

The future of remote work

Edited by

Nicola Countouris, Valerio De Stefano,
Agnieszka Piasna and Silvia Rainone

etui.



The future of remote work

Edited by

**Nicola Countouris, Valerio De Stefano,
Agnieszka Piasna and Silvia Rainone**

Acknowledgment

The editors are extremely grateful to Calvin Allen, Géraldine Hofmann and Aymone Lamborelle for their invaluable work in the realisation of this volume.

© Publisher: ETUI aisbl, Brussels, 2023

All rights reserved

Print: ETUI Printshop, Brussels

D/2023/10.574/15

ISBN: 978-2-87452-671-8 (print version)

ISBN: 978-2-87452-672-5 (electronic version)



The ETUI is co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the ETUI. Neither the European Union nor the ETUI can be held responsible for them.

Contents

Nicola Countouris, Valerio De Stefano, Agnieszka Piasna and Silvia Rainone Introduction	7
Jon C. Messenger Chapter 1 Some reflections on the experience of telework during the Covid-19 pandemic: a paradigm shift and its implications for the world of work.....	19
Uma Rani Chapter 2 Remote platform work and the flexible workforce: what global dynamics can we see?	29
Mehtap Akgüç, Béla Galgóczi and Pamela Meil Chapter 3 Remote work and the green transition.....	45
Kalina Arabadjieva and Paula Franklin Chapter 4 Home-based telework, gender and the public-private divide.....	61
Wouter Zwysen Chapter 5 Remote work as a new dimension of polarisation: Individual and contextual determinants of the relationship between working from home and job quality	83
Kurt Vandaele and Agnieszka Piasna Chapter 6 Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic.....	103
Birte Dedden, Stan De Spiegelaere and Maureen Hick Chapter 7 Remote work: ensuring trade union and workers' rights through collective bargaining.....	127
Nicola Countouris and Valerio De Stefano Chapter 8 Out of sight, out of mind? Remote work and contractual distancing	147

Silvia Rainone	
Chapter 9	
Digital and remote work: pushing EU labour law beyond its limits.....	163
Uglješa Grušić	
Chapter 10	
Remote work in private international law.....	185
Zane Rasnača	
Chapter 11	
Enforcing the rights of remote workers: the case of digital nomads.....	201
Hamid R. Ekbia	
Chapter 12	
Parallel universes: the future of remote work and the remoteness of future work.....	221
List of contributors.....	235

Introduction

Nicola Countouris, Valerio De Stefano, Agnieszka Piasna and Silvia Rainone

1. The genesis of the book: fundamental questions about where and how we work

Debates on the future of work have taken a more fundamental turn in the wake of the Covid-19 pandemic. Early in 2020, when large sections of the workforce were prevented from coming to their usual places of work, remote work became the only way for many professions to continue to perform their economic activities and provide their services. In this way, what had been a piecemeal, at times truly sluggish, evolution towards a multilocation approach to work turned into an abrupt, radical and universal shift (ILO 2021). It quickly became clear that the consequences of this shift were far more significant and far-reaching than simply changing the address of one's workspace. They involved a series of rapid, blockbuster transformations that, it was already clear back then, were going to outlast the 'mandatory lockdown' phase of the pandemic.

Early discussions within the multidisciplinary community of the European Trade Union Institute (ETUI) Research Department on the transformations that the pandemic was bringing on how work is organised and performed showed the complexity of assessing the impact and the future trajectories of remote work. These led to fundamental questions being raised, discussed and explored: from the nexus between the location from where work is performed and how it is performed to how remote locations may affect the way work is managed and organised, as well as the applicability of existing legislation. Additional questions concern remote work's environmental and social impact and the rapidly changing nature of the relationship between work and life. The concepts and frameworks that could be drawn from the literature on telework at the time were rather inadequate as they had been coined for what was an exceptional phenomenon rather than a structural one. While they provided some useful starting points for further research, they clearly needed to be validated against a very different landscape and, perhaps more importantly, they needed to be revised in light of the rapid transformations determined by the unprecedented scale of the experience.

These early discussions highlighted the gaps in existing knowledge about remote work, but they also made it clear that insights from different areas of research could shed light on this emerging debate. Thus, a group of ETUI researchers and academics embarked on a fascinating and challenging journey of formulating critical questions about remote work and examining them from the perspective of their disciplines. The debate went beyond the four walls of the Institute, drawing inspiration from and sharing the perspectives of experts from academia and international institutions as well as from the

trade union world, as evidenced by the composition of the editorial team. This volume is the culmination of those analytical efforts.

1.1 Probing assumptions and searching for answers

While the decoupling of ‘work’ from the traditional concept of ‘the workplace’ may be – in many ways – revolutionary, it most certainly does not imply that work may happen nowhere or that the actual place of work does not have an impact on the very performance of work. On the contrary, the physical location of work away from the traditional ‘office space’ is having a growing influence in shaping several outcomes of remote work for workers (Risi and Pronzato 2021). It has become increasingly obvious that not everyone has access to the same quality of working space at home and that, when working from home, there are different sets of roles and duties – many of them ‘gendered’ and socially constructed – competing for workers’ time and attention. The departure from a shared and standardised place of work into highly individualised locations with unequal potential and constraints can deepen existing inequalities as well as generate new ones.

Paradoxically, just as remote work is emerging from the shadows and into the light, remote workers – by their very nature – are disappearing out of sight, both literally and metaphorically. Managerial practices built around the notion of the presence and visibility of workers in the workplace are increasingly being challenged, as are the power relations on which they are premised. With the disintegration of the traditional concept of managerial oversight, the very rationale behind employing workers under traditional employment contracts is being questioned, with numerous employers no longer feeling that remote work practices ensure a sufficient degree of subordination such as to justify the *quid pro quo* between control of labour resources and worker protection that is inherent to the concept of the contract of employment. It might be useful to draw parallels with the proliferation of outsourcing and the platformisation of work and, against this background, to identify the potential future challenges to work and employment conditions related to remote working (Piasna 2022; Weil 2019; Wood et al. 2019). In a similar vein, collective bargaining and representation instruments built around a physical and shared workplace will need to be reimagined if they are not to lose their influence and relevance.

The metaphorical disappearance of remote workers is also linked to some of the, perhaps less obvious, consequences of the shift of paid work into the private, domestic sphere of the household (Bérestéguí 2021). Industrial and post-industrial societies have largely excluded any labour performed in the private sphere from the notion of work or employment that ought to be remunerated and protected. The few exceptions to this rule, for instance ‘home working’, invariably struggle to attract ‘decent work’ standards (it is not a coincidence that ILO C-177, the Home Work Convention of 1966, has only been ratified by 13 countries). Invariably, work performed at home – not to mention ‘reproductive labour’ – is typically regarded as alien to the public interest and to public regulation. The growth of remote work performed from home reinserts paid labour into the private sphere, revealing the pre-existing regulatory lacunae and creating

new normative tensions at the frontiers of these two worlds: private life and paid work (De Valdenebro Campo et al. 2021).

Remote work has also been invisible in official labour market statistics, with little data available from the pre-pandemic period and little conceptual clarity as to how to measure work that is not performed on employers' premises (see also Felstead 2022). And, as with many concepts in social sciences, what is not measured tends to be ignored (Burchell et al. 2014). It is thus about time to put forward questions and formulate the concepts that can guide future research on remote work.

One area where we might still lack the right questions is the environmental impact of remote work. Early proponents of telework saw it as a modality of work that would reduce commuting time, road traffic and pollution. These assumptions have now been put to the test, revealing a much more complex web of interdependencies and effects. Reduced commuting time may change consumption patterns but it may also change lifestyles, transforming suburbs and city centres. The science does not even seem to be settled on whether virtual meetings have a larger environmental footprint than offline meetings in an office as they require electricity, data storage and more IT equipment, not to mention heated dwellings and additional consumption of energy in the household.

With remote work now clearly emerging as a central component of the broader future of work debate, it requires careful consideration from different perspectives and disciplines in order to arrive at a truly socially embedded approach to the future of remote working. This edited volume, with chapters written by ETUI researchers as well as external experts from academia and the labour movement, lays the groundwork for properly evaluating the risks and potential of post-pandemic and post-emergency remote work. What it aims to contribute is not mere predictions about the development of remote work but, instead, reasoned assumptions about its impact on various aspects of life, society and the economy, coupled with specific policy and regulatory proposals for achieving decent remote work.

2. The state of play on remote work

The following chapters offer a rich, multidisciplinary and multidimensional overview of the phenomenon of remote work. Remote work has now firmly entered its post-pandemic phase and, in doing so, it has claimed a more structural presence in the lexicon of human resource management and work organisation practices and, of course, in the daily lives of millions of workers and businesses. The move away from the contingencies of the Covid-19 emergency and lockdown mandates has, in many respects, also transformed the concept of (remote) work itself, at least in two ways. First, it has opened the use of remote work to choice and deliberation, with workers and employers able to choose whether remote work should feature in the workplace and, if so, to agree (individually and collectively) how it should be treated and regulated. Second, it has opened the possibility of mixing this form of work with other forms and modalities of employment, including in conjunction with the more mundane forms of work from the 'office', often

referred to as ‘hybrid work’, or other forms of work provided outside the employer’s premises extending from platform work to other typologies of ‘peripatetic’ employment.

These two factors – choice/deliberation and the ability to mix different forms of remote and onsite work – are currently leading to a large scale of decentralised – typically company based – experimentation, with certain patterns clearly emerging but with many elements of uncertainty and unpredictability.

In terms of the emerging patterns, the most evident is arguably the progressive consolidation of hybrid work as the ‘new normal’. There is growing evidence that, while the end of Covid-19 mandates has clearly reduced the number of people working exclusively from home, many have retained the possibility of working remotely for at least part of the working week, typically going to the ‘office’ in the middle of the week and working from home on Mondays and Fridays (Financial Times 2022). The number of office workers availing themselves of this option is substantial but varies from country to country (Alexandri et al. 2023). Data published by ETUI in the 2023 issue of *Benchmarking Working Europe* (Countouris et al. 2023) show that, on average, 24 per cent of workers in the EU worked from home at least sometimes in 2021, compared to 12 per cent in 2012, but with important national variations: for example, 54 per cent of Dutch workers teleworked at least in part in 2021, up from only 12 per cent in 2012. Perhaps more importantly, the data suggest that vacancies and openings are increasingly offering some combination of remote and office work in order to lure in applicants whose preferences remain strongly in favour of remote and hybrid work (Romei 2022).

The reorganisation of remote work around a hybrid work norm has several important consequences for both workers and employers. These are explored in greater detail in the different chapters of this edited collection but it is worth briefly listing them here. For workers, the most obvious implication is that hybrid work arrangements can simultaneously bring together both the best and the worst of each of the two modes of work they are composed of, office work and remote work. For example, they can lead to job intensification and a blurring of working time and personal time during ‘working from home’ days, as well as additional workload demands during ‘office work’ days under the direct supervision of managers concerned about productivity or the completion of certain office-based tasks in a shorter number of days. It can also lead to more remote surveillance for the purposes of monitoring home work productivity in ways that can spill over into greater managerialism and control during office days. The blurring of home work and office work lines has important implications for employers, too. In the pre-hybrid work era, personal lives used to be hidden to employers, especially to those keen to turn a blind eye. But with the home becoming an extension of the office, at least some days of the week, this is no longer possible and even non-inquisitive managers are regularly confronted with concerns about ‘personal’ wellbeing that, prior to the pandemic, were – literally – none of their business. There is evidence that employers that do not engage with these novel requests may be confronted, if not with ‘great resignations’, then with ‘quiet quitting’ practices (Economist Impact 2023).

This ‘worst of both worlds’ scenario is undoubtedly the one that is currently focusing the minds of trade unions and, to a certain (but lesser) extent, of regulators. As suggested by some of these chapters (Chapter 7 in particular), the key concerns of national and supranational trade unions is to ensure that remote and hybrid work arrangements do not lead to an erosion of working conditions and trade union rights. Second to this priority is that of preventing businesses from, broadly speaking, externalising certain costs and risks to workers – e.g. the costs related to work equipment but also those related to energy bills, subsistence and, no less importantly, health and safety at work – simply because part of work is being performed remotely from their homes. A third priority is that of addressing risks that are specifically linked to the remote portion of hybrid work, from data mining to undue surveillance practices to the risk of falling behind in terms of training opportunities and career progression. Discussions and negotiations about the ‘right to disconnect’ feature prominently within this debate.

Hybrid work would appear to be less exposed to the obstacles to trade union access and mobilisation that would appear to be inherent to pure, full-time remote work, with workers’ representatives being at least able to interact with a more traditional ‘office workforce’ some days of the week. But, even so, it should be clear that the organisational challenges faced by the union movement, and by workers themselves, of ensuring that hybrid work does not become an opportunity for scaling down trade union presence in the workplace are nothing short of formidable. To simplify a more complex point developed in greater detail in Chapter 6, if half of the workforce is not present in the office half of the time, then unions do need to adapt their recruitment, communication and mobilisation strategies to a hybrid and online environment. Neither does hybrid work mean that all of the workforce works from the office some/most of the time, with some workers periodically being allowed to work fully remotely for considerable periods of time for various reasons some of which could be linked to personal or family related vulnerabilities. Overall, a shift away from the physical office space as the central locus for unionisation is forcing unions to experiment with the creation of new, online communities but with results that will need to be carefully monitored in the years to come.

While hybrid work features prominently in the current state of play on remote work, it is important to note that full-time remote work is also growing in popularity, often (but not always) in association with the proliferation of platform mediated work. This trend brings along a unique set of challenges and regulatory questions, only some of which are currently being addressed or engaged with by the various national and supranational legal instruments on platform work. So, for example, purely remote forms of telework (whether mediated by a platform or not) lend themselves much more to a transnational and cross-border provision of work and services than hybrid work, in ways that raise important challenges for tax, social security and even labour and employment process rules. Digital nomads may well have the freedom to reside in one country and offer their services in another, but the country in which they live and access important public services may not be the same as the one in which they and their employers/principals are paying their social security contributions. Often, in order to make the most of the undeniable benefits that come with greater autonomy and freedom, remote workers and remote employers may agree to change the very nature

of their contractual arrangements, shifting them away from protected employment and into the sphere of self-employment and commercial contracts. Overall, this will in time require a reconfiguration, in more universal and supranationally coordinated terms, of important elements of employment protection and social security legislation but, as Section 3 suggests, this is not the only challenge lying ahead on the road to a more worker centred regulation of remote work.

3. The way forward

It is undeniable that the proliferation of remote and hybrid work models poses essential challenges to labour regulation systems and trade unions. The blurring of boundaries between private and professional life, the resulting extension of working hours and intensification of work pace, the disproportionate gender impact of these phenomena and the expansion of occupational health and safety risks beyond traditional workplaces are analysed in various chapters of this volume. In addition to these issues, they also focus on the possibility that remote work could transform into an opportunity for businesses to resort to unfettered outsourcing practices through the unilateral misclassification or re-classification of an ever-increasing number of online workers. Furthermore, we cannot understate how the transition to remote work has been accompanied by an enormous spread of abusive and intolerably invasive means of controlling and monitoring work performance. These technological tools have reintroduced forms of personal control, often damaging to human dignity, which have been associated with workplaces since the beginning of the industrial revolution, into the private spaces of workers, paradoxically leading to an extension and intensification of worker subordination.

It is evident, however, that the solution countering these risks cannot be a return to the pre-pandemic working situation. This would mean not only wasting the investments that have been made to enable the shift to remote work, and needlessly opposing a seemingly irreversible trend, but primarily failing to recognise that a significant portion of the workforce does not seem to be willing to turn back the clock to a time when they had to endure hours of daily or weekly commuting and attend the office every weekday now they have realised that a constant office presence is unnecessary. For trade unions, it would be an enormous risk to be identified as ‘champions of the return to the office’ when a growing segment of the working population rejects this as the sole paradigm of working.

The challenge, instead, is to ensure that remote work becomes and stays decent in the future and, for trade unions, to lead the struggle for labour rights in this direction. To this aim, what should be absolutely rejected are the Fordist-Taylorist vision of remote work and the techno-determinism that often accompanies the introduction of technology in workplaces.

In this respect, the false trade-off (Kantor and Sundaram 2022) between the ability to work remotely and the need for increased control and surveillance by management will have to be debunked. Existing studies show that remote work functions best in an atmosphere of mutual trust and increased worker autonomy (Messenger 2019).

Accepting the assumption that the ‘physical’ personal control of management in the office must necessarily be supplanted by the monitoring of keystrokes, stealth screenshots and various forms of spyware would be a mistake. Likewise, it would be erroneous to think that the introduction of these tools is somehow legitimised by them being technically available and now affordable. Such a techno-determinist approach cannot be accepted by the trade union movement and progressive policymakers. Instead, it is necessary to invest time and resources in demonstrating how many of these surveillance practices are already prohibited by labour and employment regulation and to mobilise around limiting the use of any other invasive control tools that continue to evade this regulation. Among other things, this requires collective reflection and policymaking on the scope and intensity of employers’ managerial prerogatives and how compatible these are with modern democratic societies.

We must also reflect more broadly on how technology allows these managerial prerogatives to spill over beyond the boundaries of the contract of employment, facilitating the use of sham self-employment while maintaining tight control over bogus ‘independent contractors’. In this respect, it will be vital to avoid a ‘platformisation’ of remote work, with businesses outsourcing their activities to sham freelancers online, meticulously controlled through technology, as has been happening for some time on various digital labour platforms.

Further consideration is needed on how to respond to the technological blurring of the boundaries between self-employment and subordinate work, especially when work is executed online. It is evident that the common watershed between work that is protected and work that is not based on traditional elements of legal subordination is struggling to keep pace with the phenomena briefly discussed in this Introduction and analysed in depth in the chapters of this volume. Hopefully, the receptivity of authoritative institutions such as the Court of Justice of the European Union to universal protection perspectives may pave the way for future trade union action.

Remote work will, in many ways, be the work of the future but it already represents the present and the way in which millions of workers earn a living. There is therefore a certain urgency in developing strategies and collective action to ensure that it meets the expectations of decency and emancipation that were associated with its blockbuster growth in the early days of the pandemic. We hope that the contributions collected in the chapters of this volume, that Section 4 presents in greater detail, will provide a solid theoretical foundation upon which to build the future of remote work.

4. Analytical approach and structure

The objective of this volume is to explore the impact of remote work and to investigate potential constructive and strategic ways of ensuring that it goes hand-in-hand with the interests of workers and society as a whole. In undertaking this fundamental and challenging inquiry, we have opted for a broad definition of the concept of remote work, covering a wide range of situations.

On the one hand, it encompasses forms of telework and hybrid work arrangements that do not involve critical changes in the company's business model or in the contractual classification of workers or the nature of their tasks. These arrangements are linked to an array of issues such as work-life balance, health and safety, surveillance, wages, the skills divide between remote workers and non-remote workers, unionisation and the determination of the applicable fiscal, social security and employment legislation. On the other hand, while these are crucial aspects to address, we believe they do not exhaust the footprint of remote working practices as regards the world of work. The volume therefore also looks at those remote work situations that arise from the broader phenomenon of digitally mediated work. There, a whole parallel set of issues emerges. These go beyond working conditions in the strict sense and include the implications of those business models based on extreme outsourcing tendencies and workforce scalability. From this perspective, remote work, especially when enabled by a digital ecosystem, is linked to a progressive fragmentation of the conventional (legal as well as spatial) notion of the firm and, consequently, to a loosening of the grip of trade union representation and to the growing ineffectiveness of the existing normative paradigm defining the scope of employment protection, that of subordination *in primis*.

Having framed the inquiry in such a pluridimensional fashion, it seemed quite natural to adopt a multidisciplinary perspective. This is reflected in the different and complementary areas of expertise of the editors and the 19 authors who have contributed to the volume. Through its sociological and political science angle, the book unpacks a series of societal and structural transformations linked to the expansion of remote work. Economists' analyses have been crucial in processing existing evidence and patterns in order to identify the trends and discern the complex interrelationships between remote work and the circumstances in which it is located. The volume also reflects the voice of the trade union world, providing the perspective of workers' organisers on a 'spaceless' world of work. Finally, a non-negligible number of authors are labour lawyers, thus giving the overall exploration a solid hold on the regulatory landscape with which remote work practices are confronted.

Enriched by this plurality of disciplines, one of the main contributions of the volume is the definition of a seminal research agenda for further exploration. Indeed, the 12 chapters draw an articulate picture of several work-related dimensions affected by remote work trends. Reflections develop along parallel axes, ranging from the discussion of global and societal dynamics to the implications for the contractual relationship between employers and workers. Similarly, the displacement of the spatial component of work is considered both from a theoretical perspective as a potential paradigm shift for the world of work and, more pragmatically, as a challenge for the implementation of specific regulatory regimes. Another key intuition that emerges from the multidimensional approach of this volume is that the establishment of a worker centred future of (remote) work requires the exploration and development of constructive pathways at different levels and in different directions involving the role of regulators, courts, trade unions, researchers, businesses and workers themselves.

In terms of structure, the volume opens with a reflection by Jon Messenger (Chapter 1) on how remote work alters the temporal and spatial variables of the world of work.

This is not necessarily negative; on the contrary, such changes can empower workers by giving them greater control over their (working) lives. However, it is essential that a number of safeguards are put in place and that the social partners are involved in drawing out the lessons learned from the Covid-19 pandemic. Following this introductory contribution, the volume outlines a series of problematic issues which, far from being new, now risk being exacerbated by the normalisation of remote work.

Uma Rani in Chapter 2 adopts a global perspective and shows how remote work, combined with online and platform work, is intensifying cost-driven labour outsourcing trends. The chapter traces the main flows of demand for online or remote work, with particular implications for the US, UK and Indian labour markets, and warns that, in the absence of effective international and universal labour standards, remote and platform work will accelerate the fragmentation of the workplace and exacerbate the downward pressure on working conditions around the globe. Chapter 3, contributed by Mehtap Akgüç, Béla Galgóczi and Pamela Meil, examines the relationship between remote work and the green transition which, they argue, is far less straightforward than commonly presumed. The assumption that less commuting and office use will reduce energy consumption is not necessarily true. In the following Chapter 4, Kalina Arabadjieva and Paula Franklin analyse remote work as a disruptor of the public and private spaces divide and reflect on its implications from a gender perspective. The authors unravel a complex and seemingly contradictory dynamic in which home-based telework has a disproportionately negative impact on women, exposing them to a whole range of unpaid care work, while at the same time having the potential to improve their position in the labour market. Another critical development associated with telework arrangements is the emergence of a new cleavage between those employees who are able to work from home, and who generally have higher skills and wages, and those whose jobs entail tasks that cannot be performed remotely, who have more precarious working conditions and are paid proportionately less. Using representative data on the EU labour market, Wouter Zwysen discusses this phenomenon in Chapter 5 and finds that higher union density tends to be associated with more equitable access to remote work across the workforce.

Having problematised some of the specific implications of remote work, the focus then turns to the role of trade unions in promoting better working conditions for remote workers. The aspect addressed by Kurt Vandaele and Agnieszka Piasna in Chapter 6 is that of the challenges to unionisation that emerge in ‘spaceless’ workplaces. The authors explore the potential of spontaneous online communities of workers and consider the relationship between these and trade union organising strategies, suggesting that these two dimensions may have a mutually reinforcing role. Providing a direct trade union perspective, Birte Dedden, Stan De Spiegelaere and Maureen Hick’s Chapter 7 then reviews collective bargaining experiences around the issue of remote work and outlines a remote work agenda for trade union delegates and organisers. Their recommendations also apply to policymakers who have an essential role to play in ensuring trade union access to remote workers and in strengthening the enforcement of the existing legal framework on information, consultation and collective bargaining rights.

Another fundamental variable determining the unfolding of remote work practices, and more expressly their impact on working conditions, is the regulatory framework. The volume devotes ample space to legal analysis, highlighting both the gaps and the potential of existing (European) legal systems. Nicola Countouris with Valerio de Stefano in Chapter 8, and Silvia Rainone in Chapter 9, respectively, provide a cartography of the weaknesses of traditional legal paradigms and point to potentially constructive routes to overcome the unintended rigidities that undermine the effectiveness of employment protection systems. Focusing on the employment relationship, Countouris and De Stefano suggest that a model based on subordination is increasingly unable to curb the ‘contractual distancing’ implications of remote work. Lacking the spatial dimension of managerial control, employers tend to prefer freelance labour supply, taking advantage of the anachronistic formalism that governs the scope of labour rights. Rainone integrates these observations by showing that transformative dynamics also emerge with respect to the dissipation of the traditional legal concepts linked to the employer’s sphere of influence, such as the notion of establishment or undertaking. In addition, digital remote work is associated with the emergence of monopsonistic dynamics that exacerbate the power imbalance between businesses and workers and urge the introduction of new, more targeted labour standards.

This is followed by a discussion of the implications of remote work for one of the most regulated aspects of EU law, namely the coordination of applicable legal regimes in the case of working arrangements with a connection to more than one Member State, as may well be the case with remote workers who live in a country other than that of their employer. Uglješa Grušić examines in Chapter 10 the applicability of the Brussels I and Rome I regulations to remote working scenarios and suggests that their correct implementation minimises the risk of misclassification of the employment relationship. On the other hand, European private international law as it currently stands supports outsourcing and offshoring practices, with potentially negative consequences for the effectiveness of employment standards. In Chapter 11, Zane Rasnača narrows the focus to the specific and often mediatised figure of digital nomads as a case study to analyse the situation of remote workers in terms of labour standards enforcement. The chapter identifies several enforcement gaps, mainly related to legal obscurity regarding the status and protection of mobile remote workers under EU law and ambiguously drafted legislation.

Chapter 12 by Hamid Ekbia closes the volume, sublimating the different angles and dimensions explored in the previous chapters in a theoretical reflection on the future of work. Remote work is embedded within a series of transformative dynamics that are reconfiguring the relationship between space and time in the interest of the perpetuation of capitalist systems. Enabled and displaced by digital technology, work risks drifting into a purely profit-driven narrative. To reverse such a trend, it is argued that the future of remote work must be embedded in an emancipatory and empowering agenda.

References

- Alexandri E., Barbieri L., Seymour D., Suta C.-M. and Thoung C. (2023) Short and medium-term sectoral employment: forecasting the future development of remote work, Report, ETUI. [Forthcoming]
- Bérastégui P. (2021) Teleworking in the aftermath of the Covid-19 pandemic: Enabling conditions for a successful transition, Policy Brief 2021.05, ETUI.
<https://www.etui.org/publications/teleworking-aftermath-covid-19-pandemic>
- Burchell B., Sehnbruch K., Piasna A. and Agloni N. (2014) The quality of employment and decent work: Definitions, methodologies, and ongoing debates, *Cambridge Journal of Economics*, 38 (2), 459-477. <https://doi.org/10.1093/cje/bet067>
- Countouris N., Piasna A. and Theodoropoulou S. (eds.) (2023) *Benchmarking Working Europe 2023: Europe in transition - Towards sustainable resilience*, ETUI and ETUC.
<https://www.etui.org/publications/benchmarking-working-europe-2023>
- De Valdenebro Campo A.M., Avolio B. and Idrovo Carlier S. (2021) The relationship between telework, job performance, work-life balance and family supportive supervisor behaviours in the context of Covid-19, *Global business review*. <https://doi.org/10.1177/09721509211049918>
- Economist Impact (2023) *Rewriting the rules: Building a healthy hybrid workplace*.
<https://impact.economist.com/projects/rewriting-the-rules/pdfs/rewriting-the-rules-building-a-healthy-hybrid-workplace.pdf>
- Felstead A. (2022) *Remote working: A research overview*, Routledge.
- ILO (2021) *Teleworking arrangements during the COVID-19 crisis and beyond*, ILO.
- Kantor J. and Sundaram A. (2022) The rise of the worker productivity score, *The New York Times*, 14 August 2022. <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>
- Messenger J. (2019) Conclusions and recommendations for policy and practice, in Messenger J.C. (ed.) *Telework in the 21st Century*, Edward Elgar 286-316.
- Piasna A. (2022) Precariousness in the platform economy, in Choonara J., Carmo R.M. and Murgia A. (eds.) *Faces of precarity: Critical perspectives on work, subjectivities and struggles*, Bristol University Press, 130-145. <https://doi.org/10.2307/j.ctv2tjdh08.13>
- Risi E. and Pronzato R. (2021) Smart working is not so smart: Always-on lives and the dark side of platformisation, *Work organisation, labour & globalisation*, 15 (1), 107-125.
<https://doi.org/10.13169/workorglaboglob.15.1.0107>
- Romei V. (2022) Office workers embrace hybrid working as post-pandemic norm, *Financial Times*, 22 October 2022. <https://www.ft.com/content/91899837-0fc7-4fe8-9581-60517d85399b?list=intlhomepage>
- Weil D. (2019) Understanding the present and future of work in the fissured workplace context, *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 5 (5), 147-165.
<https://doi.org/10.7758/rsf.2019.5.5.08>
- Wood A.J., Graham M., Lehdonvirta V. and Hjorth I. (2019) Networked but commodified: The (dis)embeddedness of digital labour in the gig economy, *Sociology*, 53 (5), 931-950.
<https://doi.org/10.1177/0038038519828906>

All links were checked on 18.04.2023.

Chapter 1

Some reflections on the experience of telework during the Covid-19 pandemic: a paradigm shift and its implications for the world of work

Jon C. Messenger

*'Time and space are not conditions of existence,
time and space is a model for thinking'*
Albert Einstein

1. Introduction

When considering remote working via information and communications technologies (ICTs) – that is, telework – time and space do indeed provide a model for thinking. Time and space represent two of its most important aspects. Telework has important effects on both the temporal and the spatial dimensions of the world of work, and these can be positive or negative depending upon how it is practised. Indeed, it changes these two dimensions in ways that have the ability fundamentally to alter the nature of work itself. In particular, telework, if exercised correctly, allows workers to have a substantial degree of choice over when, where and how they work.

1.1 Definition

Telework is defined as the use of ICTs such as smartphones, tablets, laptops and desktop computers to work from outside an employer's premises; that is, to work remotely. In other words, telework denotes work achieved with the help of ICTs and conducted outside the employer's physical place of work.¹ The use of telework is not new, having existed since the 1970s in some parts of the world, particularly in California where it was invented and first implemented on an experimental basis (Nilles 1975). It was expected to grow substantially as the costs of ICTs and broadband communications became cheaper but, prior to the Covid-19 pandemic, its regular use was limited to certain occupations, particularly managers, senior professionals and technical staff; and certain economic sectors, such as IT and finance.

1.2 The Covid-19 pandemic experience and lessons learned

In 2020, the pandemic changed this situation dramatically. In an attempt to limit the spread of the Covid-19 virus, keep workers employed and reduce the negative economic

1. In the context of this chapter, most self-employed workers working from their own homes are not considered to be teleworkers; they are working from an employer's premises.

consequences of the pandemic, policymakers promoted, and employers aggressively implemented, telework. Almost overnight, the world entered into a kind of ‘natural experiment’ with mass teleworking as the vast majority of those workers who were capable of doing their jobs remotely began working from home. For an in-depth review and analysis of the use of home-based telework as a pandemic crisis response measure, see the section on home-based teleworking (home offices) in *Working Time and Work-Life Balance Around the World* (ILO 2022).

However, while the availability of ICTs allowed for the widespread use of telework in many countries around the world – including all of the G20 countries – this experiment highlighted not only the opportunities but also the threats of this type of flexible work arrangement. Early evidence confirms that the mandatory, full-time nature of pandemic teleworking exacerbated the disadvantages, such as the potential for social isolation and detachment from colleagues and the organisation itself, as well as the ergonomic issues. Existing gender inequalities and challenges for women also appear to have been aggravated by mandatory, full-time teleworking, especially in the context of the closures of schools and childcare facilities.

The full impact of Covid-19 on labour markets still remains to be determined. However, it is very likely that the rates of telework in many countries and industries with large numbers of ‘teleworkable’ jobs will remain significantly higher than they were prior to the onset of the pandemic. Indeed, some early evidence from Europe during the post-pandemic period confirms that higher rates of teleworking are almost certainly here to stay (Eurofound 2022).

2. Telework and hybrid work in the post-pandemic world

Early stage research and surveys have found that a substantially larger percentage of workers would like to telework more frequently than they did prior to the pandemic (see e.g. Eurofound 2022). More workers have realised that their jobs can be done outside of traditional office spaces and they have also gained experience with the necessary technology. Additionally, many business leaders who were previously resistant to their teams working from home because they did not know if it was going to be effective have now found that it can be done successfully and are thus supportive of workers teleworking more frequently.

However, if these aspirations are to be realised, it requires ensuring that the necessary digital infrastructure is in place. In addition, the ‘teleworkability’ of jobs is strongly related to occupational structure, encompassing a variety of factors such as the skills of the workforce and implying that possession of the appropriate skills is critical to making telework a viable option for a substantial portion of the labour force.

Post-pandemic, teleworking may well return to its voluntary and partial or occasional nature – and, if so, that is in some respects a very positive development. Beforehand, telework was under-developed regarding both law/regulation and policy (at national and organisational levels). In countries outside of the EU, there were often no laws or

regulations of any kind on telework; and there were even fewer on the right to disconnect, which is extremely important for ensuring proper rest periods for teleworkers. As laws, regulations and policies further develop to catch up in practice with the pandemic-induced paradigm change, developing such frameworks should help to improve the working conditions of teleworkers even if, and when, mandatory full-time telework is used in other crisis situations.

It now appears that teleworking is likely to involve a hybrid or blended form of teleworking – working part of the time in the office and part of the time remotely. In fact, this ‘hybrid model’ of teleworking was shown some time ago to be the best approach to maximising its benefits and minimising its drawbacks (see e.g. Eurofound and ILO 2017). The mandatory, full-time pandemic form of teleworking should really be used only in exceptional circumstances (e.g. in epidemics or other pandemics), and possibly also for natural disasters (e.g. the 2011 Sendai earthquake and tsunami in Japan).

In order to ensure that telework arrangements provide decent working conditions, it is essential to realise that some of these are – due to the nature of telework – very different from those experienced at an employer’s premises.² Perhaps one of the most dramatic differences in the working conditions of teleworkers compared with onsite workers concerns working time.

3. The working time of teleworkers: time porosity and the risk of working longer hours

Certainly, the interest in analysing telework arrangements precedes the pandemic. In 2019, the edited volume *Telework in the 21st Century* (Messenger 2019) collected research studies from 15 different countries, all of which reported the same basic working time pattern: longer total hours of work combined with much greater discretion for workers regarding the organisation of their working time (i.e. work schedules), often referred to as ‘time sovereignty’. The former is one of the most important potential disadvantages of telework, while time sovereignty is perhaps the most sought-after benefit for workers. Telework evidently allows workers to have the flexibility to structure their working days in accordance with their individual needs. For example, they can take their children to school and pick them up afterwards, run errands and handle other personal business (for example, attend medical appointments) during normal business hours and then work at other times that are more convenient for them. All of these factors dramatically change the nature of teleworkers’ working time, both in terms of working hours and work schedules.

As noted above, the onset of the Covid-19 pandemic in 2020 dramatically increased the use of telework in order to prevent the spread of the virus. The available research regarding the use of telework in response highlights some key issues and provides important insights into what may be needed as part of any attempt to develop a balanced legal/regulatory and policy framework for employers and workers to manage

2. Of course, hybrid workers work both remotely and in the office.

telework in the future. With regard to working time and rest, the research from this period indicates that many of the concerns expressed by workers who teleworked prior to 2020 were also felt by those forced into telework by the pandemic. Studies conducted during 2020 in different countries around the world found that many teleworkers had longer working hours, but what was most notable was the consistency of those findings: a study of the 27 Member States of the European Union found that around 35 per cent of teleworkers reported an increase in working hours (Eurofound 2021; Eurofound 2020); working hours for teleworkers in Israel went up 47 minutes per day on average (The Economist 2020); and a study conducted by Harvard Business School of 16 cities in North America, Europe and the middle east, of 3.1 million people who were teleworking, found that the average working day increased by 48.5 minutes (DeFilippis et al. 2020). These findings seem particularly ironic given that, at least prior to the pandemic, many managers were worried that teleworkers would ‘slack off’ without regular, in-person supervision (see e.g. Messenger 2019).

When considering the working time of teleworkers, it is essential to mention that telework provides workers with substantial time savings due to reductions in commuting to and from the workplace. Indeed, the original impetus for the development of telework in California back in the 1970s was the desire to reduce or even eliminate long and stressful commutes to the workplace which is why its inventor, Jack Nilles, referred to it as ‘telecommuting’ – that is, commuting to work by means of telecommunications. This point seems rather obvious. The more difficult question to answer is the extent to which the time savings from reductions in commuting are eaten up by an increase in the total hours of work discussed in the previous paragraph. For example, in a study in the United States, while 65 per cent of workers surveyed enjoyed a net increase in their disposable time due to telework, 35 per cent of them indicated that all of the time saved from the commute was devoted to additional working time in their primary job (Bloom et al. 2020).

An important factor to bear in mind regarding the research studies that have been produced on Covid-related telework is that, in many countries and many organisations, both public and private, the imposition of telework came very quickly, but often without a management or regulatory framework as to how telework could be done – or, for that matter, any training for the workers and managers involved. This near-total absence of structure and preparation help to explain the factors that have led to some of the negative outcomes of pandemic teleworking, including longer working hours, while understanding them should provide policymakers and social actors with information and insights on how they might be addressed. In these circumstances, pandemic teleworking should have been a complete disaster; that it functioned as well as it did is something akin to a miracle.

In addition to its effect on the length or volume of working hours, telework also has an impact on the organisation or arrangement of working time, mainly because of the employee-oriented working time flexibility, or ‘time sovereignty’, that is inherent in most telework arrangements.

Gschwind and Vargas (2019: 49) provide a vivid illustration of this phenomenon, noting that:

...[T]he planning of a workday looks very different in comparison to a regular eight-hour office day. Almost half of the teleworkers (45 per cent) run little errands in between, gear the working hours to family needs or do odd jobs or domestic chores when having a break. Just a minority of the home-based teleworkers (9 per cent) keep to the timetable of the office, whereas others start working earlier or later or quit working earlier or later (36 per cent). Thus, while the working day of teleworkers is typically longer than those of office workers, it is also more 'porous'.

As a result of the time porosity of a typical teleworking day, teleworkers are more likely than their office-based colleagues to work during the evenings and sometimes on the weekends as well. For example, teleworkers in several European countries, including Belgium, Finland, Spain and the Netherlands, are more likely to work during the evenings and on Sundays than their colleagues who always work at the employer's premises (Gschwind and Vargas 2019). Similarly, there is also evidence of teleworkers in Japan and in India also being more likely to work during the evenings and at weekends than their office-based counterparts (Sato 2019; Noronha and D'Cruz 2019).

Thus, it appears that telework does provide individuals with the opportunity better to organise their work schedules in line with their own needs and preferences as well as with reductions in the time they need to spend commuting. However, it also results in longer working hours extending into their personal time. As a result of this situation, the boundary between paid work and personal life has the potential to become very blurred and this, in turn, can lead to increased work-family conflict and other negative outcomes. Consequently, it is important for remote workers to establish boundaries between their paid work and their personal lives, particularly if they work from home. Furthermore, such boundaries need to be both physical and temporal. One example of a physical boundary is a home office or other space dedicated to carrying out paid work; an example of a temporal boundary is the right to disconnect from paid work during those periods reserved for rest and/or personal life, such as evenings and weekends.

In addition to telework's effects on working time, it can also – and perhaps not surprisingly – have a profound effect on the localities where work is done; thus it affects not only the spatial organisation of work and personal life but also the broader spatial patterns of society as a whole.

4. The spatial dimension of telework and hybrid work

As we have seen, telework had a spatial dimension from its earliest development (Nilles 1975). At that time, futurists waxed poetic regarding the potential of technology to enable remote working; for example, Alvin Toffler envisioned something he called 'the electronic cottage': a home-based electronic production system (Toffler 1980).

While telework never came close to achieving this utopian vision, nevertheless it has always had the potential to help promote a reconfiguration of the spatial distribution

of work and, as a result, of personal lives as well. The dramatic expansion of telework during the pandemic provided employees who had the capability to telework with the opportunity to experience the advantages and disadvantages of this first hand which, as mentioned earlier, were magnified by the conditions of the pandemic, particularly government-mandated lockdowns and social distancing.

Nevertheless, research studies and company examples, developed in the relatively brief post-pandemic period, do report that most employees would prefer to work remotely for at least some of the time. This preference has already led to widespread experimentation with working from alternative locations including, but not limited to, working from home.³ Many companies (e.g. Google and Dell) are offering – or sometimes even requiring – their employees to work from locations other than the employer’s premises. Obviously, this is a cost-saving measure for those companies but, at the same time, many others are requiring employees to come into the office again on a regular basis, or even full-time, in spite of these potential cost savings. The appeal is, it seems, far from universal.

The point is, however, that if employees are able to choose the location of their workplace, it seems likely that there would be some movement from highly urbanised areas into less populated ones, not to mention fewer commutes to and from the office. The transportation literature is filled with examples of the potential of regular teleworking to reduce the use of personal vehicles and increase the use of public transport, leading to the reduction of CO₂ emissions (see e.g. Akgüç et al., this volume). Therefore, in addition to the savings in commuting time and in the accompanying stress for workers, telework has the potential to offer broader benefits to society as well.

5. Some opportunities and challenges of telework for trade unions

An appropriate legal and regulatory framework is absolutely essential to help ensure that telework arrangements offer decent working conditions and social protection for workers, including the right to disconnect from work during specified periods of time reserved for rest and personal life (e.g. between work shifts and on weekly rest days). A closely-related but often neglected point regarding this legal and regulatory framework is that the ability to telework on a regular basis is regarded by many workers as an important benefit – even more so in the wake of the experience of the pandemic.

However, this overall framework needs to be sufficiently flexible to permit telework arrangements to be customised to the needs of workers and employers in particular economic sectors and different organisations, both public and private. The need for such adaptation offers opportunities for trade unions to take an assertive approach to forging collective agreements with employers at all levels (see Dedden et al., this volume).

3. Many teleworkers are actually mobile workers, moving from one work location to another or working while travelling on business.

Probably the most notable example of such an agreement is the European Union Framework Agreement on Telework (2002), negotiated by the European-level social partners. This Agreement establishes a general framework for the rules regarding telework with the aim of promoting it but also ensuring that this work arrangement meets the needs of workers as well as employers. It highlights the important principle that teleworkers should retain the same legal protections as employees working at an employer's physical premises. It also identifies the critical features that are specific to remote working, requiring adaptation on issues such as employment conditions, data protection, privacy, equipment, health and safety, the organisation of work, training and collective rights. This Agreement, applicable to all Member States of the European Union, has resulted in national-level regulations on telework in all but two EU Member States⁴ (Eurofound 2022). More recently, in the wake of the pandemic, the European-level social partners have decided to begin negotiations to review and update it to reflect the profoundly new circumstances of the post-pandemic world (Eurofound 2022).

In addition to collective bargaining and actively influencing government laws and policies on telework, the dramatic expansion of telework also offers other opportunities for trade unions. For example, one of the most important disadvantages of telework is the potential for social isolation, particularly with full-time telework. However, this disadvantage offers a potential opportunity for trade unions by serving as a vehicle for promoting interaction, communication and socialisation among workers who are geographically dispersed.

This spatial dispersion inherent in telework can potentially make it more difficult for trade unions to organise employees than would be the case in more traditional, physical workplaces. Unions need actively to seek technological solutions to transcend this barrier and ensure that workers remain connected with each other (see also Vandaele and Piasna, this volume). Regular meetings and other events, ideally in person ones, can also help foster and maintain a collective identity and shared objectives.

6. The way forward: ensuring equal treatment and opportunities for teleworkers

During 2020, the necessity of deploying teleworking arrangements during the Covid-19 pandemic to promote social distancing, while keeping organisations operating and workers employed, dramatically increased the use of telework almost overnight in both private enterprises and public sector organisations. While the pandemic has now mostly passed, the ultimate result of this massive deployment of telework as a crisis response measure amounts to nothing less than a paradigm shift in the way in which paid work is carried out. The proverbial horse is now not only out of the stables but has already bolted down the road and, at this stage, it's going to be nearly impossible to get it back. Workers have seen both the upsides and the downsides of telework in the worst possible circumstances and yet they must have concluded that the former outweigh

4. These two being Cyprus and Ireland.

the latter because their demands to work remotely on a regular basis as a condition of employment are rising.

Therefore, as a result of this ‘natural experiment’, it will be necessary to work out how to promote decent and productive telework for a much larger portion of the workforce than used this work arrangement prior to the pandemic. During the next, highly uncertain period, workers, employers and governments will need to adapt to this new way of living and working which will require new behaviours and new norms. The ILO’s telework guide, *Teleworking during the Covid-19 Pandemic and Beyond: A Practical Guide*, offers specific, practical recommendations regarding effective teleworking practices focused on eight key areas that affect workers’ well-being as well as the performance of individuals and teams:

- working time and work organisation
- performance management
- digitalisation
- communication
- occupational safety and health
- legal and contractual implications
- training
- work-life balance (ILO 2020).

Fully implementing the practical recommendations in this Guide will help make the remote working experience as similar as possible to the office experience which, in turn, will help to promote equal treatment and opportunities for both remote workers and onsite ones. In fact, the nature of hybrid work itself helps to promote equal treatment and opportunities because it involves the same people working in both modes.

Many possible approaches to hybrid work are possible, both regarding the number of days of remote working per week or per month and workers’ ability to choose which days are best suited to their individual needs. Additionally, in examining which particular model of telework is best suited to them, organisations should seek employees’ inputs regarding the design of telework arrangements and work collaboratively with them to implement and then manage them. Such an approach will not only result in telework arrangements that are well-adapted to these needs, but will also build the trust that is essential to making them work effectively, ultimately leading to beneficial results for both workers and employers.

Last, but certainly not least, it is essential to ensure that the social partners play a central role in drawing out the lessons learned from this enforced experiment and applying them to revise existing laws, regulations and policies or, if necessary, to develop new ones. This can help make teleworking a ‘win-win’ arrangement benefiting both workers and employers in private enterprises as well as in public sector organisations.

References

- Bloom N., Davis S. and Barrero J.M. (2020) 60 million fewer commuting hours per day: how Americans use time saved by working from home, VoxEU, 23 September 2020.
<https://voxeu.org/article/how-americans-use-time-saved-working-home>
- DeFilippis E., Impink S.M., Singell M., Polzer J.T. and Sadun R. (2020) Collaborating during coronavirus: the impact of COVID-19 on the nature of work, NBER Working Papers Series 27612, National Bureau of Economic Research .
- The Economist (2020) People are working longer hours during the pandemic, working from home is less liberating than many hoped, Daily chart, 24 November 2020.
<https://www-economist-com.idm.oclc.org/graphic-detail/2020/11/24/people-are-working-longer-hours-during-the-pandemic>
- Eurofound (2020) Living, working and COVID-19, Publications Office of the European Union.
- Eurofound (2021) COVID-19: implications for employment and working life, Publications Office of the European Union.
- Eurofound (2022) The rise in telework: impact on working conditions and regulations, Publications Office of the European Union.
- Eurofound and ILO (2017) Working anytime, anywhere: the effects on the world of work, Publications Office of the European Union. <http://eurofound.link/ef1658>
- Gschwind L. and Vargas O. (2019) Telework and its effects in Europe, in Messenger J. (ed.) *Telework in the 21st century: an evolutionary perspective*, Edward Elgar, 36-75.
- ILO (2020) A practical guide on teleworking during the Covid-19 pandemic and beyond, ILO.
- ILO (2022) Working time and work-life balance around the world, ILO.
- Messenger J. (ed.) (2019) *Telework in the 21st century: an evolutionary perspective*, Edward Elgar.
- Nilles J.M. (1975) Telecommunications and organizational decentralization, *IEEE Transactions on communications*, (23) 10, 1142-1147.
- Noronha E. and D’Cruz P. (2019) Organization advantage: experience of telework in India, in Messenger J. (ed.) *Telework in the 21st century: an evolutionary perspective*, Edward Elgar, 255-285.
- Sato A. (2019) Telework and its effects in Japan, in Messenger J. (ed.) *Telework in the 21st century: an evolutionary perspective*, Edward Elgar, 76-127.
- Toeffler A. (1980) *The Third Wave*, Bantam Books.

Chapter 2

Remote platform work and the flexible workforce: what global dynamics can we see?

Uma Rani¹

1. Introduction

The growth of remote working arrangements, facilitated by the rapid digitalisation that has taken place over the past decade, has been accelerated by the Covid-19 pandemic. The widespread use of digital tools and technologies, as well as the rise of digital labour platforms, are driving the transformation of work and leading to changes in work organisation and work processes. This transformation encompasses not only the digitalisation of work previously carried out by individuals within a firm, but also its outsourcing to individuals with different skill sets working remotely in various locations across the globe through the use of online labour platforms and other technologies.

The lockdowns during the Covid-19 pandemic created a greater awareness of the potential for remote work, even for jobs that were traditionally performed within a physical office. Firms facing financial constraints seized this opportunity to outsource work to remote workers, potentially saving costs and accessing talent from different countries (Rani and Dhir 2020) as they moved towards an agile workforce model. The pandemic has also made it easier for firms to hire remote workers from other countries (Brynjolfsson et al. 2020) which has helped drive the rise in remote work.

Based on data from Layoffs.fyi, which tracks redundancies, it was reported that 161 061 employees were laid off from more than 1000 tech companies in 2022.² As of March 2023, the same source reports that approximately 123 000 employees have already been laid off in this calendar year from over 400 tech companies. Furthermore, based on a survey of 1000 US business leaders, it was estimated that forty-eight per cent of companies had replaced workers with ChatGPT since November 2022, with companies using it for tasks such as writing code, copywriting, content creation and customer support.³

Despite the recent layoffs and the growing use of artificial intelligence (AI) tools, work still needs to be completed and human intervention here remains vital, leading firms to turn frequently to outsourcing via individual contractors or online labour platforms. Gusto, the payroll and HR platform serving over 200 000 small and medium-sized companies in the United States, has reported a 23 per cent increase in contractor payments over the last two years, with one in five employees now classified as a

1. I would like to thank Marianne Furrer for extracting the data from the Online Labour Observatory and Rishabh Dhir for his comments on an earlier draft of this chapter.

2. See <https://layoffs.fyi/>; also see <https://www.bbc.com/news/technology-64317078>

3. See <https://www.resumebuilder.com/1-in-4-companies-have-already-replaced-workers-with-chatgpt/>

contractor (Wilke and Bowen 2022). Similarly Google, one of the major tech companies, reportedly utilises various types of employment contracts as well as a shadow workforce in its task completion.⁴

In addition to the rise in remote work, the pandemic has also accelerated the adoption of digital tools like Teams and Slack, creating collaborative workspaces for people to interact remotely even in traditional or regular workplaces. However, these tools also serve as management tools for monitoring and controlling work processes. Now that these digital tools have become embedded in the workplace, there is the potential for conventional workplaces to adopt some of the features seen on online labour platforms.

Remote work is defined in various ways in the literature – homework, telework, mobile work, etc. For the purposes of this chapter, we adopt a narrow definition of ‘remote platform work’ that specifically refers to individuals who use personal electronic devices to work from a location outside of an office or company premises. This definition encompasses individuals who work through online labour platforms and provide services remotely to clients in different parts of the world. These workers carry out tasks that require a wide range of skills.

This chapter examines the emerging issues related to remote platform work and whether remote working arrangements have led to an increase in flexible employment options, such as companies hiring more independent contractors or outsourcing tasks through online labour platforms. We also investigate whether these trends are changing the way companies organise work, alongside the blurring of the boundaries between internal and flexible workers. Additionally, we consider the types of tasks – that is, whether they are low-skilled or high-skilled – being outsourced. Finally, we analyse the working conditions of remote platform workers, including the control that firms and clients have when using various digital tools. The analysis for this chapter is based on data from the Online Labour Observatory, the online global surveys conducted by the ILO and other relevant data sources, as well as secondary literature.

2. Is remote work a new phenomenon?

Remote work is not a new phenomenon and has been around in various forms including homework, telework and mobile work. These terms have evolved with technological advances, as noted by Messenger and Gschwind (2016). During the 1970s, the term ‘telecommuting’ was coined, seemingly in response to the oil crisis and a perception of the need to reduce the time spent commuting. The latter was a major issue in California in the United States (Nilles et al. 1976; Nilles 1975). Telecommuting became popular in the US during that decade due to the oil shortages and long queues for scarce fuel supplies, resulting in alternative work arrangements (Ellison 2004). Workers began teleworking from home in order to reduce their daily gas-guzzling commutes and instead communicated through telephones (Bailey 2022).

4. See <https://www.theguardian.com/technology/2021/sep/10/google-underpaid-workers-illegal-pay-disparity-documents> for details.

In the 1980s, there was a belief that advances in the information and communications technology (ICT) infrastructure would usher in a new era of teleworking (Toffler 1980) as desktop computers, along with file transfer protocols, enabled file sharing thus allowing work to be done remotely (Bailey 2022). Additionally, the development of ICT led firms to realise that work could be relocated to other countries or locations, enabling them to reduce costs, including labour, and improve productivity (Messenger and Gschwind 2016; Ellison 2004). This led to the outsourcing of work through business process outsourcing (BPO) companies and the siting of call centres in developing and emerging economies. These technologies facilitated the easy transfer of the knowledge required to perform service-related tasks, resulting in the relocation of work from one place to another. However, work was still carried out in the destination country on the premises of an employer. This process led to the substitution of labour in advanced economies with workers in developing countries and might have led to the disappearance, or relocation, of some occupations and tasks in advanced economies, these being integrated instead within the production process in developing ones.

Since the 2000s, new technologies like cloud computing and infrastructure have paved the way for innovative outsourcing methods through online labour platforms. In addition to outsourcing work, some companies allowed their employees to work remotely even before the Covid-19 pandemic. However, the early phases of the pandemic led many businesses to adopt full-time remote working for their employees. As a result, there is an emerging divide in the labour market: some companies are allowing their employees to continue working remotely full-time while maintaining the employment relationship; others are outsourcing work through online labour platforms, often resulting in work arrangements that deny workers an employment relationship. This trend has caused firms to restructure and reorganise, making them more agile and adaptable to changing market conditions. Moreover, it has led to the emergence of ‘digital nomads’ – workers who utilise innovative approaches to remote work and who are in the process of moving towards the concept of a ‘virtual office’ (Messenger and Gschwind 2016; Rasnača, this volume).

Firms are exploring innovative approaches to the outsourcing of work through alternative work arrangements that incorporate independent contractors, freelancers, gig workers and crowdworkers. In recent times, freelance and talent platforms such as InnoCentive, Toptal, Topcoder, Kaggle and Upwork are becoming increasingly popular for outsourced work. According to Deloitte (2019), these talent platforms now manage over two billion dollars in outsourced activities and employ hundreds of millions of people globally. A survey of 700 business leaders in the United States (Fuller et al. 2020) has revealed that these platforms are considered critical to a company’s future competitive advantage. It also found that companies are moving beyond experimentation and using platforms with the aim of developing an integrated strategy to tap the best talent. Moreover certain technology companies, such as Google and Wipro, have adopted a hybrid business model by acquiring online talent platforms like Kaggle and Topcoder, respectively (ILO 2021).

This has led to a new generation of remote work which can be understood as ‘remote platform work’, with two observable trends. The first is the rise of online labour

platforms, including talent, freelance and microtask platforms, which allow firms to outsource work globally to workers with varying skills from around the world. The second trend is the emergence of a new generation of call centres that offer artificial intelligence-enabled services using human labour. Unlike the earlier three generations of remote work, where workers still had an employment relationship and enjoyed work-related benefits with their employer, this generation has made employment relationships rather complex.

3. Occupations with the potential for remote work

The pandemic has been associated with a growing literature investigating which occupations have the potential for remote work, largely focused on advanced economies. Dingel and Neiman (2020) analysed the Occupational Information Network (O*NET) database for the United States and found that occupations that do not require physical activities, such as computer or IT-related, education, legal, business and financial activities, are more amenable to being performed remotely from home. Sostero et al. (2020) used detailed occupational data to show a huge divide in the potential for remote work between white collar and blue collar occupations as the latter are more likely to be physical and place dependent. They identify managerial, professional and clerical support workers as those most amenable to remote work compared to other occupations. These findings are supported by firm-level surveys conducted in North America which show that knowledge-intensive work done by skilled professionals can be done remotely compared to work in factories or in the hospitality sector (Bartik et al. 2020).

Some studies use online job postings to analyse the possibilities of performing certain tasks remotely. Adrjan et al. (2021), in their study of 20 OECD countries, found an increase in advertised telework between 2019 and 2021 in some high-skilled sectors, such as IT-related services and insurance. They also argue that countries and sectors that are digitally prepared have a higher potential for remote work compared to others.

Several real-time surveys have also been conducted to estimate the number of people working remotely and to identify the occupations involved. A survey in Germany revealed that the sectors where remote work is most prevalent include IT and communications, education and real estate (Möhring et al. 2020). A cross-national survey carried out in the USA, China, Japan, Italy, South Korea and the UK showed that remote work is more prevalent in managerial and professional occupations compared to blue collar or sales and service ones (Belot et al. 2020). A comparative real-time survey in the US and the UK in 2020 revealed that there are significant differences across occupations and industries in the extent to which tasks can be done remotely (Adams-Prassl et al. 2020).

Even before the pandemic, there was increasing debate about automation and AI potentially replacing some clerical tasks, such as the offer of AI ‘virtual assistants’ to carry out secretarial tasks. However, these tasks are currently not only being performed by remote human workers based in India and the Philippines for clients in the Global North, but they are also training the AI itself (ILO 2021). Additionally, there has been a

rise in the outsourcing by big technology companies of clerical and short-term tasks such as data annotation, image tagging, object labelling, etc. to business process outsourcing companies or to workers through microtask platforms. These tasks are often performed by workers in the Global South because they can be done at a very low cost (ILO 2021). Recent cases, such as OpenAI, which outsourced tasks to workers in Kenya with the aim of making ChatGPT less toxic for users (Perrigo 2023), highlight this trend. While these efforts aim to reduce toxicity for users, the workers who are responsible for taking on such tasks are often exposed to significant psychological risks that could have lifelong effects on their health and mental wellbeing. At the same time, however, it also raises the concerns about the beneficial development outcomes for highly educated workers in these developing countries.

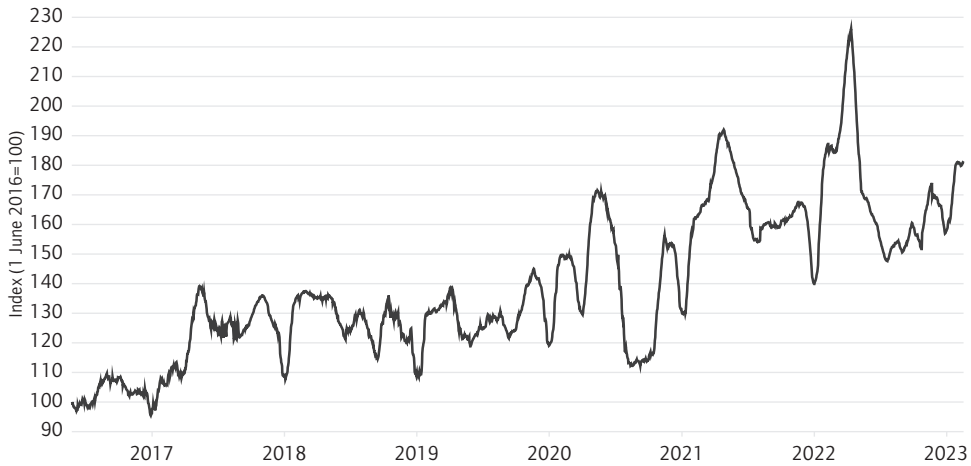
The ability to work remotely can vary depending on the country and sector, and it may not be feasible for all tasks and types of work. In developed countries, remote work may lead to job losses or the reclassification of tasks while in developing countries it may create new employment opportunities, albeit with significant changes in work processes. However, when tasks are outsourced to developing countries, such as those in Asia or in Africa, they are often fragmented and result in low-paid work whereas the same tasks in developed countries are relatively well paid. This changing nature of tasks raises questions about the content and quality of work as well as the nature of the employment relationship. Many online remote tasks are unrelated to workers' educational levels and there is often little opportunity for career progression or skill development (Rani et al. 2023). These developments raise fundamental questions about the nature of the jobs that are being created.

4. Remote platform work in recent times: what do the data tell us?

In 2019, data collected from one of the largest freelance platforms revealed a huge volume of work being outsourced remotely, with a total transaction volume of approximately 135 million dollars (ILO 2021).

To understand the global dynamics of the demand for online labour, we look at the Online Labour Observatory (OLO) which tracks the tasks and projects posted on the five largest freelance and microtask platforms. This measure is a good indicator of whether companies are outsourcing tasks through online labour platforms and using online labour. Figure 1 illustrates a significant increase in the demand for online work on the five major tracked platforms since 2016. Since the onset of the pandemic, the demand for online labour has grown phenomenally, with the number of projects posted on these platforms more than doubling in 2022. As of early 2023, there were approximately 80 per cent more projects compared to mid-2016.

Figure 1 Online labour demand: projects posted on major freelance and microtask platforms, 2016 to 2023



Source: Online Labour Observatory (iLabour Project, Oxford Internet Institute and ILO).

In Spring and Autumn 2021, the European Trade Union Institute (ETUI) conducted an Internet and Platform Work Survey using a random sampling method on the working age population in 14 European countries to estimate the extent to which workers are earning incomes through online platforms (Piasna et al. 2022). The survey captured two types of online task: short-term microtasks; and high-skilled IT, software related, copy editing and other tasks. Roughly 6.2 per cent of respondents in these countries had performed either of these two types of online tasks remotely, with women being underrepresented in IT and related tasks (41 per cent) compared to microtasks (56 per cent),⁵ which is consistent with the global trend.

Table 1 Online labour demand: share of tasks by occupational categories on major freelance and microtask platforms, 2016-2022 (%)

Occupational categories	2016	2017	2018	2019	2020	2021	2022
Clerical and data entry	15.4	13.7	11.8	10.7	9.8	17.6	20.1
Creative and multimedia	21.5	23.8	23.2	21.6	19.7	18.0	18.5
Professional services	2.2	2.2	2.2	2.3	2.7	3.1	3.4
Sales and marketing support	9.1	10.1	10.4	11.5	11.3	11.3	11.6
Software development and technology	39.8	37.3	38.6	41.1	44.5	39.2	35.3
Writing and translation	12.1	12.8	13.7	12.8	11.9	10.8	11.1

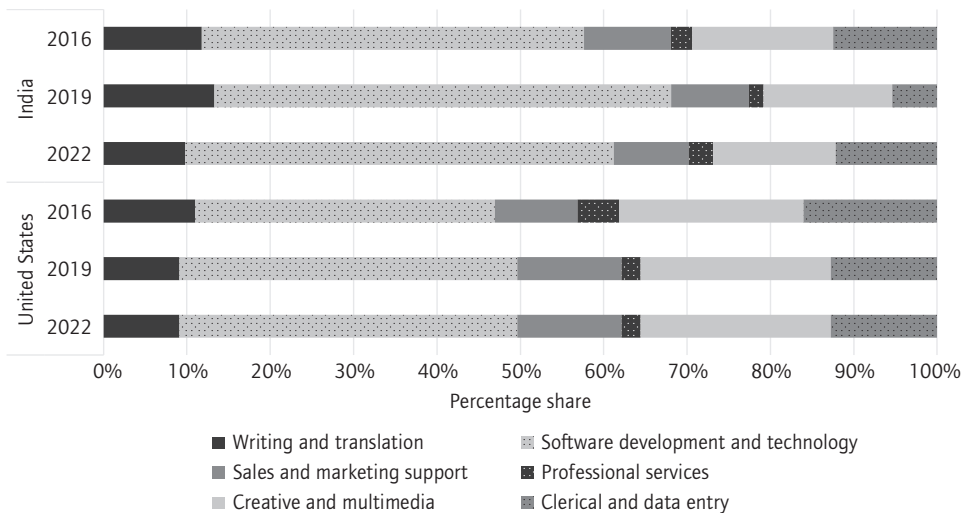
Source: Online Labour Observatory, ILO and Oxford Internet Institute.

5. Calculations from the ETUI IPWS data, Spring and Autumn 2021 waves.

The OLO data also help us in understanding the nature of the tasks being outsourced; that is, whether they are low-skilled or high-skilled. Soon after the pandemic, there was greater demand for labour in software development and technology occupations, the share of which peaked at 44.5 per cent in 2020, followed by creative and multimedia. However, by the end of December 2022, the demand for labour in software development and technology had declined by almost nine percentage points while it had doubled in the clerical and data entry category (Table 1).

Globally, the demand for online or remote work in 2022 was dominated by the US (37 per cent), followed by the UK (8 per cent) and India (7.6 per cent). The demand for online work in Canada and Australia has declined in the past few years. In India, more than 50 per cent of the demand for online labour relates to software development and technology, which is quite high compared to other countries (Figure 2). This is not surprising as a number of tech companies in India laid off workers soon after the pandemic appeared, outsourcing their tasks through online labour platforms, which process has continued to date. This is also evident from the significant increase in the number of registered workers on online platforms since the start of the pandemic (ILO 2021).

Figure 2 Online labour demand by occupational category in India and the United States, 2016-2022



Source: Online Labour Observatory (iLabour Project, Oxford Internet Institute and ILO).

There are some similarities between the impact of remote work on online labour and the outsourcing of business processes that occurred in the mid-1980s and 1990s. Both involved the outsourcing of knowledge-intensive work as well as low-skilled back-end operations or clerical work. In both cases, firms or clients originated largely from North America, western Europe and Australia, and work was outsourced to developing countries, primarily in Asia and in Africa, to take advantage of low labour costs.

However, there are also significant differences between the two models. In the 1980s and 1990s, a large proportion of outsourcing took place between firms and was guided by supply chain requirements and agreements. Work was executed on the basis of strict compliance and workers continued to benefit from an employment relationship, with labour and some forms of social protection being provided by a firm even if jobs had been relocated to developing countries. In this outsourcing model, firms absorbed the risks as well as the costs, without workers being involved in either.

The current model of outsourcing through online labour platforms operates differently. The business practices of these platforms are laid down in the terms of service agreements, which are unilaterally determined by each platform, and they govern how workers and clients interact with it (ILO 2021). These platforms are emerging as significant players in the temporary staffing industry, offering an efficient matching system to their clients and firms, thereby allowing for greater productivity and reduced transaction costs for firms. However, this often comes at the expense of workers who are forced to bear the brunt of the costs and risks associated with the work.

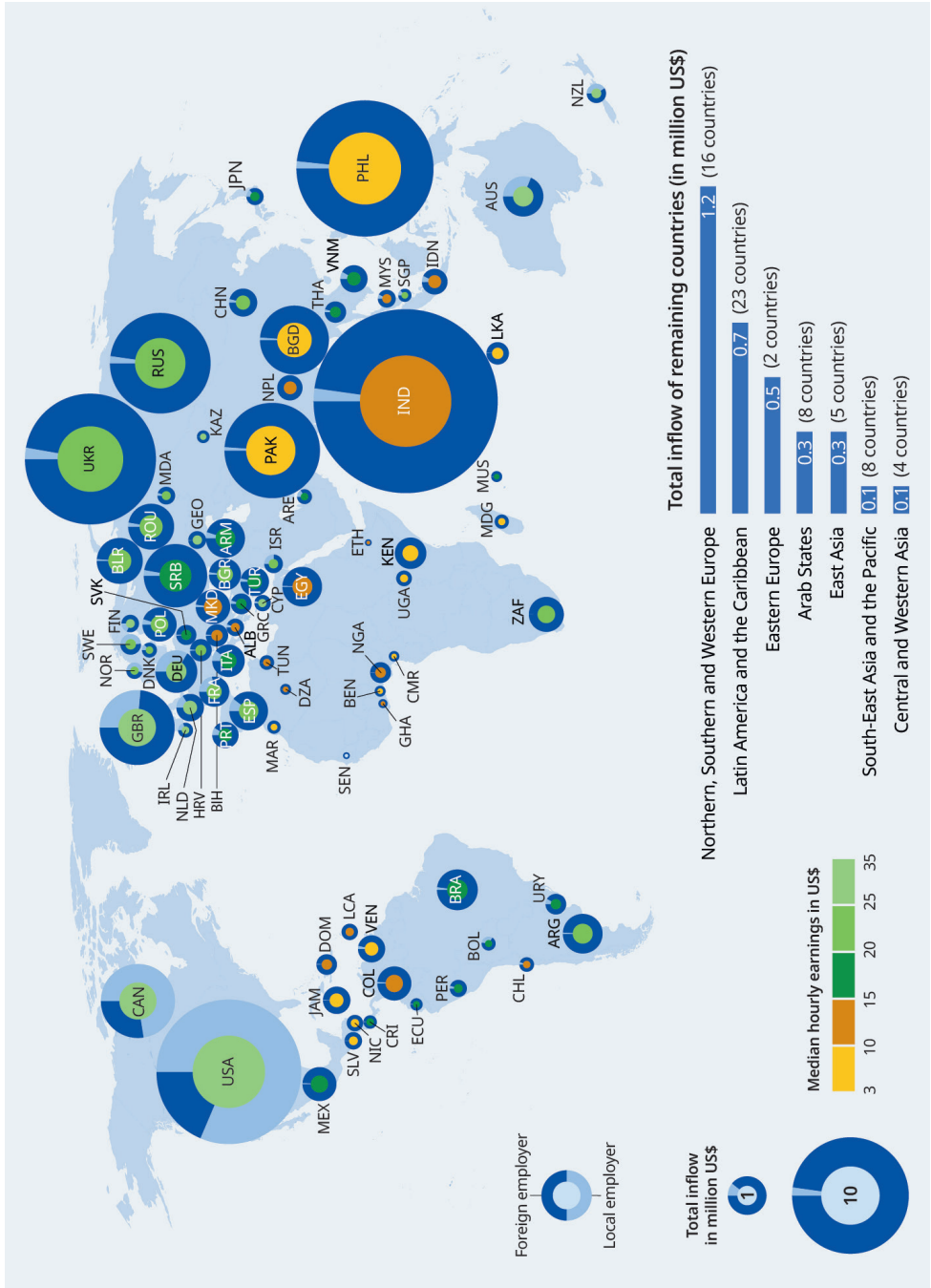
The platform business model thus represents a new form of workplace fissuring (Weil 2014) that is altering the boundaries of contemporary firms, restructuring work organisation and reconfiguring the relationship between capital and labour. Technological advances have allowed clients to access workers from a global pool of labour, increasing competition between workers, and we are now seeing a return to piece rate work which can be dehumanising and which makes workers vulnerable. Only a small proportion of workers with highly specialised skills are able to attract valuable projects and succeed in the remote labour market.

5. Implications of remote platform work: wage gaps and inequalities

Remote platform work has diverse implications. The classification of workers as freelancers, independent contractors or self-employed can result in job insecurity and a lack of employment and social protection benefits, and it may increase precariousness and vulnerability for workers. The rise of remote platform work may have far-reaching consequences for the earnings of workers and could affect wages worldwide.

Based on 200 000 projects included on one of the largest freelance platforms, we found that work is being outsourced there by firms in the Global North and performed by workers in the Global South (see Figure 3). Online work demand mainly originates from Australia, Canada, Germany, New Zealand, the UK and the US. This is denoted by the outer circle which shows whether demand comes from within the country or abroad. The size of the circle indicates the volume of work being performed, with a significant proportion being done by workers in developing countries, particularly India (20 per cent), the Philippines and Ukraine. Remote wages differ significantly among workers located in different countries, as shown by the colours in the inner circle. For instance, the median hourly wages of workers in the US were about twice those of workers in India and three times those of workers in the Philippines.

Figure 3 The outsourcing of tasks on one freelance platform across countries, inflow of work and earnings, 2019



Source: ILO 2021 (Figure 1.2).

Brinatti et al. (2022), in their study of one of the large web-based platforms, found that remote wages vary considerably, influenced by workers' countries and local labour market conditions, despite the marketplace being global. They also found that the wage differential is strongly linked to GDP per capita in the worker's location. Additionally, even when working for the same employer, remote workers from richer countries earn more than workers from developing ones. An ILO global survey of workers on freelance platforms found that workers in developed countries earn 60 per cent more per hour than their counterparts in developing countries, even after controlling for basic characteristics and the type of task being performed. This wage gap suggests that workers in developing countries may face unequal access to work opportunities due to the design of the platform and to client perceptions (ILO 2021). While some researchers attribute this gap to information asymmetry and stereotypes about worker quality (Galperin and Greppi 2017; Beerepoot and Lambregts 2015; Lehdonvirta et al. 2014), such differentials could also be due to pure discrimination, with clients simply paying less to workers in developing countries (as reported by workers in the ILO interviews). Additionally, well-paid tasks may not be equally accessible to workers from developing countries, further contributing to the wage gap.

The existence of wage differentials raises the question of why workers participate in remote platform work. According to the analysis of the ETUI Internet and Platform Work Survey by Zwysen and Piasna (2023), workers engage in remote IT-related and microtasks as a consequence of the local labour market conditions in their regions or countries. The percentage of workers participating in remote work is higher in regions or countries with high unemployment rates, while job quality and quantity, including underemployment, are also important factors. These findings are consistent with global trends (ILO 2021). Approximately 40 per cent of workers performing remote IT-related and other tasks are either on fixed-term contracts or are self-employed, and are likely to be doing these tasks to earn supplementary income.

The findings of a survey of workers on the Gusto platform, among US firms which utilise international contractors, further support this notion. The survey showed that 69 per cent of international contractors state that their pay from contracting is better than pay for similar work in their home country; with 38 per cent saying that it is 'much better' (Wilke and Bowen 2022). For these workers, contracting enables them to leverage their skills and earn more than what is accessible in their local labour market. Firms are taking advantage of this situation and using it to avoid their responsibility to provide work and employment-related social protection benefits. This survey of workers further revealed that 'among contractors that do not already have full-time traditional employment, approximately 67 per cent of the contractors would prefer a traditional employee arrangement' (Wilke and Bowen 2022).

The business model of these platforms is also a cause for concern. Platforms generate revenue through commission fees or subscription plans which can reach up to 35 per cent of workers' earnings in some cases. This significantly reduces workers' income and contributes to the increasing inequality. In addition to commission fees, workers also report bearing other costs such as buying 'connects' or proposal credits in order to bid for projects on Upwork (69 per cent) or for paying fees to withdraw money from the

platform (60 per cent) (ILO 2021). Workers have little choice but to bear the burden of the costs imposed on them in this way. This highlights the unequal power dynamic between platforms and workers, with platforms able to extract a significant share of workers' earnings. Moreover, requiring a subscription plan or payment to bid for projects creates an entry barrier for workers from developing countries and low income households who may lack the financial capacity to access such work. This can result in de facto discrimination and limit their participation, further exacerbating inequality.

Due to the global nature of platforms, there is fierce competition within the global labour force as workers underbid each other for tasks and projects, particularly on freelance platforms. This can potentially drive down wages and increase inequality. An ILO survey of freelance platform workers found that about 67 per cent of workers reported underbidding for tasks and projects while 79 per cent accepted work for low pay or even performed tasks for free. Additionally, 37 per cent of workers reported accepting tasks that they would otherwise have declined in order to build up their platform rating and reputation (Rani et al. 2023). This indicates that competition for work has become so intense that some workers are willing to accept any task, including unpaid work, simply to access work on the platforms.

Besides low wages, remote platform workers often lack access to social protection benefits, with only 16 per cent reporting such access in the ILO global survey. As a result, they may be dependent on family members for support. In some ways, workers in traditional workplaces end up subsidising these workers (ILO 2021).

The growth of remote platform work has also led to the fragmentation of tasks, including in translation or transcription, which were previously carried out in the traditional labour market and which are now outsourced to workers on a per-task basis. However, this trend can have unexpected consequences, including the potential deskilling of work and the replacement of skilled labour with unskilled labour (ILO 2021; Cheng et al. 2015). Additionally, low-skilled tasks related to data processing, such as tagging, classifying, cleaning, structuring and organising, are now increasingly being outsourced to highly educated workers in developing countries. This trend raises concerns about the underutilisation of workers' skills and their limited career progression (Rani and Furrer 2019).

Moreover, the outsourcing of traditional labour market tasks through online labour platforms to remote workers on a per-task basis has widened the wage gap for similar tasks in the same market. Remote platform workers earn significantly less than their counterparts in the traditional labour market. ILO analysis shows that, in India, remote platform workers earn 64 per cent less, and in the United States they earn 81 per cent less, than workers in the traditional labour market. Furthermore, the earnings gap is wider for women than it is for men (ILO 2021). The low earnings of remote platform workers can be attributed to various factors including the payment structure, irregular and unstable work opportunities, unpaid tasks, lack of work-related benefits and the time spent searching for work. This trend has the potential to exacerbate inequalities in the labour market.

Finally, remote platform work can facilitate the greater monitoring and control of workers by firms which may potentially undermine worker privacy and autonomy. A global survey conducted by the ILO of freelance workers found that many were required to install hardware and software programs by platforms or clients enabling them to be monitored to ensure their efficiency (ILO 2021). These tools allow clients to track the progress of their project and monitor worker performance, with nearly half of workers reporting regular monitoring through digital tools: approximately 46 per cent indicated that they were required to take and send regular screenshots of their work to their clients. Furthermore, around 43 per cent reported being requested to be available at specific times. In many instances, remote platform workers need to be available during asocial hours as their clients tend to be based in different time zones which not only creates challenges for work-life balance but also has health implications.

The use of digital tools for monitoring and managing workers is not limited to remote platform work, as it may also be observed in traditional work settings. A recent study conducted in Spain and Germany found that between 10 and 20 per cent of workers were subject to some degree of digital monitoring and algorithmic management at their workplace (Fernández-Macías et al. 2023).

Despite being classified as ‘independent contractors’ by platforms, workers have limited control over their work schedule and are required to follow the rules set by the platform. Non-compliance can have a negative impact on their ratings and their access to work. Moreover, platform algorithms closely monitor and evaluate work processes and interactions between workers and clients. As the platforms have exclusive control over the design of their review systems and the algorithms used to evaluate workers, it gives them significant power to influence workers’ employability and they can be deactivated from the platform without any reason or explanation.

6. Making workers’ conditions more precarious: the need for regulation and universal labour standards for all

The wage gap and the inequalities entailed by remote work discussed in this chapter highlight the need for platforms to address these issues and ensure fair and equal pay for all workers, regardless of their location or background. This can be achieved by addressing information asymmetry and stereotyping, eliminating discrimination and improving access to well-paid tasks for all workers, in addition to ensuring that these workers are correctly classified. Platforms have the potential to use technology to provide decent working conditions for workers but, instead, they are using it to reduce workers’ terms and conditions as it makes cheap labour available in abundance. This has created a situation where workers are struggling to make a decent living and lack job and income security. It is important for platforms to recognise the value of their workforce and work towards creating a fair and sustainable model that benefits both the platform and the workers. This would not only benefit workers but would also help to reduce inequality and promote greater economic stability in the long run.

Given the transnational nature of work, where platforms, clients and workers are located in different jurisdictions, it becomes difficult to regulate the activities of these platforms and poses significant challenges in enforcing regulations. In order to protect the rights of remote platform workers, it is essential to engage in international policy dialogue and coordination to ensure that universal labour standards are applied to all workers regardless of their employment classification as employees or as self-employed. This requires a concerted effort to establish comprehensive regulations that safeguard the interests and wellbeing of all workers in the platform economy, such as ensuring employment status is correctly classified, ensuring transparency and accountability in algorithms, ensuring that self-employed workers enjoy the right to bargain collectively, protecting workers' personal and work data, ensuring adequate social security benefits, providing for wage protection, fair payments and working time standards, and fair termination process among others. However, regulating platforms is not sufficient on its own. It is equally important to implement employment or job creation policies at national level in order to generate enough jobs that utilise the skills of workers and support the development of both society and the economy. By doing so, policymakers can help ensure that platform work complements traditional employment, rather than replacing it, and that all workers are able to enjoy the benefits of a thriving and inclusive labour market.

References

- Adams-Prassl A., Boneva T., Golin M. and Rauh C. (2020) Inequality in the impact of the coronavirus shock: Evidence from real time surveys, *Journal of Public Economics*, 189, 104245. <https://doi.org/10.1016/j.jpubeco.2020.104245>
- Adrjan P., Ciminelli G., Judes A., Koelle M., Schwellnus C. and Sinclair T. (2021) Will it stay or will it go? Analysing developments in telework during COVID-19 using online job postings data, *OECD Productivity Working Papers 30*, OECD Publishing. <https://doi.org/10.1787/aed3816e-en>
- Bailey D.E. (2022) Emerging technologies at work: Policy ideas to address negative consequences for work, workers, and society, *ILR Review*, 75 (3), 527-551. <https://doi.org/10.1177/00197939221076747>
- Bartik A., Cullen Z.B., Glaeser E.L., Luca M. and Stanton C.T. (2020) What jobs are being done at home during the COVID-19 crisis? Evidence from firm-level surveys, Working Paper 27422, National Bureau of Economic Research. <https://doi.org/10.3386/w27422>
- Beerepoot N. and Lambregts B. (2015) Competition in online job marketplaces: Towards a global labour market for outsourcing services?, *Global Networks*, 15 (2), 236-255. <https://doi.org/10.1111/glob.12051>
- Belot M., Choi S., Jamison J.C., Papageorge N.W., Tripodi E. and van den Broek-Altenburg E. (2020) Six-country survey on Covid-19, IZA Discussion Paper 13230, Institute of Labor Economics.
- Brinatti A., Cavallo A., Cravino J. and Drenik A. (2022) The international price of remote work, Working Paper 29347, National Bureau of Economic Research. <https://doi.org/10.3386/w29437>
- Brynjolfsson E., Horton J.J., Ozimek A., Rock D., Sharma G. and TuYe H. (2020) COVID-19 and remote work: An early look at US data, Working Paper 27344, National Bureau of Economic Research. <https://doi.org/10.3386/w27344>

- Cheng J., Teevan J., Iqbal S.T. and Bernstein M.S. (2015) Break it down: A comparison of macro- and microtasks, Proceedings of the 33rd annual ACM conference on Human Factors in Computing Systems – CHI’15, 4061-4064. <https://doi.org/10.1145/2702123.2702146>
- Deloitte (2019) Leading the social enterprise: Reinvent with a human focus, 2019 Deloitte Global Human capital trends, Deloitte Insights.
- Dingel J. and Neiman B. (2020) How many jobs can be done at home?, *Journal of Public Economics*, 189, 104235. <https://doi.org/10.1016/j.jpubeco.2020.104235>
- Ellison N.B. (2004) Telework and social change: How technology is reshaping the boundaries between home and work, Praeger.
- Galperin H. and Greppi C. (2017) Geographical discrimination in the gig economy, SSRN Scholarly Paper 2922874, Social Science Research Network. <https://doi.org/10.2139/ssrn.2922874>
- Fernández-Macías E., Brancati U., Wright S. and Pesole A. (2023) The platformisation of work: Evidence from the JRC algorithmic management and platform work survey, Publications Office of the European Union. <https://doi.org/10.2760/801282>
- Fuller J., Raman M., Bailey A., Vaduganathan N., Palano J., Kaufman E., Laverdière R. and Lovett S. (2020) Building the on-demand workforce, Harvard Business School.
- ILO (2021) World employment and social outlook 2021: The role of digital labour platforms in transforming the world of work, ILO.
- Lehdonvirta V., Barnard H., Graham M. and Hjorth I. (2014) Online labour markets: Levelling the playing field for international service markets?, Paper presented at IPP2014 Crowdsourcing for Politics and Policy, 25-26 September 2014, Oxford Internet Institute.
- Messenger J.C. and Gschwind L. (2016) Three generations of telework: New ICTs and the (r) evolution from home office to virtual office, *New Technology, Work and Employment*, 31 (3), 195-208. <https://doi.org/10.1111/ntwe.12073>
- Möhrling K., Naumann E., Reifenscheid M., Blom A.G., Wenz A., Rettig T., Lehrer R., Krieger U., Juhl S., Friedel S., Fikel M. and Cornesse C. (2020) Die Mannheimer Corona-Studie: Schwerpunktbericht zur Erwerbstätigkeit in Deutschland (20.3.-15.4.2020), Mannheim Corona Survey, Focus report: Employment in Germany. <https://www.uni-mannheim.de/en/gip/corona-study/>
- Nilles J.M. (1975) Telecommunications and organizational decentralization, *IEEE Transactions on Communications*, 23 (10), 1142-1147.
- Nilles J.M., Carlson F.R., Gray P. and Hanneman G. (1976) The telecommunications-transportation tradeoff: Options for tomorrow, Wiley.
- Perrigo B. (2023) Open AI used Kenyan workers on less than \$2 per hour to make ChatGPT less toxic, *Time*, 18 January 2023.
- Piasna A., Zwysen W. and Drahoukoupil J. (2022) The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey, Working Paper 2022.05, ETUI. <https://www.etui.org/publications/platform-economy-europe>
- Rani U. and Dhir R.K. (2020) Platform work and the COVID-19 pandemic, *The Indian Journal of Labour Economics*, 63 (Suppl. 1), 163-171. <https://doi.org/10.1007/s41027-020-00273-y>
- Rani U. and Furrer M. (2019) On-demand digital economy: Can experience ensure work and income security for microtask workers?, *Jahrbücher für Nationalökonomie und Statistik*, 239 (3), 565-597. <https://doi.org/10.1515/jbnst-2018-0019>
- Rani U., Dhir R.K. and Gobel N. (2023) Work on online labour platforms: Does formal education matter?, in Huws U. and Surie A (eds.) *Platformization and informality: Pathways of change, alteration and transformation*, Routledge. [Forthcoming]

- Sostero M., Milasi S., Hurley J., Fernández-Macías E. and Bisello M. (2020) Teleworkability and the COVID-19 crisis: A new digital divide?, JRC121193, European Commission.
- Toffler A. (1980) *The third wave*, Morrow.
- Weil D. (2014) *The fissured workplace: Why work became so bad for so many and what can be done to improve it*, Harvard University Press.
- Wilke L. and Bowen T. (2022) Contract workers: Growing pillar of the workforce, today and tomorrow, Gusto. <https://gusto.com/company-news/us-contract-work-2022-survey>
- Zwysen W. and Piasna A. (2023) Juggling online gigs with offline jobs: How local labour markets are driving the growth in internet and platform work, Working Paper 2023.02, ETUI. <https://www.etui.org/publications/juggling-online-gigs-offline-jobs>

All links were checked on 03.04.2023.

Chapter 3

Remote work and the green transition

Mehtap Akgüç, Béla Galgóczi and Pamela Meil

1. Introduction

Remote work is not a new phenomenon: it has been going on for decades in various configurations; while recently, facilitated by digital technologies, telework has begun to appear in a range of sectors, affecting a number of occupations, taking a variety of forms including platform work, and taking place in a range of locations (e.g. the home, other working spaces or remote working hubs). Remote work has been increasing over the last decade (Felstead and Henseke 2017), but it was the Covid-19 pandemic that considerably sped up its development, bringing it into a prominent position in discussions on work. Many industries and sectors that had previously not used remote work to a large extent were forced to introduce it due to quarantines and lockdowns. Now, there is a sizeable discourse on the opportunities and challenges of maintaining high levels of remote work even when not forced to do so, given its apparent popularity on the part of both employers and workers (Sisli and Kara 2022).

Among the many discussions emerging on remote work, one that is relatively new and gaining increasing attention is its impact on the environment and climate change, and more broadly concerning the greening of the economy. The relationship between remote work and the green transition would, at first, appear to be glaringly obvious: a positive effect on the environment due to less commuter traffic and thus reductions in carbon emissions. The first studies on the effects of remote work on the environment have focused on trying to measure these effects (Sostero et al. 2020). As it turns out, this focus on telework and home-to-work commutes on non-telework days adopts a very narrow perspective. Researching this relationship is extremely complex, however, and it is mediated by a number of variables and contextual factors. Worker behaviour plays a role, too. For instance, modified work schedules thanks to remote work and diminished work commutes might lead to increased non-work travel, leisure or other recreational activities which leave their own ecological footprint¹ (Cerqueira et al. 2020). Moreover, increases in home energy demand following the increased incidence of working from home also enter into the picture when assessing the overall environmental impacts of remote work.

1. The ecological footprint measures how much nature we use compared to how much we have. This accounting approach tracks how much biologically productive land and water area an individual, population or activity uses to produce all the resources it consumes, to house all its infrastructure and to absorb its waste given prevailing technology and resource management practices (European Commission 2018).

The extent of environmental metrics to measure the effects of remote work on the environment is also expanding with an emerging literature. These go well beyond CO₂ emissions to encompass elements including the following:

- the amount of traffic congestion (e.g. measured in travel time)
- the carbon or ecological footprint (with the latter being broader than the former that looks only at the dimension of CO₂ effects)
- energy demand, for example as measured in kilowatts per hour or otherwise, of office spaces, both at employer premises or home-based and at other remote working hubs
- the purity of air, looking at the quantity of particle matter or average nitrogen dioxide (NO₂) in the atmosphere with implications for the incidence of acid rain as well as ozone depletion
- general visible air pollution, as in fog
- noise pollution (measured in decibels) due to the number of vehicles on the roads
- the volume of landfill as a result of wasted ICT equipment that is indispensable for remote work.

Furthermore, studies tend to concentrate on western industrial countries (Europe and the US), so it is unclear what the effects in other parts of the world might be. Thus, there remain many open questions on the actual net effects of remote work on the green transition. Given the limited research, the complex interrelationships, the diversity of the environmental effects and the potential for remote work to have unintended consequences for the environment, an important next step is to take stock of what we know and to point out potentially fruitful directions for future investigation on the basis of the increasing availability of detailed data.

In this chapter, we begin by examining who exactly is doing remote work, namely which occupations and types of workers are engaged in it. This issue is not strictly related to the green transition. However, worker behaviour in transport use, energy consumption and the use of IT and other work-related appliances, as well as the future prospects for working remotely, are key determinants in the outcomes regarding the green transition. Consequently, Section 3 provides a review of the existing evidence on the emerging trends in remote work and the effects these have on energy consumption and the reduction of CO₂. For instance, we examine questions of how large these effects really are and how they may potentially be offset by other forms of energy usage connected with remote working. Finally, we turn to the issue of remote work and mobility. We examine what is happening to patterns of commuting and travel (work or non-work related) with the increasing trends of remote work in home offices and working hubs.

As we examine the existing evidence on who is working in what types of occupations and what effects home offices and the shifts in home-to-work commutes are having on CO₂ emissions, energy use and how mobility patterns are developing and shifting, we place the discussion in a larger context and ask several questions. What are the actual impacts of remote work on the environment? And which contradictory and unintended consequences are arising which may offset the positive gains and potentially affect work and employment adversely? The goal is to unravel the complex interrelationships of remote work's many facets on the green transition – both empowering as well as potentially adverse. When we look at the issue of how remote working affects occupations

and employment, we also consider its potentially negative impacts on inequality and polarisation between occupations and in workers' conditions of employment. In examining the evidence of remote work on energy consumption and reduction, we also take stock of parallel developments in traditional work settings: is there, for example, any evidence of a coincident reduction in the use of heating and air conditioners or the downsizing of office space in response to increasing trends in remote work? Considering the environmental effects at a more general level, we also briefly review any evidence of the relationship between remote working and other forms of pollution such as air and noise pollution. In exploring developments in remote mobility, we consider its future implications concerning the issue of place at a more general level: what happens to the relationship between rural, urban and suburban areas?

The potentially positive effects of remote work on the environment are often used as arguments for why it should be promoted and expanded. Our position is that, for remote work to have a sustainable and positive effect on the green transition, its actual impacts on the environment have to be clarified and its unintended consequences for work and employment understood, thereby enabling meaningful policy responses.

2. Occupations, remote work and the green transition: opportunities and risks

For the green transition, the trend towards remote work being done from home revolves around its sustainability and its extent. The question is whether a greater variety of work and occupations will continue to be carried out in home offices and, if so, what are they? Will meetings – also at diverse locations – continue to be conducted online, thereby reducing the need for business travel? And, critically, will the extent of the work being carried out in home offices lead to a corresponding reduction in office use and space, thereby leading to decreasing energy use?

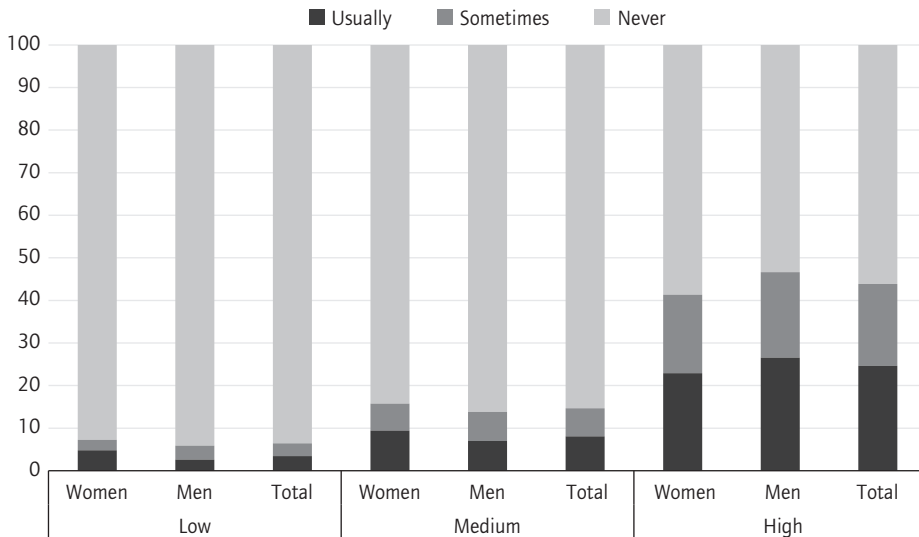
Just as remote work has shifted and diversified over the last two to three decades, so have the occupations being carried out within it. The occupations being exercised remotely, outsourcing across value chains, remote platforms and home offices are quite different but they also share certain characteristics. For one, doing remote work always involves issues of control (or the lack of it) for companies. Solutions can involve quite direct forms of control, as in surveillance and monitoring, or indirect controls involving project goals, targets and schedules, etc. Issues of control are a factor in the extent to which companies are willing to allow work to be carried out off the premises. Another central characteristic of remote work is that it usually entails a new bundling of tasks for some occupations (Felstead and Henseke 2017). This sometimes translates into standardisation and codification to simplify externalisation and enable the work to be carried out online.

The types of occupations most associated with home offices, and therefore most relevant for the green transition, tend to be on the higher range of skill levels, as can be seen in Figure 1 based on Eurostat (2022). This higher level of skill makes the work less susceptible to processes of simplification. Sostero et al. (2020) shows that, despite

the increase in the numbers of home-based remote workers during the pandemic, their socio-spatial characteristics remained largely the same. The social characteristics which strongly correlate with teleworking are education level (74 per cent of such workers have a tertiary qualification); job sector (such as education, financial services and public administration); and gender (with a strong bias towards women) (see Arabadjieva and Franklin, and Zwysen, this volume). As for the gender distribution of remote work, while the presented data do not reveal major differences, it should be noted that the position is delicately nuanced: while women tend to have a larger share of remote work in the lower and medium skills segments, men have a larger share of remote work in high skills categories.

The lockdowns during the pandemic significantly changed the landscape for remote work, including the types of work targeted for it. Many more jobs in traditional industry, government services, commerce and education were by necessity being done remotely, often from home. IT applications and customer service support have been carried out as remote work for some time, although not necessarily in home offices, but rather at ‘remote’ locations servicing company headquarters or production sites. Occupations that had already been gaining in importance, such as new types of tech workers engaged in IT maintenance and support, software development and coding, and app and algorithmic development, have become even more key.

Figure 1 Distribution of people working from home by frequency, educational attainment level and by sex, EU, 2021 (in % of total employed people aged 20-64)



Source: Eurostat (ad-hoc extraction).

Whether the shifts to home offices for the new variety of occupations is a lasting phenomenon, and what effect this has on the green transition, is difficult to answer in any definitive way given the paucity of research. The first indications suggest that, in some sectors (education for example), there is an obvious trend to return to in-

person working. In many other sectors, the move to home offices appears more long-term, although not as 100 per cent of working time. Many occupations including engineering, design, IT, an array of services, finance and human resources are affected by this trend. The extent of the mix between the home and the office is influenced by a number of factors such as companies' reluctance to give up control of working time and performance monitoring, and the benefits of in-person working for aspects of work such as team building, negotiation, conflict resolution, social contact, etc. Given that a mix of remote home offices and office presence appears the most prevalent model for most sectors and occupations, the effects regarding the green transition will, most likely, be limited to reduced commutes and minor reductions in energy and infrastructure emissions with regard to maintaining office buildings.

The trend for selected occupations, particularly those with high skills, to be candidates for carrying out work from home and thus potentially contributing to reduced carbon emissions and energy consumption should not be looked at in isolation, but rather examined in the wider work and employment context.

First, there are a number of occupations in areas such as health and care, a variety of services, public safety, restaurants, repair, maintenance and transport that cannot be done remotely. Here the workforce has to appear in person and has limited autonomy, fixed working times, etc. Their working days are extended by the time needed to commute to and from work. The rift between home office workers in well-paid high skill occupations and those occupations which are carried out necessarily in person could lead to a kind of embedded inequality between occupations and regions. There are already clear differences between regions in the US and Europe regarding the prevalence of working in home offices. In the US, southern, midwestern and more rural areas have lower levels of home offices (Brynjolfsson et al. 2020); in Europe, large well-off urban centres appear to have a higher incidence of home offices. The spatial characteristics of teleworkers have remained the same as in the pre-pandemic period – located primarily in urban areas of a city or a city suburb – although the numbers grew larger during the pandemic (Eurostat 2022).

Second, the privileges associated with being able to conduct work from a home office potentially underscore the existing or emerging inequalities (Sostero et al. 2020). Access to well-appointed computers, monitors, high-speed wi-fi and smartphones are not a given for all workers. The evidence points to a strong association between income levels and the possibility of remote work (Dingel and Neiman 2020). As mentioned previously, individuals who are more likely to be employed in 'teleworkable' jobs are also more likely to be high skilled with better paid jobs. Having higher earnings also allows them to afford to reside in houses or buildings with better energy performance (e.g. better insulated walls and roofs, rooftop solar panels) or to have cars that are using less energy (e.g. electric or hybrid models). It can conceivably work the other way around, however: higher income individuals have a tendency to consume in ways that leave a deeper ecological footprint (e.g. luxury goods, air travel, SUVs). From this perspective, the existing socioeconomic inequalities might lead to further inequalities and make it difficult to assess the overall environmental effects of remote work across income groups.

Third, these differences become even more glaring in international comparison. In developing countries, access to the resources to carry out remote work from homes can be lacking alongside the infrastructures for electricity grids or internet networks being unreliable. While according to Dingel and Neiman (2020) around 20 per cent of jobs globally could potentially be done from home, this share drops to 10 per cent in sub-Saharan Africa, in contrast to more than 45 per cent in the richest countries in Europe. The alternative for workers is often long commutes to central work locations which contributes to already high carbon emissions and air pollution in cities. Reduction of carbon emissions and energy use anywhere is a positive development, but the environmental impact is a global issue. International differences in environmental practices ultimately limit the long-term prospects for the effects to be sustainable. Moreover, remote work and the green transition can affect the development of offshoring and global value chains which can, in turn, influence work content and working conditions.

Therefore, although there are many positive aspects of working in home offices or in decentralised work centres or hubs – both for the environment and the individual’s use of time and autonomy – the long-term effects on employment conditions in general are harder to predict. For many jobs and occupations linked to large companies or the public sector which traditionally use permanent employment contracts, a model of mixing home offices with regular in-person workdays appears to be emerging. However, past experience with outsourcing across value chains and the use of platform work suggests that many forms of remote work lead to precarious contracts and the absence of employment and social benefits (Huws 2014; Meil and Akgüç 2021; Meil and Kirov 2017). As remote work spreads to more and more sectors and occupations, the question arises as to whether these jobs are at risk of being permanently outsourced or are susceptible to the introduction of fixed-term contracts. Does a company’s incentive to reduce permanent office space, given increases in the use of home offices, correspond with an incentive to reduce regular employment? In a report on remote work in the US during the Covid-19 pandemic, 10.1 per cent reported being laid-off or furloughed since the start of Covid-19 (Brynjolfsson et al. 2020). Given the general increase in more precarious work forms due to outsourcing and platform work that occurred even before the pandemic, it is worth pursuing the ongoing link between remote work and decreases in regular employment contracts in the types of occupations that have been affected in the more recent shifts to home office and decentralised work hubs. This raises the question of whether there has to be an inherent trade-off between good jobs and working conditions in order to achieve reductions in carbon emissions and decreasing energy use.

3. What are the effects of remote work in the context of the green transition and how large are they?

In Section 2, we looked at the share of occupations amenable to remote work and discussed the larger implications surrounding these trends regarding the green transition. The next subsections closely examine the available evidence on the links between remote work and the greening of the economy, focusing mainly on the environmental effects,

energy use and mobility and transport patterns, including the mitigating factors that have an impact on their direction and extent.

One key issue to keep in mind when assessing any of the environmental effects of remote work is that a number of factors play a role, with their effects often being intertwined (see, among others, Eurofound 2022; Giovanis 2018). Table 1 organises these effects into three broad areas which are explored in more detail in the following sections. Inevitably, the share of occupations amenable to remote work and the prevalence of remote workers at firm level would affect the results in how the overall environmental impacts of remote work play out.

Table 1 Conceptualising the ecological impact of remote work

Broad area of ecological impact	Example of factors
Environmental effects	<ul style="list-style-type: none"> – the geography of remote work (rural vs urban development) – noise and air pollution – use of earth minerals and other natural resources
Energy use	<ul style="list-style-type: none"> – how the office space is managed (e.g. fixed or flexible remote work days, hotdesking and how energy consumption systems are planned during this time) – energy performance of office and residential buildings – size of dwellings and of office spaces – type of heating or cooling systems at the office and residential building – number of people working from home in the household – geographical characteristics of the locations and seasonal dimensions (e.g. length of winter or summer months) with an impact on the use of heating or cooling in buildings – the general carbon intensity of the energy used by (IT) appliances in the office and the home – consumption patterns
Mobility	<ul style="list-style-type: none"> – distance between workplace and residential location – the availability of (sustainable) public transport – energy performance of the transport mode while working remotely – fuel efficiency of private vehicles – non-work mobility patterns

Source: Authors' own elaboration.

3.1 Remote work and environmental effects

The literature on remote work from the environmental angle is still emerging, but the existing studies tend to focus mainly on CO₂ emissions (Bachelet et al. 2021; Cerqueira et al. 2020; Eurofound 2022; Carbon Trust 2021; Ecoact 2020) related to reduced transport, generally involving commuting with personal cars rather than sustainable public transport. For the case of home-based remote work, however, there are a number of other factors one can consider, such as non-work travel – or even consumption –

patterns, the energy efficiency of dwellings and the carbon footprint of various transport modes.

While detailed data on CO₂ emissions are increasingly available at aggregate level, making it easier to draw up quantitative models to estimate the link with remote work, the same cannot be said for the other environmental metrics mentioned earlier, partly justifying the focus on emissions. Another simplification relates to the concentration on telework, which is a type of remote work but not the only one. Focusing on home-based remote working to understand the environmental effects reduces the number of complex dimensions pertaining to remote work outsourced down global value chains, making environmental traceability complicated.

The comprehensive global analysis conducted by the IEA (2020) suggests that, following the lockdowns during the first phase of Covid-19, gasoline use dropped by more than nine million barrels a day (plus six million barrels of diesel). Moreover, many large cities around the globe consequently witnessed striking drops, such as 65 to 95 per cent, in rush hour congestion. These effects of comprehensive restrictions and lockdowns are indicative of the effects of the reductions in mobility through remote work, but can only be seen as a starting point.

Badia et al. (2021) find that, as a result of lockdowns and homeworking following the Covid-19 pandemic, urban air quality increased significantly in Barcelona as average levels of NO₂ – the main pollutant generated by traffic emissions – dropped sharply. Their modelling framework suggests a positive relationship between the number of remote work days per week and NO₂: while two such days per week leads to a 4 per cent drop in NO₂, four days can lead to a 10 per cent drop. Similar effects are found in a study in India measuring air quality in New Delhi (IEA 2020).

3.2 Remote work and energy use

Comprehensive global analysis during the first phase of lockdowns revealed that one day of working from home has been found to be associated with an increase in household energy consumption in the range of 7 to 23 per cent, depending on a number of factors including the energy efficiency of dwellings to start with but also how many people are remotely working in the same household. It is also shown that the share of energy consumption while teleworking during the working week resembles the average energy demand of Sundays, when most people are off and at home (IEA 2020). Bachelet et al. (2021) use the German Microcensus, together with corresponding energy and carbon prices, to suggest that, while telework increases annual heating energy expenditures by 110 euros per worker, it decreases annual transport expenditure by 840 euros per worker.

From the ecological footprint angle, the overall effect of remote work is not straightforward. According to the findings of Lachapelle et al. (2018), from a study in Canada, if remote working increases productivity, and thereby economic growth, it is also thereby likely to lead to higher production and income, and thus increased

consumption patterns (e.g. more leisure travel, increased consumption of goods beyond essential needs, etc.). This will increase overall energy demand. In this case, while remote work would, in principle, decrease emissions with reduced commuting as a first order effect, it might still lead to a deeper total ecological footprint eventually through increased consumption and greater energy demand.

Moreover, the increased use of telecommunications infrastructure and heating of the home are often identified as having a negative effect on the climate. It also matters whether companies develop strategies to reduce their office space (and therefore energy consumption). What additionally will be the share of duplicated IT equipment? Earlier research has already shown the very dynamic energy use of IT equipment in the last couple of years. The literature on this topic is still emerging, but Efoui-Hess (2019) shows that digital technologies represented nearly 4 per cent of worldwide carbon emissions even before the pandemic – more than civil air transport – and their impact was increasing each year by 8 per cent. In other words, the ICT tools indispensable for remote working are significant sources of emissions. Relatedly, Obringer et al. (2021) point to the carbon footprint of internet use – related to the energy consumption of data and cloud centres – which ranges from 28 to 63 grams of CO₂ equivalent per gigabyte. Among the various internet services, commonly used tools such as videoconferencing are identified as the most energy-heavy option. However, technological advances in this domain are seeing continuous improvements and more energy-efficient solutions are being offered along the way (Obringer et al. 2021).

Last but not least, Sovacool et al. (2019) demonstrate that digital technologies are increasingly relying on rare earth materials and minerals, which are concentrated mostly in a few resource-rich countries. This, in turn, also raises environmental and socioeconomic questions about the excessive extraction of natural resources – and how the latter are shared or rather traded – to keep up with the production of ICT equipment.

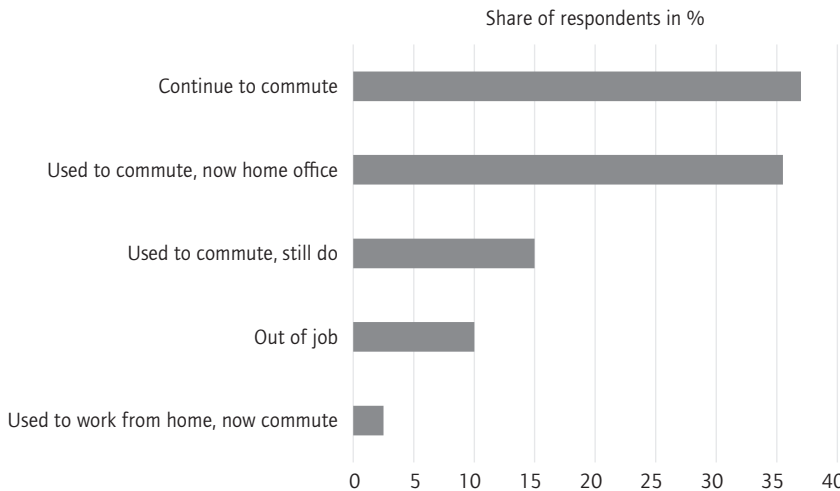
3.3 Remote work and mobility

The main potential benefit of remote work is mostly linked to its role in reducing mobility. Indeed, it is well established (EEA 2022) that transportation is a big contributor to greenhouse gas emissions and that home-to-work commutes take up a high share of it. In the US, the transport sector constitutes the highest share of total emissions and more than half of this is due to personal vehicles (Schupak 2021). With increasing remote work, the discussion about its role in sustainable mobility has gained in importance (Aguiléra and Pigalle 2021) since remote or hybrid work is often referred to as one of the major means of reducing carbon emissions due to the lower levels of home-to-work commutes.

In a report based on a two-wave representative survey in 2020 on working behaviour during the Covid-19 pandemic in the US, Brynjolfsson et al. (2020) find that, of those employed prior to Covid-19, about half are now working from home, including 35.2 per cent who report ‘they were commuting and recently switched to working from home’. The share of people switching to remote work tend to be young and in occupations related to

information work ‘including management, professional and related occupations’. The most common responses on work behaviour were ‘I continue to commute’ followed by ‘I used to commute and now work from home’ (see Figure 2).

Figure 2 **Commuting versus home office behaviour of the employed workforce in the US (2020)**



Source: Adapted from Brynjolfsson et al. 2020 : 5.

Generally, in current publications, the impact of remote work on sustainable mobility is seen in a twofold manner. On the one hand, some studies show it to have a positive effect, with a reduction in car use as the main contribution; in this way, it can reduce commuting and therefore the carbon footprint of mobility (Eldér 2020; Lopez Soler et al. 2021; Yum 2021; Clausen and Schramm 2021). This clearly shows, however, that the only expected impact of remote work in reducing transport related emissions and pollution is reduced mobility (not necessarily more sustainable mobility). On the other hand, other studies question even this contribution and point to remote workers travelling longer distances, thereby offsetting any sustainability effects (Budnitz et al. 2020; Cerqueira et al. 2020).

According to the study of the environmental effects of remote work by Bachelet et al. (2021), the resulting emissions reduction due to decreased commuting by car amounts to 4.5 million tons of CO₂, corresponding to 3 per cent of carbon emissions in the transport sector in Germany. The numbers vary by income groups as well as the residential location of workers. ADEME (2020) estimates that 271 kilograms of CO₂ could be saved annually with one day of remote work per person per week in France, distinguishing the different channels through which the emissions occur (e.g. transport mode, ICT tools, energy demand relocalisation) and then summing these up. According to Beck et al. (2020), remote working plays an important role in reducing commuting by car. They point to the number of days worked from home being crucial, similar to the ADEME report. In a similar vein, Eurofound (2022) also conducted a case study in Ireland – which recorded the third highest share of remote working in the EU following the pandemic – finding that it has a positive climate impact, implying a saving of

164 407 tons of CO₂ emissions per year. Kylili et al. (2020) find that at least 4 litres of transportation fuel and 7.4 kilograms of CO₂ can be saved per hour of remote work per 100 employees in Cyprus.

In contrast to these relatively positive findings, Cerquiera et al. (2020) provide evidence of travel behaviour and remote work in the UK, pointing to the existence of trade-off effects between work and non-work travel. Their overall analysis implies that remote work is related to higher emissions as a result of non-work travel in the absence of work commuting. The study by Elldér (2020) also confirms that part-time remote workers make more journeys than workers who do not work remotely. He concludes, however, that full days of remote working affect mode of transport choice and can indeed cause a reduction in travel demand rather than merely congestion relief which is the main benefit from part-time remote workers. De Abreu e Silva and Melo (2018) state that remote working cannot reduce car travel as it increases the weekly miles of travel given that remote workers make more non-work related journeys by car. Furthermore, increased remote work in home offices might also lead to unexpected consequences regarding negative effects on public transport as well as the sustainability of shops and restaurants in urban centres (Dougherty and Goldberg 2022).

Most research studies tend to focus on the impact of a remote worker's place of residence and the impact on reductions in car use, taking into account where the worker lives, the chosen mode of transport and travel distance but paying less attention to the spatial location of the workplace and its implications for mobility. For example, Budnitz et al. (2020) show that there is also a trend of remote workers living further from their workplace and this increases the tolerance for long-distance commuting.

Especially in suburban and rural areas, the impact of remote work on mobility behaviour is rarely addressed. Due to the suburbanisation and decentralisation that started in Europe many decades ago, many workplaces are situated in suburban and semi-rural areas close to urban centres. These workplaces often have limited access to public transport, leading to the dominance of car use. It is therefore important to look at the potential environmental and climate impact of remote work also from a socio-spatial mobility perspective.

Research by Krasilnikova and Levin-Keitel (2022), carried out in an industrial suburban area of the German city of Hannover, finds that 59 per cent of employees in the area have the potential for a reduction in car traffic through remote work. The area is the headquarters of many leading national and international companies but is also closely connected to housing locations. The study also finds that only 5 per cent of all teleworkers are full-time home-based: the majority work from home 1-3 days per week or less. The authors calculated that two extra days of remote work result in savings of 11 per cent of CO₂ emissions. The authors argue that the role of companies in supporting, enabling and fostering remote work is crucial to its success. An enabling company culture does not only include digital work but a broader shift in business models and human resource policy. Strong cooperation between companies and the city, and on a regional level, could then be helpful as a precondition for the implementation of new local shared workspaces located close to employees' places of residence. Such spaces

have the potential to manage current vulnerabilities on the way to expanding mobile work.

On the other hand, remote work has the potential not only to decrease traffic and travel but, with more time spent in non-urban areas, they can become points of social exchange and social life again – with shopping facilities, cultural offers or simply places to exchange and meet. It has also been shown that remote working might be a game-changer for sustainable mobility, depending on how local companies accept different forms of distance work.

4. Conclusions and looking ahead

In this chapter we show that, when assessing the effects of remote work on the green transition, a number of factors play a role and their effects are often intertwined. One such factor includes the share of occupations and types of work that are amenable to remote work, usually in the form of home offices. The data presented here show that the share of remote work has been increasing. However, the documented rift between home office workers in well-paid high skill occupations and occupations which are necessarily in-person ones does have the potential to increase inequality between occupations and regions and this also might have an effect on the overall ecological balance. Additionally, there are still many open questions regarding the future growth of remote working. Are employers willing to relinquish direct control over large portions of their workforces? Are workers ready to give up the social aspects of work and the benefits of face-to-face interaction? Will the shifts to home offices be limited to certain regions and income groups? The answers to these questions ultimately determine how many fellow employees will be working remotely and how office spaces will be managed.

The studies cited above report that, while remote work indeed has a potential positive effect on the environment, in reality it depends on numerous other factors and the extent to which these can be exploited. Given that a mix of remote home offices and office presence appears the most prevalent model for most sectors and occupations, the effects on the green transition will most likely be limited to reduced commutes and minor reductions in energy and infrastructure emissions in terms of the maintenance of office buildings. Even so, a growing body of literature has shown that reduced home-to-work commuting is the main source of remote working's positive climate and environmental impact as a result of reduced emissions. Some of the studies also show that the actual benefit depends on the modes of transport mix, on working time management (the number of remote working days, full-time or part-time) and on settlement structures. Studies also highlight that, if remote work takes place under the same lifestyle and work organisational framework, using the same settlement structures and transport infrastructure that was designed for full-time office work, it cannot be a game changer in sustainability; the resulting carbon – or more broadly, ecological – footprint may even become worse. The effects of remote work on energy use are even more controversial. While home energy use clearly increases, less energy use in offices does not necessarily follow. Although there are many positive aspects of working in home offices or in decentralised work centres or hubs – both for the environment and the individual's use

of time and autonomy – the long-term effects on employment conditions in general are harder to predict.

We can conclude that, for remote work to have a sustainable and positive effect on the green transition, its actual impacts on the environment have to be clarified and its unintended consequences for work and employment – both empowering as well as potentially adverse – better understood. In order to develop intelligent policy measures to promote the positive aspects of remote work on the green transition, it is necessary to consider the various facets of issues such as home-to-work commutes, mobility, the overall use of energy and occupational profiles, and to understand the potential trade-offs that might hinder or negate the desired effects.

Further research is therefore needed to document the actual environmental impact of different remote working patterns using comprehensive environmental metrics. More studies are necessary to explore the linkages between different types of remote work, settlement structures and modes of transport. Changes in the extent, composition and content of remote work also need to be followed up regularly. Moreover, it is necessary to develop projections of how the environmental effects of remote work might change with the advancing decarbonisation of energy use and transport. Last but not least, systemic changes, such as the pace of technological advance as well as the rate of climate change, will also determine the impacts that remote work will have on the green transition.

References

- ADEME (2020) Étude sur la caractérisation des effets rebonds induits par le télétravail. <https://bibliothèque.ademe.fr/mobilite-et-transport/3776-caracterisation-des-effets-rebond-induits-par-le-teletravail.html>
- Aguilera A. and Pigalle E. (2021) The future and sustainability of carpooling practices. An identification of research challenges, *Sustainability*, 13 (21), 11824. <https://doi.org/10.3390/su132111824>
- Bachelet M., Kalkuhl M. and Koch N. (2021) What if working from home will stick? Distributional and climate impacts for Germany, IZA Discussion Paper 14642, Institute of Labor Economics. <http://ftp.iza.org/dp14642.pdf>
- Badia A., Langemeyer J., Codina X., Gilaber J., Guilera N., Vidal V., Segura R., Vives M. and Villalba G. (2021) A take-home message from COVID-19 on urban air pollution reduction through mobility limitations and teleworking, *npj Urban Sustainability*, 1, 35. <https://doi.org/10.1038/s42949-021-00037-7>
- Beck M.J., Hensher D.A. and Wei E. (2020) Slowly coming out of COVID-19 restrictions in Australia: Implications for working from home and commuting trips by car and public transport, *Journal of Transport Geography*, 88, 102846. <https://doi.org/10.1016/j.jtrangeo.2020.102846>
- Brynjolfsson E., Horton J.J., Ozimek A., Rock D., Sharma G. and TuYe H.Y. (2020) Covid-19 and remote work: an early look at US data, Working Paper 27344, National Bureau of Economic Research. <http://www.nber.org/papers/w27344>

- Budnitz H., Tranos E. and Chapman L. (2020) Telecommuting and other trips: An English case study, *Journal of Transport Geography*, 85, 102713. <https://doi.org/10.1016/j.jtrangeo.2020.102713>
- Carbon Trust (2021) Homeworking report: An assessment of the impact of teleworking on carbon savings and the longer-term effects on infrastructure services. <https://www.vodafone-institut.de/studies/homeworking-report/>
- Cerqueira E.V.C., Motte-Baumvol B., Chevallier L.B. and Bonin O. (2020) Does working from home reduce CO₂ emissions? An analysis of travel patterns as dictated by workplaces, *Transportation Research Part D: Transport and Environment*, 83, 102338. <https://doi.org/10.1016/j.trd.2020.102338>
- Clausen J. and Schramm S. (2021) Klimaschutzpotenziale der Nutzung von Videokonferenzen und Homeoffice: Ergebnisse einer repräsentativen Befragung von Geschäftsreisenden, Borderstep Institut. https://www.borderstep.de/wp-content/uploads/2021/02/AP3-5_Repraesentativbefragung-11-02-2021.pdf
- De Abreu e Silva J. and Melo P.C. (2018) Home telework, travel behavior, and land-use patterns: A path analysis of British single-worker households, *Journal of Transport and Land Use*, 11 (1), 419-441. <https://doi.org/10.5198/jtlu.2018.1134>
- Dingel J.I. and Neiman B. (2020) How many jobs can be done at home?, *Journal of Public Economics*, 189, 104235. <https://doi.org/10.1016/j.jpubeco.2020.104235>
- Dougherty C. and Goldberg E. (2022) What comes next for the most empty downtown in America?, *The New York Times*, 17 December 2022. <https://www.nytimes.com/2022/12/17/business/economy/california-san-francisco-empty-downtown.html?searchResultPosition=1>
- EcoAct (2020) Homeworking emissions whitepaper. <https://info.eco-act.com/en/homeworking-emissions-whitepaper-2020>
- EEA (2022) Greenhouse gas emission efficiency of different transport modes, European Environment Agency. <https://www.eea.europa.eu/data-and-maps/figures/ghg-efficiency-of-different-transport>
- Efoui-Hess M. (2019) Climate crisis: The unsustainable use of online video: The practical case for digital sobriety, The Shift Project. <https://theshiftproject.org/wp-content/uploads/2019/07/2019-02.pdf>
- Elldér E. (2020) Telework and daily travel: New evidence from Sweden, *Journal of Transport Geography*, 86, 102777. <https://doi.org/10.1016/j.jtrangeo.2020.102777>
- Eurofound (2022) Is telework really 'greener'? An overview and assessment of its climate impacts, WPEF 22031. <https://www.eurofound.europa.eu/publications/report/2022/the-rise-in-telework-impact-on-working-conditions-and-regulations#wp-106999>
- European Commission (2018) Beyond GDP: Measuring progress, wealth and wellbeing. https://ec.europa.eu/environment/beyond_gdp/download/factsheets/EcoF_new_template_2018-11-05_updated2.pdf
- Eurostat (2022) Rise in EU population working from home, Eurostat Newsletter, 8 November 2022.
- Felstead A. and Henseke G. (2017) Assessing the growth of remote working and its consequences for effort, well-being and work-life balance, *New Technology, Work and Employment*, 32 (3), 195-212. <https://doi.org/10.1111/ntwe.12097>
- Giovanis E. (2018) The relationship between teleworking, traffic and air pollution, *Atmospheric Pollution Research*, 9 (1), 1-14. <https://doi.org/10.1016/j.apr.2017.06.004>

- Huws U. (2014) *Labor in the global digital economy: The cybertariat comes of age*, Monthly Review Press.
- IEA (2020) Working from home can save energy and reduce emissions. But how much?, Commentary, 12 June 2020, International Energy Agency.
<https://www.iea.org/commentaries/working-from-home-can-save-energy-and-reduce-emissions-but-how-much>
- Krasilnikova N. and Levin-Keitel M. (2022) Telework as a game-changer for sustainability? Transitions in work, workplace and socio-spatial arrangements, *Sustainability*, 14 (11), 6765.
<https://doi.org/10.3390/su14116765>
- Kyili A., Afxentiou N., Georgiou L., Panteli C., Morsink-Georgalli P.-Z., Panayidou A., Papouis C. and Fokaides P.A. (2020) The role of remote working in smart cities: Lessons learnt from COVID-19 pandemic, *Energy Sources, Part A: Recovery, Utilization, and Environmental Effects*, <https://doi.org/10.1080/15567036.2020.1831108>
- Lachapelle U., Tanguay G.A. and Neumark-Gaudet L. (2018) Telecommuting and sustainable travel: reduction of overall travel time, increases in non-motorised travel and congestion relief?, *Urban Studies*, 55 (10), 2226-2244. <https://doi.org/10.1177/0042098017708985>
- López Soler J.R., Christidis P. and Vassallo J.M. (2021) Teleworking and online shopping: Socio-economic factors affecting their impact on transport demand, *Sustainability*, 13 (13), 7211.
<https://doi.org/10.3390/su13137211>
- Meil P. and Akgüç M. (2021) Moving on, out or up: the externalization of work to B2B platforms, in Dražokoupil J. and Vandaele K. (eds.) *Modern guide to labour and the platform economy*, Edward Elgar, 49-66.
- Meil P. and Kirov V. (eds.) (2017) *The policy implications of virtual work*, Palgrave Macmillan.
- Obringer R., Rachunok B., Maia-Silva D., Arbabzadeh M., Nateghi R. and Madani K. (2021) The overlooked environmental footprint of increasing Internet use, *Resources, Conservation and Recycling*, 167, 105389. <https://doi.org/10.1016/j.resconrec.2020.105389>
- Schupak A. (2021) Is remote working better for the environment? Not necessarily, *The Guardian*, 2 August 2021. <https://www.theguardian.com/environment/2021/aug/02/is-remote-working-better-for-the-environment-not-necessarily>
- Sisli Z. and Kara S. (2022) Pros and cons of remote working from the perspective of decent work and Green Deal, paper presented at the 13th Ilera European Congress, Barcelona, 8-10 September 2022. <https://www.ileraeurope22.com/>
- Sostero M., Milasi S., Hurley J., Fernández-Maciás E. and Bisello M. (2020) Teleworkability and the COVID-19 crisis: A new digital divide?, European Commission.
<https://joint-research-centre.ec.europa.eu/system/files/2020-07/jrc121193.pdf>
- Sovacool B.K., Hook A., Martiskainen M. and Baker L. (2019) The whole systems energy injustice of four European low-carbon transitions, *Global Environmental Change*, 58, 101958.
<https://doi.org/10.1016/j.gloenvcha.2019.101958>
- Yum S. (2021) Differences between telecommuters and commuters: The case of the Twin Cities metropolitan area, *Transportation Planning and Technology*, 44 (3), 303-318.
<https://doi.org/10.1080/03081060.2021.1883229>

All links were checked on 24.02.2023.

Chapter 4

Home-based telework, gender and the public-private divide

Kalina Arabadjieva and Paula Franklin

1. Introduction

While the blurring of the boundaries between public and private spaces in the context of work had already commenced before the pandemic, the Covid-19 crisis prompted an increase in the use of telework, bringing to the fore the numerous challenges of working from one's private home. It has become evident that the place where individuals telework can have different consequences for working conditions, on top of different levels of teleworking intensity and frequency; and that some workers, in particular those with unpaid care responsibilities at home, are more likely to be negatively affected (Eurofound 2020a; 2022a).

In this chapter, we provide an analysis of a specific type of teleworking arrangement defined by reference to the place where it is performed, namely home-based telework (HbTW),¹ and adopt a robust gender perspective. In particular, we point to the challenges posed by home-based telework for working conditions having different relevance on the basis of gender, with women likely to be disproportionately negatively affected because they are more likely to perform home-based telework alongside a larger share of unpaid care work. We argue, however, that HbTW also has the potential to make a positive contribution to addressing women's labour market disadvantages and to gender equality, if accompanied by culture change and policy and legal frameworks that give appropriate recognition to paid and unpaid work performed in the home.

We analyse the impact of home-based telework on working conditions and on gender equality from the perspective of a feminist theorisation of the public-private divide. That is, we focus on how the historical division between the public space of the workplace and the private space of the home in western societies, and the constructed economic relations of production and reproduction, has translated into gendered social relations and on the repercussions that this has in the context of the shift to new remote working practices. This theoretical framework enables us to analyse critically how the rapid spatio-temporal changes in the world of work risk repeating the ideology regarding socially constructed places in which the home as a place of work is rendered subordinate to the public space, thus recreating gender inequalities. We examine evidence of the

1. We adopt the definition of the ILO (2020a) of 'home-based telework' as comprising 'home-based workers who carry out work defined as telework'. At EU level, telework is defined as 'a form of organising and/or performing work' by means of 'information technology, in the context of an employment contract/relationship' regularly carried out away from the employer's premises (ETUC et al. 2002).

working conditions of home-based teleworkers obtained mainly in the EU and make recommendations regarding the regulation of home-based telework in the EU context.

The chapter proceeds as follows. We first outline how the historical division of the public-private space in western countries has translated into gendered social relations and how this has affected the conditions of those working in the private space of the home, such as domestic and home-based workers (Section 2). Second, we provide an analysis of recent EU data on the prevalence of home-based telework before and during the Covid-19 pandemic, showing that this mode of performing paid work in the private space of the home has a significant gender dimension (Section 3). We then discuss some of the potential negative implications that HbTW could have for women and link those to the gendered division of public and private space and the structural disadvantages facing women (Section 4). Finally, we argue that the way to address such negative implications – as well as the disadvantages faced by those performing work in the home more generally – requires us to challenge the dominant narrative regarding the public-private divide and to implement a range of complementary policy and regulatory solutions at EU, national and workplace levels to ensure that HbTW has a transformative, positive effect on work organisation and gender equality (Section 5).

2. The gendered division of social space into public and private

Western thinking has historically used binaries to construct an understanding of the social world (Habermas 1991; Squires 2018). The positing of men/women, masculine/feminine and public/private as opposite entities has constructed an ideological structure in which meanings and qualities are attributed so that one part is subordinate to the other (Kang et al. 2017; Lefebvre 1991). The gendered division of social space into the private ‘feminine’ sphere of the home and the public ‘masculine’ space in western societies can be seen as a legacy of the industrial revolution (Gal 2002) and the associated shift in modes of production and economy (Beebe and Davis 2017).² Alice Clark’s (2013 [1919]) book ‘Working Life of Women in the Seventeenth Century’ showed how the growth of the factory industry in Europe from the eighteenth century onwards meant that women began to stay in their homes whilst more men went out to work. Consequently, it was women who became almost entirely engaged in domestic labour, while the separation of the home and the workplace meant that ‘it became harder for women to juggle work and childcare [and] by the 19th century, the idea that a woman’s place was in the home – or among the lower social classes, in other people’s homes – had become entrenched in European capitalist societies’ (Basham 2021: 1).

Within this conceptualisation, the public space became associated with masculinity, production and professionalism, juxtaposed with the private space that became attributed to femininity and the family. Thus, the public space – including the place of work, such as factories – came to be seen as the domain of men and of paid,

2. When space takes on meaning it becomes a place; for example, ‘a home’ is a spatial structure where a person lives while simultaneously being a place with meanings attributed to it such as safety and a sense of belonging and of privacy.

‘productive’ work, and the private space of the home as the domain of women and unpaid, ‘reproductive’ work. As with any social phenomenon, the history of the division was not clear-cut as there were class differences between women for whom the concept of a private, feminised ‘domestic sphere’ was realised (that is, the bourgeoisie) while working class women who were recruited to factory work (e.g. in the textile industry) became subjected to the double burden of paid and unpaid (care) work (Williamson 2012).

Marxist-feminist theorisation of the value of production/reproduction highlights that, while in industrial capitalism both men and women participated in the economy and generated surplus value, in the family it was mainly women who carried out the work of producing use value – and this situation continues to date. The domestic economy produces value through invisible work which contrasts with the visible work taking place in the public sphere, but complements it: ‘on one hand, the domestic work of women allows further time for social work and creation of surplus value by men, on the other women themselves also participate in social work, but even more discriminated against, with lower wages’ (Larguia and Dumoulin 1975, in Campos 2020: 33). Further, Lafargue (1973 [1904]) notes that industrialisation integrated women both in factories and liberal professions to guarantee capitalism low wage labour, but also that capitalism and the bourgeoisie kept women at home when it benefited them.

For example, in the late 19th century, a ‘cult of domesticity’ dictated that a woman who considered working outside the home was unnatural (Welter 1966); while, during World War II, American women who, at the time, were mostly occupying the private space of the home were asked to go to work in factories in the short-term before being brought back to the private space and to domesticity (Santana 2016). In the UK, during World War I and II, large numbers of women were recruited to work in jobs that were formerly reserved for men (e.g. railway guards and ticket collectors, bus and tram conductors, postal workers, police, firefighters, bank ‘tellers’ and engineers), as well as into new jobs created as part of the war effort, for example in munitions factories. Women’s employment increased by around 10 percentage points during the world wars, and the actual level of employment is likely to have been higher as many domestic servants would have been redeployed to national service but were excluded from the figures. However, stereotypes about women’s capacity and ability to engage in ‘men’s work’ were rife; and, alas, they received lower wages for doing the same work. While some limited agreement was reached that allowed equal pay for women, most employers managed to circumvent the issue and women’s pay remained on average 53 per cent of the pay of the men they replaced. It was also expected that women’s wartime work would only be temporary (‘Striking Women’ website). Such situations illustrate how this division between public and private is a historically bound ideological structure enacted through unequal gender relations and embodied in the physical spaces of homes and workplaces.

Capitalism articulates itself differently depending on particular social settings and therefore is not universal (Basham 2021). In the western context, the origins and consequences of the division of social space during the industrial era continue to have an impact on gender relations through ideology, discourse and culture, disadvantaging women. While women’s labour market participation has steadily risen over the last

century, the employment rates of women are still lower than those for men in all EU Member States (European Commission 2020). Women spend considerably more time than men in unpaid care and housework – and this is true before, during and after the Covid-19 pandemic (EIGE 2021a; EIGE 2021b) – which often means that they participate in the labour market on a part-time basis or on precarious contracts. Their participation in public life, such as politics, remains unequal to that of men (Schreeves 2021; European Commission 2021). The division between public space and the private space of the home is connected to the state and it exerts normative power through social practices (Bourdieu 2002) and legislation. Indeed, the divide between the public space and the private space of the home, and between productive and reproductive work, has delineated the boundaries of state intervention in the private space, with significant negative implications for women.

Importantly, in the world of work, the public-private divide has defined the reach of labour law. Work performed in the home has traditionally either been excluded from labour protection altogether or else accorded a lower degree of it (Fudge 2014; Mantouvalou 2012; Sedacca 2022). Further, labour law is not concerned with regulating ‘labour’ in general, only labour performed within the remit of certain kinds of contractual relationships. Unpaid domestic labour occurs outside conventional market relationships and has thus traditionally been deemed not to be an appropriate object of labour law regulation (Zatz 2011: 245). Regulatory issues relating to social reproduction have instead been treated as a matter of family and social welfare law (Freedland and Kountouris 2011; Fudge 2014: 11) – areas of law that have often reinforced patriarchal structures and the ‘male breadwinner/female housewife’ model. Feminist labour law scholars have, however, pointed out that the drawing of jurisdictional boundaries – such as between labour and family law – along this divide is not inevitable (Fudge 2014: 11). Rather, it is the outcome of social and political contestation (Fudge 2014: 18), reflecting societal perceptions about the different nature of activities and relationships that take place within the public sphere and the home, and that only work performed in the public sphere is ‘real’, economically significant work.

The public-private divide has ramifications for workers performing paid work in the household, too. The location of domestic workers³ in the private space of the home and close to the family has troubled ‘conventional maps of jurisdiction’ (Fudge 2014: 11), resulting in their exclusion in many jurisdictions from all or some minimum labour standards (ILO 2013; Mantouvalou 2012). Enforcement of standards relating to working conditions on the employer’s premises – that is, the private home – is generally poor, not least because private homes are sometimes excluded from labour inspections (ILO 2013; Mantouvalou 2012). This is despite domestic workers being generally more exposed to abuse and a lack of work-life balance because they are isolated from other workers, rarely unionised and sometimes live in their employer’s home (Mantouvalou 2012). Assumptions about the public-private divide thus lead to a lack of accountability and scrutiny of labour and human rights violations and – because domestic work is

3. ‘Domestic worker’ is defined in Article 1 of the ILO Domestic Workers Convention as ‘any person engaged in domestic work within an employment relationship’, although ‘a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.’

traditionally performed by women as unpaid work – to a gendered devaluation of the work performed, resulting in lower wages and worse working conditions (Sedacca 2022). For these and other reasons,⁴ domestic workers are among the most vulnerable and precarious workers. The International Labour Organization (ILO) Domestic Workers Convention No. 189 of 2011 – which requires the protection of certain basic rights for domestic workers – has been ratified by only eight EU Member States and 35 member states of the ILO.⁵

Another group of workers that has been subject to no or reduced labour protection are home-based workers.⁶ The ILO estimates that, in 2019, there were around 260 million home-based workers worldwide, amounting to 7.9 per cent of global employment (ILO 2020b). Women form the majority of home-based workers globally (ILO 2021) and more women than men work from home in most EU Member States (Eurostat 2021). Home-based work includes a wide range of activities such as sewing clothes or stitching shoes, assembling goods or, more recently, also computer-based tasks such as translation, text production or other click-work, sometimes through digital platforms (Nilsson et al. 2022; Berg 2022; Piasna et al. 2022). Home-based work has often been a way for women to combine paid work with unpaid domestic labour (ILO 2020b). It has always existed but has remained largely invisible and often excluded from official employment statistics because it is performed in the private sphere, often in an informal way, or because these workers are classified as self-employed (Chen et al. 1999; Nilsson et al. 2022). Home-based workers have often been omitted from the coverage of labour law and social protection while being exposed to particular risks resulting from the lack of either or all of an adequate workspace, equipment and health and safety precautions (ILO 2020b; Nilsson et al. 2022).

Neethi (2014: 89) argues that home-based work has allowed employers inexpensively to ‘expand production and capital to manipulate patriarchal social relations’ as many home-based workers have poorer contractual terms and conditions, less autonomy and poor working conditions. Home-based work has enabled changes in work organisation, such as switching to piece rate pay, along with setting lower wages and abdicating social security responsibilities. In the context of developing economies, home-based manufacturers have been considered as a flexible labour force that can be quickly hired and fired in response to changing market demands, while traditional unionising methods subside under home-based production (Neethi 2014). As in the case of paid and unpaid domestic work, the private space of the home not being considered as a site of production and labour has contributed to the undervaluation of this type of work and the struggle for the recognition of home-based workers as ‘real workers’ (Nilsson et al.

4. Other important factors creating vulnerabilities for domestic workers are restrictive visa regimes and the fact that such work is often undeclared (Mantouvalou 2012; Sedacca 2022).

5. A list of countries that have ratified the Convention can be found here: https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460

6. Home-based work does not have a legal definition but it is generally understood to be work that is carried out in one’s own home (ILO 2020b: 19). A homeworker is a sub-set of home-based workers, defined in Article 1 of the ILO Home Work Convention No. 177 of 1996 as ‘work carried out by a person ... in his or her home or in other premises of his or her choice, other than the workplace of the employer, for remuneration, which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used.’

2022; Neunsinger 2022). As a result of the Covid-19 pandemic, more employers are moving to fully remote working and this can potentially open more jobs to the possibility of offshoring from Europe (Alexandri et al. 2023: 24), making it imperative to analyse this shift globally and from a gender perspective.

Feminist scholars, in particular, have contributed to critical thinking around and the deconstruction of social dichotomies, as well as in the questioning of related power relations, while the historical division of social space has received considerable scholarly attention (Seeliger and Villa Braslavsky 2022; De Backer et al. 2019; Madanipour 2003; Özbey and Bardakçı 2019; Basham 2021). However, a reconceptualisation of the home as a place of HbTW remains scarce. Now that ‘the office’ is increasingly located in the private space of the home, the influence of the binary logic of public versus private is becoming evident as the remit of employment and occupational safety and health legislation is balancing on an ideological line. In the context of rapid changes in the world of work, most notably the exponential increase in the prevalence of home-based teleworking during and beyond the Covid-19 pandemic, it is important to consider the ways in which gendered ideology regarding space is produced and reproduced if we are to transform these practices.

3. Home-based telework and gender

The findings on home-based work in general resonate with recent developments in the EU and elsewhere on home-based telework – a mode of working that has been possible for some time but the use of which increased to unprecedented levels during the Covid-19 pandemic and is predicted to expand significantly compared to pre-pandemic levels. Home-based telework offers opportunities to achieve better balance between work and private life due to spatial and temporal flexibility, including opportunities to arrange work alongside domestic and care tasks and to take advantage of the time freed from commuting (Eurofound 2022c). This can be particularly attractive, as in the case of home-based work generally, to those with a greater share of caring responsibilities who are more likely to be women. For example, couples with children telework⁷ more often than other household types, though they also tend to work more in their free time (Ojala et al. 2014). Indeed, before the pandemic, according to some studies, women constituted 57 per cent of home-based teleworkers but only 46 per cent of those using telework/ICT mobile work arrangements generally (Eurofound and ILO 2017). This suggests that gender roles are important in selecting the type of remote working arrangement (EIGE 2021 b: 26). Motives for opting for home-based telework are often gendered, too. Men tend to use home-based telework to work more hours while women invest their time gained in childcare and unpaid domestic labour (van der Lippe and Lippényi 2020).

Before the pandemic, in 2019, 5.7 per cent of employed women aged 15–64 and 5.2 per cent of employed men worked from home. In 2020, during the pandemic, the

7. While there are differences in defining ‘telework’ across studies, in general ‘home-based telework’ is more common than ICT-mobile work and, when using ICT outside the employer’s premises, employees generally prefer to work at home rather than more flexibly in various places or on the road (Eurofound and ILO 2017).

shares were 13.0 per cent and 11.2 per cent; and, in 2021, 14.4 per cent and 12.5 per cent respectively (Eurostat 2022). The Internet and Platform Work Survey (IPWS) conducted by the ETUI in 2021 across 14 EU countries (for details about the survey, see Piasna et al. 2022) gives an indication of the overall increasing gender differences in the use of telework across sectors.⁸ It found that, prior to the pandemic, female self-employed workers were more likely than male workers to work from home, but there was little difference among employees (Table 1). The proportion of workers working from home during/after the pandemic by gender and employment status shows a dramatic increase for employees and there is now a large difference between men and women in teleworking from home (Table 2).

Table 1 The proportion (%) of workers working from home before the pandemic by gender and employment status

Employment status	Women	Men	Total
Employee on open-ended contract	18	19	18
Employee not on open-ended contract	16	16	16
Self-employed with employees	35	26	29
Self-employed without employees	37	29	32
Total	20	20	20

Source: ETUI IPWS 2021.

Table 2 The proportion (%) of workers working from home during/after the pandemic (i.e. at the time of the survey in 2021) by gender and employment status

Employment status	Women	Men	Total
Employee on open-ended contract	45	39	42
Employee not on open-ended contract	44	38	41
Self-employed with employees	59	49	52
Self-employed without employees	55	46	49
Total	46	40	43

Source: ETUI IPWS 2021.

This finding resonates with the hypothesis regarding gender differences in terms of the degree of the ‘teleworkability’ of certain jobs, a predictor for the probability of telework (EIGE 2021 b: 27; Eurofound 2022c). It has been estimated that the share of women in teleworkable occupations is much higher than the share of men, at 45 per cent compared with 30 per cent (Sostero et al. 2020).

8. We are grateful to our ETUI colleague, Wouter Zwysen, for kindly providing us with IPWS data on gender differences in the use of HbTW and his analysis of the data. The results shown in this chapter are based on data pooled from the Spring and Autumn 2021 waves of the IPWS.

Table 3 **Teleworking (work from home) prior to and during/after the Covid-19 pandemic (i.e. at the time of the survey in 2021) by sectors and gender (%)**

Sector	Women	Men	Gender gap
Agriculture, hunting, forestry and fishing			
Before	20	12	8
During/after	36	26	10
Industry			
Before	20	17	3
During/after	41	34	7
Construction			
Before	31	13	18
During/after	57	24	33
Trade, repair, transportation, accommodation			
Before	15	16	-1
During/after	35	32	3
Information and communications			
Before	29	44	-15
During/after	61	73	-12
Financial and insurance activities and real estate			
Before	29	39	-10
During/after	70	73	-3
Professional, scientific and technical			
Before	30	33	-3
During/after	61	61	0
Admin and support			
Before	27	29	-2
During/after	63	56	7
Public administration, education and health			
Before	16	20	-4
During/after	45	44	1
Other sectors			
Before	20	20	0
During/after	44	43	1
Total			
Before	20	20	0
During/after	46	40	6

Source: ETUI IPWS 2021.

The ETUI IPWS Survey data also show that the gendered trend of an increase in HbTW for women is apparent across sectors (Table 3). The sectors in which there had already been a higher proportion of women conducting HbTW saw a further increase: most notably, in the construction sector from a gender difference in HbTW of 18 percentage points to one of 33; and in the agriculture, hunting, forestry and fishing sector from an eight point gender difference to one of 10 points. The gender difference increased also in industry (seven points) and in the trade, repair, transportation and accommodation sector (three).

Sectors that, prior to the pandemic, had a higher proportion of men conducting HbTW witnessed the same trend: in the administration and support sector the increase for women was 36 points and men 27, changing the gender difference from a two points greater use of HbTW arrangements for men prior to the pandemic into one of seven points greater for women during/after the pandemic. The change was similar in the public administration, education and health sector (from four points higher for men to one point higher for women). The three point gender gap in the professional, scientific and technical sector changed to no gender difference; and the gender difference in financial and insurance activities and the real estate sector, as well as in the information and communications sector, decreased by seven and three points respectively as more women changed to HbTW.

It is notable also that the increase in gender differences in the use of HbTW is repeated across different educational levels. Prior to the pandemic, education was strongly related to telework with a greater presence of workers working from home among higher educational levels, with almost two in three having completed higher education studies (62.6 per cent). The probability that workers with tertiary education would work from home was greater, but the distribution by level of education was more homogeneous than for occasional teleworkers or highly mobile teleworkers (López-Igual and Rodríguez-Modroño 2020). The ETUI IPWS data show that, among workers with low or intermediate qualifications, the increase in HbTW during the pandemic was much larger for women than for men: 20 points for low-qualified women vs. 14 points for men; and 23 points for intermediate-qualified women vs. 18 points for men. Among those with a university degree, there was a greater increase for women than men (32 points and 27 points respectively) (Table 4).

The results of the IPWS, alongside data from other sources on the pre-pandemic use of HbTW, clearly show that HbTW is a gendered phenomenon and so both its positive and negative implications are likely to affect women in particular. While women may benefit from some of the positive opportunities that home-based telework offers for combining paid work with care responsibilities – which may increase women’s labour market participation and their income – they are also disproportionately affected by the considerable challenges and potential negative effects that it brings. As women are the majority of home-based teleworkers, more women than men are exposed to the general risks that home-based telework poses. Women are also particularly vulnerable to some of the negative effects of telework because of the existing structural disadvantages such as the double burden of paid and unpaid work (Eurofound 2022c). Below, we explain in

more detail some of these challenges and discuss how they relate to the issues stemming from socially constructed, gendered spaces.

Table 4 The proportion (%) of workers who teleworked (worked from home) prior to and during/after the pandemic by education and gender

Education	Women	Men	Total
Low: lower secondary			
Before	15	13	14
During/after	35	27	30
Intermediate: higher secondary and post-secondary non tertiary			
Before	14	15	14
During/after	37	33	35
High: tertiary			
Before	29	33	31
During/after	61	60	60
Total			
Before	20	20	20
During/after	46	40	43

Source: ETUI IPWS 2021.

4. Risks arising from women's structural disadvantages and gender stereotypes

Home-based telework poses a range of challenges to the wellbeing and career development of workers that may have particular repercussions for women. We have divided these into three broad categories: lack of visibility in the workplace and reduced career prospects; gender stereotyping and the increased double burden; and psychosocial risk-mediated health impacts. These effects are at least in part interrelated and underpinned in different ways by the assumptions and gender roles associated with the public-private divide discussed in Section 2. These are areas in which there is already evidence of negative impacts, as well as hypotheses of potential negative impacts.

4.1 Lack of visibility and reduced career prospects for home-based teleworkers

As mentioned in Section 2, societal assumptions regarding the public-private divide associate the public space of the employer's premises with productive work and professionalism; by contrast, the private space of the home is associated with non-productive, 'subordinate' type of work. This has led to the devaluation of both unpaid and paid work performed in the home and the struggle to recognise even that those performing paid work in the home are 'real' workers. This perception is reflected also

in the situation of home-based teleworkers, whose visibility as workers is reduced. The physical absence of home-based teleworkers from the office may be seen as a lack of commitment, resulting in career penalties such as being overlooked for promotion (Leslie et al. 2012; Eurofound 2020a: 41). Home-based teleworkers can also face a lack of trust from their organisation mediated by the lack of face-to-face contact, both by management and by co-workers, as well as tensions with colleagues who are non-teleworkers (Athanasiadou and Theriou 2021; Sewell and Taskin 2015; Taskin and Bridoux 2010).

Furthermore, the lack of contact in the physical space has been found also to affect the transfer of knowledge between teleworkers and non-teleworkers (Taskin and Bridoux 2010) as well as opportunities for learning, particularly informal learning, that enhances work-related skills (Eurofound 2020a). This, again, can reduce professional development and affect career prospects. It has been found that female teleworkers, especially those with children who spend more than half of their working hours in HbTW, are more likely to report experiencing reduced visibility and fewer career development opportunities (Maruyama and Tietze 2012). This could be a particular issue for some women who already have less visibility at work, such as those working part-time. This is on top of women already often being left out of key leadership networks, frequently having less access to mentors than equivalent men (Ernst Kossek and Kelliher 2022) and being disadvantaged in workplaces that reward the working of longer hours on the employer's premises. Thus, the increasing use of HbTW by women and the increasing gender differences in the use of such arrangements hide the risk that women may be further sidelined at the workplace, with economic and other repercussions. The lack of presence at a physical workspace may also mean that women have less information about their rights and are less involved in collective organisation and representation (see also Dedden et al., and Vandaele and Piasna, this volume).

4.2 Gender stereotypes and increased double burden

Another concern is that the increasing use of HbTW by women workers could entrench existing gender stereotypes that associate women with the home space and gender roles relating to care responsibilities (EIGE 2021b). It may also lead to women taking on a greater amount of unpaid care work, given their availability to undertake such tasks in the home alongside their work, leading to (even) greater work-life conflicts or interruptions at work. These can, in turn, lead to poorer performance and affect career prospects while also contributing to risks to mental and physical health, as discussed below (EIGE 2021b; Blasko et al. 2020; Eurofound 2020b). As an example, the analysis by Adams-Prassl (2020) of gender differences in working patterns and wages on Amazon Mechanical Turk⁹ showed that women earn 20 per cent less per hour on average. The wage gap is concentrated amongst women with young children reporting that domestic responsibilities affected their ability to plan and complete work online. Already existing structural gender inequalities in respect of unpaid care work – often the reason for

9. Amazon Mechanical Turk is a crowdsourcing website for businesses to hire remotely located workers to perform on-demand tasks.

women to work from home in the first place – may be exacerbated by the increasing availability and use of HbTW.

A similar phenomenon was observed during the Covid-19 pandemic more broadly: the combination of telework and school closures affected women disproportionately because of existing structural disadvantages linked to women in general tending to be the primary caregiver in the family. Women were more likely to take paid or unpaid leave, reduce their working hours or leave the market altogether in order to fulfil increased care responsibilities; as they are more likely to work on part-time or precarious contracts, in part because of the double burden they face, they were also more likely to lose their job, in turn making it more likely that they would bear the brunt of care responsibilities, rather than their male partner (Wenham 2020; EIGE 2021b; Kohlrausch and Zucco 2020; Eurofound 2020b; Buckingham et al. 2020).

Structural disadvantage can be self-reinforcing in this way and it is crucial to bear this in mind in the context of HbTW. The negative effects of HbTW must be considered in the context of the disadvantages facing women more generally, including the lack of recognition of the economic and social value of unpaid care work. Accordingly, as we argue in more detail in Section 5, efforts to address such disadvantages must be part of more comprehensive efforts to ensure gender equality in unpaid care work, pay, career opportunities and so on.

4.3 Psychosocial risk-mediated health impacts

While offering opportunities for better work-life balance, home-based telework is often also associated with increased availability, longer working hours, the intensification of work and a blurring of the boundaries between work and private life which exacerbates work-life conflicts (EU-OSHA 2021; Eurofound 2020b; Eurofound and ILO 2017). Significantly more teleworkers, including home-based teleworkers, than those working from an employer's premises report health issues such as fatigue, headaches, eyestrain and anxiety (Eurofound 2020a: 33). In addition, such working conditions give rise to psychosocial risk factors (PSR), exposure to which can be detrimental to workers' mental and physical health (EU-OSHA 2021). When exploring the intersection of HbTW and gender, two PSR factors come across as specifically prominent: work-life conflict and job insecurity. The focus on 'space' is relevant to both aspects because it is the domestic space, under home-based teleworking, that combines paid and unpaid work and because it risks transforming it into a place for precarious employment with a lack of recognition.

During the pandemic, women had higher levels of exhaustion and stress in the EU, particularly due to work-family conflict (Eurofound 2020d), while women who work from home are more likely to have blurred work-life boundaries as many combine paid work with caregiving (Ernst Kossek and Kelliher 2022; Chung and van der Lippe 2020; Glavin and Schieman 2012). The study of Franklin et al. (2022) of temporal job quality based on cross-sectional European data, found that time-based work-life conflict is particularly detrimental to women's health; and there is also a range of

other evidence of negative health impacts for women mediated by work-life conflict (Eurofound 2020b; Mascherini and Nivakoski 2021; Del Rio-Lozano et al. 2022). Data show that men initially took part in unpaid work during the Covid-19 pandemic more than before, prompting an expectation that the future of home-based telework would narrow the gender gap in unpaid labour. However, subsequent research has shown that the unbalanced sharing of tasks continues (Eurofound 2020d; results from 2nd wave of Covid-19 survey), including in countries considered highly gender equal such as Iceland (Hjálmsdóttir and Bjarnadóttir 2021) and Finland (Yerkes et al. 2022).

Another relevant aspect of PSR in home-based teleworking is job insecurity, which is linked to stress-mediated negative health outcomes in general (Hassard and Winski 2017), while precarious employment has been found to contribute to the work-related mental health problems of women in particular (Campos-Serna et al. 2013; Méndez Rivero et al. 2021). Prior to the pandemic, close to a quarter of teleworkers were in precarious employment, being more likely to have a fixed-term contract, earn a low income, experience job insecurity and lack training opportunities (Eurofound 2020b). The analysis of the 2015 European Working Conditions Survey data by López-Igual and Rodríguez-Modroño (2020) found weak correlations between telework, permanent contracts and full-time jobs, especially among home-based teleworkers who are, mostly, women. Similarly, analysis of EU Labour Force Survey data showed that the spike in 2020 in working from home rates coincided with an increase in temporary work. At EU27 level, the share of fixed-term remote workers increased by around one percentage point in 2020, to a level not seen in previous years, indicating that the number of fixed-term workers who were also working from home increased faster than the total number of those working from home. This may be indicative of a linkage between working from home and the use of fixed-term contracts (Alexandri et al. 2023).

While it is still too early to predict who the workers that will remain as home-based teleworkers are, and how contractual practices might change, the ETUI IPWS data indicate a clear gender pattern that requires monitoring of the situation. Based on the analysed data and reviewed evidence, the pandemic has changed the profile of home-based teleworkers both in terms of sectors and level of education, with clear gender differences. Considering the specific unfavourable psychosocial working conditions involved in HbTW, attention should be paid to work-life conflict and possible job insecurity. Further, musculoskeletal disorders (MSD) particularly affect women in all European countries, research having established an interrelationship between PSR factors and MSDs. MSDs can be regarded as the pathological effects of dysfunctional work organisation and the resulting intensification of work (Roquelaure 2018). Aside from this, there is research that shows teleworkers in general being more likely to report health concerns, including virtual presenteeism – that is, working from home despite feeling unwell – with regular HbTW being associated with the highest number of negative health outcomes (Eurofound 2020b). Further research into the interplay between gender, working conditions and health in the context of HbTW is essential (Casse and De Troyer 2020).

5. A way forward

Despite the considerable issues discussed above, many want to telework, and it is clear that HbTW does have the potential to improve work-life balance and to benefit women workers in various ways. For this potential to materialise, it is essential to organise HbTW in a way that addresses the challenges outlined in Section 4, paying particular attention to gender differences and how these relate to gender inequalities more generally at the workplace and in society at large. In the EU context, this requires a comprehensive set of complementary policy measures that deal with the various problematic dimensions of HbTW: lack of visibility and career penalties for home-based teleworkers; stereotypes that associate women with the home space and unpaid care work; psychosocial risks that arise from the intensification of work and a blurring of the boundaries between work and private life; and so on. Many of these issues are at least in part related to societal perceptions about the public space of the workplace and the private space of the home and their respective association with productive and non-productive labour. The relevance of spatial divisions to the scope of labour law is significant here too, since its application to and enforcement in the private home remains circumscribed.

Efforts to address the challenges that HbTW presents to workers should, therefore, take as a starting point a reconsideration of assumptions about the public-private divide. In this respect, HbTW could have a transformative effect on how we think about the gendered division of space, with normative implications. In the words of Doreen Massey, some three decades ago:

Particular ways of thinking about space and place are tied up with, both directly and indirectly, particular social constructions of gender relations... challenging the ways in which space and place are currently conceptualized implies also, indeed necessitates, challenging the currently dominant form of gender definitions and gender relations. (Massey 1994: 2)

As the use of HbTW increases and workplace and employer control increasingly spill into the home, the dominant societal narrative that work performed in the physical space of the home is in some way inferior – or not ‘real work’ – has quite clearly become untenable. HbTW blurs the boundaries between ‘office’ and ‘home’, casts a light on the home space as a workspace and juxtaposes paid and unpaid work performed in spatial and temporal proximity. In this it challenges sharp distinctions between ‘paid’ and ‘unpaid’ labour and makes more visible the unpaid domestic labour that workers perform alongside their job – labour that easily goes unrecognised when the performance of ‘paid’ work is physically separated. HbTW also has the potential to challenge the assumption that the home is ‘the domain of women’ given that take-up by men is also considerable. Furthermore, the attention that HbTW has received in the context of the pandemic has created a fresh impetus to consider policy and regulatory solutions to inadequate working conditions and the impacts on health of those working from home. The implementation of these solutions could benefit not only home-based teleworkers but also other home-based and domestic workers.

A range of policy and regulatory measures at different levels are needed to support this change in societal assumptions and to ensure that work organisation can make the most of the positive aspects of HbTW while addressing the potential negative repercussions. Gender-sensitive changes to work organisation and working patterns at company level are key to ensuring that workers can reap the benefits of telework. This includes measures to ensure that teleworkers stay connected to their colleagues and supervisors, have a sufficient degree of autonomy and benefit from a culture of trust and compassion (Bérastégui 2021). It also includes the particular design of telework arrangements which, for example, has implications for the extent to which workers are able to achieve better work-life balance, particularly those with care responsibilities (Eurofound 2020a: 23-25). In this respect, further research is necessary to understand better the gender differences in the use and impacts of HbTW, in particular between different types of arrangement (e.g. full-time vs. occasional HbTW or its combination with flexible working hours, as well as other specificities of HbTW).

In terms of regulatory measures, the ‘right to disconnect’ – that is ‘the right for workers to switch off their technological devices after work without facing consequences for not replying to e-mails, phone calls or text messages’ (Eurofound 2020c) – has gained attention as a measure to prevent the expansion of working hours and the intrusion of professional life into the private sphere, and has been introduced by a number of Member States (Eurofound 2022b). The European Parliament has called for legislation on the right to disconnect at EU level, too (Shreeves 2021). While important, however, such a right does not address the crucial challenges arising from the intensification of work and the spatial (rather than temporal) expansion of the office into the home. There is a need also to challenge traditionally accepted boundaries of ‘workplace’ regulation and ensure that the obligations of employers under occupational health and safety legislation extend to the private home where relevant, alongside a corresponding enforcement of the competences of labour inspectorates and appropriate safeguards for workers’ privacy, and that these obligations include the prevention of psychosocial risks. A few Member States have taken steps in this direction; for example, Spain has introduced requirements for risk assessment and the prevention of ergonomic and psychosocial risks in the context of telework (Eurofound 2022b: 13).

More generally, a recent Eurofound report finds that many Member States have introduced or amended existing measures regulating telework in the wake of the pandemic, both in legislation or national/sectoral collective agreements covering access to telework, rules on data protection, privacy and surveillance, compensation for telework, access to training, etc. (see Eurofound 2022b: 12). Relevant measures, however, vary significantly between Member States and some have little regulation or only soft initiatives; while, despite changes to regulatory frameworks, working conditions have generally not been adequately adapted to the reality of teleworking in many countries (Eurofound 2022b). There is, therefore, much room for improvement when it comes to the regulation of telework across the EU. The EU Social Dialogue and an updated Framework Agreement on Telework are essential to developing solutions to the challenges posed by teleworking, although there is no one-size-fits-all approach to regulation in this context (Eurofound 2022b). Social dialogue and collective agreements are necessary to put in place arrangements that are adapted to the particular sector,

workplace and activities. Gender mainstreaming should be applied across all of these regulatory measures to ensure that the gendered impacts of telework arrangements are identified and addressed.

Finally, measures to address the gendered impacts of HbTW can only be effective if accompanied by robust policy and legal frameworks which specifically address the unequal distribution of unpaid care work between men and women. Such frameworks should provide, among other things, for adequate and accessible child and adult care services, widely accessible and well-paid parental and paternity leave of sufficient duration, and revised limits to working time for all workers regardless of gender (Arabadjieva 2022; Zbyszewska 2016). They should also be underpinned by the recognition that paid and unpaid care work are essential to the functioning of our societies and have significant social and economic value (Arabadjieva 2022; Elson 2017) – another fact that the Covid-19 pandemic has brought to the fore. Relevant EU frameworks, such as the Work-Life Balance Directive, are lagging behind in this respect (Arabadjieva 2022). Much more ambitious efforts are needed to challenge the dominant narratives and gender stereotypes about care and work performed in the home; and the disruption brought on by the Covid-19 pandemic may well, finally, prompt such a transformation.

References

- Adams-Prassl A. (2020) The gender wage gap on an online labour market: The cost of interruptions, Discussion Paper DP14294, Centre for Economic Policy Research <https://cepr.org/publications/dp14294>
- Alexandri E., Barbieri L., Seymour D., Suta C.-M. and Thoung C. (2023) Short and medium-term sectoral employment: forecasting the development of remote work, Report, ETUI. [Forthcoming]
- Arabadjieva K. (2022) Reshaping the work-life balance Directive with Covid-19 lessons in mind, Working Paper 2022.01, ETUI. <https://www.etui.org/publications/reshaping-work-life-balance-directive-covid-19-lessons-mind>
- Athanasiadou C. and Theriou G. (2021) Telework: Systematic literature review and future research agenda, *Heliyon*, 7 (10), e08165. <https://doi.org/10.1016/j.heliyon.2021.e08165>
- Basham V. (2021) A necessarily historical materialist moment? Feminist reflections on the need for grounded critique in an age of crises, *International Relations*, 35 (1), 178-182. <https://doi.org/10.1177/0047117821992408>
- Beebe K. and Davis A. (eds.) (2017) *Space, place and gendered identities: Feminist history and the spatial turn*, Routledge.
- Bérestégui P. (2021) Teleworking in the aftermath of the Covid-19 pandemic: Enabling conditions for a successful transition, Policy Brief 2021.05, ETUI. <https://www.etui.org/publications/teleworking-aftermath-covid-19-pandemic>
- Berg J. (2022) Contemporary digital home work: Old challenges, different solutions?, in Nilsson M., Mazumdar I. and Neunsinger S. (eds.) *Home-based work and home-based workers (1800-2021)*, Brill, 288-307.

- Blasko Z., Papadimitriou E. and Manca A. (2020) How will the COVID-19 crisis affect existing gender divides in Europe, Publications Office of the European Union. <https://doi.org/10.2760/37511>
- Bourdieu P. (2002) *Masculine domination*, Stanford University Press.
- Buckingham S. et al. (2020) Precarious work from a gender and intersectionality perspective, and ways to combat it, European Parliament. [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2020\)662491](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)662491)
- Campos A. (2020) On red feminism: Class, gender and historical materialism, *International Review of Contemporary Law*, 2 (3), 32-42. <https://iadllaw.org/newsite/wp-content/uploads/2020/12/IADL-Review-December-2020-web.pdf>
- Campos-Serna J., Ronda-Pérez E., Artazcoz L., Moen B.E. and Benavides F.G. (2013) Gender inequalities in occupational health related to the unequal distribution of working and employment conditions: A systematic review, *International Journal for Equity in Health*, 12, 57. <https://doi.org/10.1186/1475-9276-12-57>
- Casse C. and De Troyer M. (eds.) (2020) *Gender, working conditions and health. What has changed?*, Report 143, ETUI. <https://www.etui.org/publications/gender-working-conditions-and-health>
- Chen M., Sebstad J. and O'Connell L. (1999) Counting the invisible workforce: The case of homebased workers, *World Development*, 27 (3), 603-610. [https://doi.org/10.1016/S0305-750X\(98\)00154-5](https://doi.org/10.1016/S0305-750X(98)00154-5)
- Chung H. and van der Lippe T. (2020) Flexible working, work-life balance, and gender equality: Introduction, *Social Indicators Research*, 151, 365-381. <https://doi.org/10.1007/s11205-018-2025-x>
- Clark A. (2013/1919) *The working life of women in the seventeenth century*, Routledge.
- De Backer M., Dijkema C. and Hörschelmann K. (2019) The everyday politics of public space, *Space and Culture*, 22 (3), 240-249. <https://doi.org/10.1177/1206331219830080>
- Del Río-Lozano M., García-Calvente M., Elizalde-Sagardia B. and Maroto-Navarro G. (2022) Caregiving and caregiver health 1 year into the COVID-19 pandemic (CUIDAR-SE study): A gender analysis, *International Journal of Environmental Research and Public Health*, 19 (3), 1653. <https://doi.org/10.3390/ijerph19031653>
- EIGE (2021a) *Gender inequalities in care and consequences for the labour market*, Publications Office of the European Union. <https://doi.org/10.2839/074>
- EIGE (2021b) *Gender equality and the socio-economic impact of the COVID-19 pandemic*, Publications Office of the European Union. <https://doi.org/10.2839/29540>
- Elson D. (2017) Recognize, reduce, and redistribute unpaid care work: How to close the gender pay gap, *New Labor Forum*, 26 (2), 52-61. <https://doi.org/10.1177/1095796017700135>
- Ernst Kossek E. and Kelliher C. (2022) Mainstreaming teleworking and gender equality: A double-edged sword?, *OECD Forum Network*, 3 March 2022. <https://www.oecd-forum.org/posts/mainstreaming-teleworking-and-gender-equality-a-double-edged-sword>
- ETUC, UNICE, UEAPME and CEEP (2002) *Framework Agreement on Telework*. <https://etuc.org/en/framework-agreement-telework>
- EU-OSHA (2021) *Telework and health risks in the context of the COVID-19 pandemic: Evidence from the field and policy implications*, Publications Office of the European Union. <https://osha.europa.eu/en/publications/telework-and-health-risks-context-covid-19-pandemic-evidence-field-and-policy-implications>

- Eurofound (2020a) *Telework and ICT-based mobile work: Flexible working in the digital age, New forms of employment series*, Publications Office of the European Union. <https://doi.org/10.2806/337167>
- Eurofound (2020b) *Women and labour market equality: Has COVID-19 rolled back recent gains?*, Publications Office of the European Union. <https://doi.org/10.2806/302982>
- Eurofound (2020c) *Right to disconnect in the 27 EU Member States*, Working Paper WPEF20019, Eurofound. <https://www.eurofound.europa.eu/publications/report/2020/telework-and-ict-based-mobile-work-flexible-working-in-the-digital-age#wp-101320>
- Eurofound (2020d) *Living, working and Covid-19, Covid-19 series*, Publications Office of the European Union. <https://doi.org/10.2806/467608>
- Eurofound (2022a) *Teleworking*. <https://www.eurofound.europa.eu/topic/teleworking>
- Eurofound (2022b) *Telework in the EU: Regulatory frameworks and recent updates*, Publications Office of the European Union. <https://doi.org/10.2806/42974>
- Eurofound (2022c) *The rise in telework: Impact on working conditions and regulations*, Publications Office of the European Union. <https://doi.org/10.2806/069206>
- Eurofound and ILO (2017) *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union and International Labour Office. <https://doi.org/10.2806/372726>
- European Commission (2020) *European Semester Thematic Factsheet - Women in the Labour Market*. https://commission.europa.eu/system/files/2020-06/european-semester_thematic-factsheet_labour-force-participation-women_en_0.pdf
- European Commission (2021) *Report on gender equality in the EU*. https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2021_en.pdf
- Eurostat (2021) *How usual is it to work from home?* <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20210517-2>
- Eurostat (2022) *Employed persons working from home as a percentage of the total employment, by sex, age and professional status (%)* [Accessed 27.09.2022]. https://ec.europa.eu/eurostat/databrowser/view/LFSA_EHOMP__custom_4158185/default/table?lang=en
- Franklin P., Zwysen W. and Piasna A. (2022) *Temporal dimensions of job quality and gender: Exploring differences in the associations of working time and health between women and men*, *International Journal of Environmental Research and Public Health*, 19 (8), 4456. <https://doi.org/10.3390/ijerph19084456>
- Freedland M. and Kountouris N. (2011) *The legal construction of personal work relations*, Oxford University Press.
- Fudge J. (2014) *Feminist reflections on the scope of labour law: Domestic work, social reproduction, and jurisdiction*, *Feminist Legal Studies*, 22, 1-23.
- Gal S. (2002) *A semiotics of the public/private distinction*, *Differences: A Journal of Feminist Cultural Studies*, 13 (1), 77-95. <https://www.muse.jhu.edu/article/9632>
- Glavin P. and Schieman S. (2012) *Work-family role blurring and work-family conflict: The moderating influence of job resources and job demands*, *Work and Occupations*, 39 (1), 71-98. <https://doi.org/10.1177/0730888411406295>
- Habermas J. (1991) *The structural transformation of the public sphere: An inquiry into a category of Bourgeois Society*, MIT Press.
- Hassard J. and Winski T. (2017) *Precarious work: definitions, workers affected and OSH consequences*, OSHwiki, EU-OSHA.

- Hjálmsdóttir A. and Bjarnadóttir V.S. (2021) 'I have turned into a foreman here at home': Families and work-life balance in times of COVID-19 in a gender equality paradise, *Gender, Work and Organization*, 28 (1), 268-283. <https://doi.org/10.1111/gwao.12552>
- ILO (2013) Domestic workers across the world: Global and regional statistics and the extent of legal protection, ILO.
- ILO (2020a) COVID-19: Guidance for labour statistics data collection. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_747075.pdf
- ILO (2020b) Working from home: From invisibility to decent work, ILO.
- ILO (2021) Home-based workers in the world: A statistical profile, Statistical Brief 27. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_771793.pdf
- Kang M., Lessard D., Heston L. and Nordmarken S. (2017) Introduction to women, gender, sexuality studies, University of Massachusetts Amherst Libraries. <https://openbooks.library.umass.edu/introwgss/>
- Kohlrusch B. and Zucco A. (2020) Die Corona-Krise trifft Frauen doppelt: Weniger Erwerbseinkommen und mehr Sorgearbeit, WSI Policy Brief 40, Hans-Böckler-Stiftung. https://www.wsi.de/de/faust-detail.htm?sync_id=8906
- Lafargue P. (1973 [1904]) 'A Questão da Mulher' in Neves H. (1973) O Problema feminino e a Questão Social, Viseu: Tipografia Guerra.
- Larguia I. and Dumoulin J. (1975) Para uma ciência da libertação da mulher, Prelo Editora.
- Lefebvre H. (1991) The production of space, Wiley-Blackwell.
- Leslie L.M., Flaherty Manchester C., Park T.Y. and Mehng S.A. (2012) Flexible work practices: A source of career premiums or penalties?, *Academy of Management Journal*, 55 (6), 1407-1428. <https://doi.org/10.5465/amj.2010.0651>
- López-Igual P. and Rodríguez-Modroño P. (2020) Who is teleworking and where from? Exploring the main determinants of telework in Europe, *Sustainability* 12 (21), 8797. <https://doi.org/10.3390/su12218797>
- Madanipour A. (2003) Public and private spaces of the city, Routledge.
- Mantouvalou V. (2012) Human rights for precarious workers: The legislative precariousness of domestic labour, *Comparative Labor Law and Policy Journal*, 34, 133-165.
- Maruyama T. and Tietze S. (2012) From anxiety to assurance: concerns and outcomes of telework, *Personnel Review*, 41 (4), 450-469. <https://doi.org/10.1108/00483481211229375>
- Mascherini M. and Nivakoski S. (2021) Gender differences in the impact of the COVID-19 pandemic on employment, unpaid work and well-being in the EU, *Intereconomics*, 56 (5), 254-260.
- Massey D. (1994) Space, place and gender, University of Minnesota Press.
- Méndez Rivero M., Padrosa E., Utzet M., Benach J. and Julià M. (2021) Precarious employment, psychosocial risk factors and poor mental health: A cross-sectional mediation analysis, *Safety Science*, 143, 105439. <https://doi.org/10.1016/j.ssci.2021.105439>
- Neethi P. (2014) Home-based work and issues of gender and space, *Economic and Political Weekly*, 49 (17), 88-96.
- Neunsinger S. (2022) Introduction between ban and human rights: The regulation of home-based work since the twentieth century, in Nilsson M., Mazumdar I. and Neunsinger S. (eds.) *Home-based work and home-based workers (1800-2021)*, Brill, 117-121.
- Nilsson M., Mazumdar I., Neunsinger S. and Andersen N.T. (2022) Introduction: History-visibility-recognition-organizing, in Nilsson M., Mazumdar I. and Neunsinger S. (eds.) *Home-based work and home-based workers (1800-2021)*, Brill, 1-26.

- Oakman J., Kinsman N., Stuckey R., Graham M. and Weale V. (2020) A rapid review of mental and physical health effects of working at home: How do we optimise health?, *BMC Public Health*, 20, 1825. <https://doi.org/10.1186/s12889-020-09875-z>
- Ojala S., Nätti J. and Anttila T. (2014) Informal overtime at home instead of telework: Increase in negative work-family interface, *International Journal of Sociology and Social Policy*, 34 (1-2), 69-87.
- Özbey A.Ü. and Bardakçı A. (2019) 'Women' in public and private spheres in the context of modern feminist theories from ancient civilizations to the present, *OPUS International Journal of Society Researches*, 14 (20), 1789-1818. <https://doi.org/10.26466/opus.596196>
- Piasna A., Zwysen W. and Drahoukoupil J. (2022) The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey (IPWS), Working Paper 2022.05, ETUI. <https://www.etui.org/publications/platform-economy-europe>
- Ren C., Li X., Yao X., Pi Z. and Qi S. (2019) Psychometric properties of the effort-reward imbalance questionnaire for teachers (teacher ERIQ), *Frontiers in Psychology*. <https://doi.org/10.3389/fpsyg.2019.02047>
- Rigó M., Dragano N., Wahrendorf M., Siegrist J. and Lunau T. (2021) Work stress on rise? Comparative analysis of trends in work stressors using the European working conditions survey, *International Archives of Occupational and Environmental Health*, 94, 459-474. <https://doi.org/10.1007/s00420-020-01593-8>
- Roquelaure Y. (2018) Musculoskeletal disorders and psychosocial factors at work, Report 142, ETUI. <https://www.etui.org/publications/reports/musculoskeletal-disorders-and-psychosocial-factors-at-work>
- Rugulies R., Aust B. and Madsen I.E. (2017) Effort-reward imbalance at work and risk of depressive disorders. A systematic review and meta-analysis of prospective cohort studies, *Scandinavian Journal of Work, Environment and Health*, 43 (4), 294-306. <https://doi.org/10.5271/sjweh.3632>
- Santana M.C. (2016) From empowerment to domesticity: The case of Rosie the Riveter and the WWII Campaign, *Frontiers in Sociology*, 1 (16). <https://doi.org/10.3389/fsoc.2016.00016>
- Sedacca N. (2022) Domestic workers, the 'family worker' exemption from minimum wage, and gendered devaluation of women's work, *Industrial Law Journal*, 51 (4), 771-801. <https://doi.org/10.1093/indlaw/dwac005>
- Seeliger M. and Villa Braslavsky P.I. (2022) Reflections on the contemporary public sphere: An interview with Judith Butler, *Theory, Culture and Society*, 39 (4), 67-74. <https://doi.org/10.1177/02632764211066260>
- Sewell G. and Taskin L. (2015) Out of sight, out of mind in a new world of work? Autonomy, control, and spatiotemporal scaling in telework, *Organization Studies*, 36 (11), 1507-1529. <https://doi.org/10.1177/0170840615593587>
- Shreeves R. (2021) Women in politics in the EU: State of play, Briefing, European Parliament. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689345/EPRS_BRI\(2021\)689345_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689345/EPRS_BRI(2021)689345_EN.pdf)
- Siegrist J. and Li J. (2016) Associations of extrinsic and intrinsic components of work stress with health: A systematic review of evidence on the effort-reward imbalance model, *International Journal of Environmental Research and Public Health*, 13 (4), 432. <https://doi.org/10.3390/ijerph13040432>
- Sostero M., Milasi S., Hurley J., Fernández-Macías E. and Bisello M. (2020) Teleworkability and the COVID-19 Crisis: A new digital divide?, JRC, European Commission.

- https://joint-research-centre.ec.europa.eu/publications/teleworkability-and-covid-19-crisis-new-digital-divide_en
- Squires J. (2018) Public and private, in Bellamy R. and Mason A. (eds.) *Political concepts*, Manchester University Press. <https://doi.org/10.7765/9781526137562.00015>
- Striking Women (2023) *Women and work*. <https://www.striking-women.org/main-module-page/women-and-work>
- Taskin L. and Bridoux F. (2010) Telework: A challenge to knowledge transfer in organizations, *International Journal of Human Resource Management*, 21 (13), 2503-2520. <https://doi.org/10.1080/09585192.2010.516600>
- van der Lippe T. and Lippényi Z. (2020) Co-workers working from home and individual and team performance, *New Technology, Work and Employment*, 35 (1), 60-79. <https://doi.org/10.1111/ntwe.12153>
- Welter B. (1966) The cult of true womanhood: 1820-1860, *American Quarterly*, 18 (2), Part 1 (Summer), 151-174. <https://doi.org/10.2307/2711179>
- Wenham C. (2020) The gendered impact of the COVID-19 crisis and post-crisis period, European Parliament.
- Williamson F. (2012) Public and private worlds? Social history, gender and space, *History Compass*, 10 (9), 633-643. <https://doi.org/10.1111/j.1478-0542.2012.00851.x>
- Yerkes M.A., Remery C., André S., Salin M., Hakovirta M. and van Gerven M. (2022) Unequal but balanced: Highly educated mothers' perceptions of work-life balance during the COVID-19 lockdown in Finland and the Netherlands, *Journal of European Social Policy*, 32 (4). <https://doi.org/10.1177/09589287221080411>
- Zatz N. (2011) The impossibility of work law, in Davidov G. and Langille B. (eds.) *The idea of labour law*, Oxford University Press, 234-255. <https://doi.org/10.1093/acprof:oso/9780199693610.003.0016>
- Zbyszewska A. (2016) Reshaping EU working-time regulation: towards a more sustainable regime, *European Labour Law Journal*, 7 (3), 331-347. <https://doi.org/10.1177/201395251600700302>

All links were checked on 27/02/2023.

Chapter 5

Remote work as a new dimension of polarisation: Individual and contextual determinants of the relationship between working from home and job quality

Wouter Zwysen

1. Introduction

Working from home made it on to everyone's radar with the Covid-19 pandemic and the onsets of lockdowns. Before that it was relatively rare, albeit slowly rising. This changed with the pandemic, making it all the more relevant to investigate the link between working from home and inequalities in the labour market.

This chapter focuses on the drivers and labour market effects of 'working from home'. While there are various reasons for and types of work done at home, one of them is the use of remote work where tasks as an employee are carried out from other locations than the corporate office (Rupietta and Beckmann 2016; Bolisani et al. 2020; Eurofound 2022). In this chapter I mainly focus conceptually on the type of remote work carried out at home.

Working from home, where it entails remote work otherwise done in an office, differs in its compatibility with the tasks that need to be carried out in a job: as with other digital technologies, access to remote work and its effect on the workers using it is essentially heterogenous. Increased flexibility generally benefits disproportionately the higher skilled and those whose jobs could more easily move to a remote location, while the lower-skilled and those in jobs requiring personal contact are at risk of being left behind (Autor et al. 2003; Michaels et al. 2013; Autor et al. 2020).

Working from home is on the increase and is unlikely to return to pre-pandemic levels, so it is important to consider its effects on the world of work. This type of remote work can exacerbate inequality by forming a new cleavage between workers. Those who are able to work from home are, in general, those who were already better off while access to working from home can be linked not only with better work-life balance but also higher wellbeing and even productivity which can, in time, be associated with higher wages. This stands in contrast to those workers, often in client-facing tasks, who are paid less, have less secure conditions and who cannot access different types of remote work or carry out the core of their work tasks from home.

This chapter sets out to describe the situation of working from home in Europe, focusing on three main points. First, to what extent do changes in telework during the pandemic follow existing inequalities where the more advantaged are also more likely to end up in telework? Second, while some aspects of the jobs of home workers are expected to be better, there are also downsides for instance in terms of work intensity. This points to the need to consider the wider dimensions of job quality and go beyond only

studying income (Muñoz de Bustillo 2011; Piasna 2017). Third, while teleworking has increased overall and is likely to have followed traditional lines of disadvantage, there is no inevitability about this. Teleworking is still partly determined by the level of digital technology within the company and may not be equally accessible overall. As more technologically intensive sectors can be expected to differentiate more between their workers in access to telework, I expect greater inequality of access between workers in those sectors (Zwysen 2022). There may also be differences in how telework is arranged depending on the presence of trade unions and appropriate worker representation, as with other aspects of inequality (Zwysen 2022).

This chapter uses representative data from across European countries to address these three points. Section 2 provides an overview of the rapidly increasing literature on working from home and telework, with a focus on the situation prior to the Covid-19 pandemic and its estimated impact, although this is still unfolding. Then I describe the EU Labour Force Survey (LFS) – a cross-nationally representative European data set – which is used in this chapter. I go on finally to discuss the main findings.

First, indeed, the growth in working from home is mainly accruing to those who are more advantaged on the labour market. Second, working from home itself is associated with, on average, better working conditions and higher wages, although also with generally higher working hours. Finally, there is substantial variation in how unequally telework is growing between sectors and countries. Access to telework is more unequally divided between workers depending on their qualifications, demographics or work status in more technologically intensive sectors, while there is less difference in this access in countries and sectors with stronger worker representation through greater union density which, therefore, has the potential to curtail some of this inequality.

2. Background: working from home before and during the pandemic

2.1 Who is teleworking?

Prior to the Covid-19 pandemic, working from home was still relatively rare. In 2010 around 5.4 per cent of workers in the EU usually worked from home and 5.2 per cent did so occasionally. By 2019, there had been no real change in the percentage usually working from home, although the share of occasional teleworkers had increased to 9 per cent (Milasi et al. 2020). These relatively low shares, however, hid enormous variation between countries, sectors, occupations and even within occupations (Milasi et al. 2020; Zwysen et al. 2021). These variations reflect differences in the types of tasks carried out and the ease with which they can be done remotely (Adams-Prassl et al. 2022), differences in infrastructure such as broadband coverage, and differences in digitalisation and digital skills (Sostero et al. 2020). However, the differences between sectors, occupations and countries were mainly due to differences in willingness to allow telework.

Working from home was more common among autonomous knowledge workers, such as in IT, or in those jobs where productivity could easily be monitored, such as call centres. It was mainly used as a benefit or perk to attract more highly skilled workers and tie them to the company and, in that sense, it most often accrued to full-time and established workers, the more highly educated and those doing higher skilled tasks (Rupietta and Beckmann 2016; Holgersen et al. 2021; Adams-Prassl et al. 2022).

Clearly, the share of workers actually working from home was substantially lower than the share of jobs that could, relatively easily, be moved remotely. Several studies have estimated the total amount of jobs that could be performed remotely based on their task content (e.g. Adams-Prassl et al. 2022; Baker 2020; Dingel and Neiman 2020; Holgersen et al. 2021). These estimates indicate that between 33 per cent and 44 per cent of employment in Europe is suitable for telework (Sostero et al. 2020). There are vast differences between jobs, however, and these fall on traditional lines with nearly three quarters of the 20 per cent of highest earners potentially able to telework compared to only 5 per cent of those with wages in the bottom 20 per cent (Sostero et al. 2020). Tasks that can be teleworked are more often done by men, the university educated and those with a permanent contract (Adams-Prassl et al. 2022).

There is a clear link between those tasks that can more easily be done remotely, as they require less interaction or manual work, and the extent to which these tasks are valued. The result is that teleworking links to labour market inequalities and polarisation more widely (Dingel and Neiman 2020; Sostero et al. 2020; Holgersen et al. 2021; Adams-Prassl et al. 2022). This echoes the polarising nature of technological innovation overall, which is generally complementary to higher skilled jobs and to those tasks that are more valued, such as cognitive and abstract tasks (Menon et al. 2019; Autor et al. 2020).

During the pandemic many governments initiated shutdowns or limited mobility and telework often became all but obligatory where possible (Samek Lodovici et al. 2021; Zwysen et al. 2021). This shift was quickest and easiest for those jobs that already had some experience with teleworking and those tasks that could readily be done remotely (Adams-Prassl et al. 2022). Often the more productive firms had already adopted some telework and were quickest to extend this (Criscuolo et al. 2021). The pandemic pushed ahead technological innovation that was already happening and sped up this process with new technologies, capabilities and management practices. These investments were mainly made by firms with higher skilled workforces and those that were already more technologically advanced (Valero et al. 2021). The pandemic thus widened this polarisation but also added a problematic dimension as those workers in jobs that could not be done from home – more often the lower paid, the lower educated, women and those in smaller and less productive firms – were either at greater risk of losing their jobs or otherwise of contracting Covid-19 (Criscuolo et al. 2021; Adams-Prassl et al. 2022; Felstead and Reuschke 2020).

There is a high likelihood that working from home will remain, in some form at least, after the pandemic. Surveys show that both employees and employers report wanting to retain some working from home, with probably a hybrid system as the most favoured option (Barrero et al. 2021; Bloom et al. 2021; Criscuolo et al. 2021). In one interesting

study, Adrjan et al. (2021) monitored references to telework from job postings online across the OECD following the pandemic. These show a sharp increase when there are mobility restrictions but no similar decline when these are lifted, which they take to mean that telework will stay.

This chapter uses cross-national European data to analyse the growth in working from home over time due to the Covid-19 pandemic and the extent to which this varies by worker characteristics. I anticipate sizeable increases in working from home, with this increase mainly accruing to higher educated workers and those working in higher skilled occupations. Besides these differences by education and job type, I also expect differences by gender, age and employment contract. Such differences would then widen the gap between those that are more protected and advantaged on the labour market and those that are not.

2.2 How does working from home affect the job?

A lingering question in the literature concerns the link between working from home on the one hand and productivity and worker wellbeing on the other. Several studies have addressed this question. The main takeaway is that the relationship differs between tasks: some types of work benefit from working undisturbed and autonomously while other tasks can be done more effectively with face-to-face contact and the quicker communication that this entails. The opportunity for workers to do some work from home does, overall, seem conducive to greater productivity and wellbeing. One possible downside, however, can be that time spent working from home is not as visible and can jeopardise promotions or training opportunities (Criscuolo et al. 2021; Harrington and Emanuel 2021). Productivity is generally important when considering the business case for working from home but, through links with worker wages, unequal access to telework combined with productivity differences may lead to greater differences in earnings.

Kazekami (2020) shows in Japan that workers who telework reported higher labour productivity – based on their annual income per hour worked – and generally greater life satisfaction. This was especially the case for those with long commutes and those who experienced substantial interruption at work. The benefits were mainly present with more limited telework, however, as more intensive working from home brought problems in combining home life and work. In a German study, Rupiotta and Beckmann (2016) find a positive relationship between employees' work effort and working from home which then had a positive effect on productivity. In an interesting study of one Fortune 500 firm, Harrington and Emanuel (2021) find that the productivity of call centre workers improved substantially when working from home rather than in the office, but there was a decline in promotion opportunities regardless as teleworkers were more often overlooked. This resulted in a general negative selection of workers into telework. In their survey of voluntary teleworkers, Golden and Gajendran (2019) conclude that the effects on job performance ranged from slightly benign to overall positive, with variation due to job type and the required interdependence and social support.

On the other hand, Battiston et al. (2017) report the results from a natural experiment on the speed of handling emergency 999 calls in the Greater Manchester region which required cooperation between a handler and an operator. They find that productivity was higher when teammates were assigned desks in the same room rather than when the assignments, which were done at random, put them in different rooms. This is because there was no need to communicate electronically when desks are close together. In another interesting study, Künn et al. (2020) use the natural opportunity provided by the pandemic to study changes in the quality of game that chess grandmasters play when moving from in-person tournaments to an online setting, finding that the quality of a grandmaster's game declined when done online.

The mass use of telework following the Covid-19 pandemic has allowed for more studies on the associations between hours worked and the productivity effects of working from home. Generally, the move to a home office is associated with workers reporting getting at least as much done as before, if not more, but also in spending more time working (Bolisani et al. 2020; Bloom et al. 2021; Giovanis and Ozdamar 2021; Lewis et al. 2021; Weitzer et al. 2021). Using data on emails and online meetings in 16 metropolitan areas in North America, Europe and the middle east, DeFilippis et al. (2020) find that teleworkers spent on average 11.5 per cent less time in meetings per day, despite doing more of them, and that they worked almost 50 minutes longer. When surveyed, most employees as well as managers reported an increase in work done and in productivity (Etheridge et al. 2020; Criscuolo et al. 2021; Escudero and Kleinman 2022). There are some studies that also report declines (Weitzer et al. 2021), however, and some variation between groups with possibly worse outcomes for women (Del Boca et al. 2020) and the lower educated (Morikawa 2020).

The quick shift to telework following the pandemic posed problems for workers as supporting measures were often not taken and workplaces were not prepared. This brought stress and also some health and safety risks as home workspaces were not properly adjusted (Bolisani et al. 2020). Studies carried out in the initial phases of the pandemic find some increased psychosocial risks and stress for people working from home, stemming from the difficult combination of work and family life and through increased isolation from colleagues (Bolisani et al. 2020; Giovanis and Ozdamar 2021; Felstead and Reuschke 2020).

Despite problems with the urgent roll-out and the mixed experiences, most studies indicate that working from home was generally a positive experience for employees. This average response hides a possible polarisation in which most workers reported greater perceived productivity and quality of life while another, but on average smaller, group reported adverse effects (Bolisani et al. 2020; Weitzer et al. 2021; Troll et al. 2022). The reason for different experiences can lie in workers' attributes, such as their self-control and support strategies (Troll et al. 2022), as well as in the material conditions and level of support from management. Importantly, one UK study finds that 76 per cent of workers in the UK in 2021 reported that the stigma related to working from home had been reduced (Bloom et al. 2021) (see also Arabadjieva and Franklin, this volume).

However, there does seem to be a mismatch between employers and employees in the value placed on working from home, according to a vignette experiment in Poland where workers and employers responded to different scenarios indicating what amount of income they were willing to forego or pay for the right to telework. Workers saw working from home as a benefit for them but also as a positive for their work and were prepared to give up only a small percentage of earnings (around 5 per cent) for the right to telework. Employers, however, saw telework mainly as a negative and valued the right to telework at a cut in pay of 40 per cent (Lewandowski et al. 2022).

This chapter studies the association between working from home and different aspects of the quality of jobs over time. Based on these studies, the relationship between working from home and productivity on the one hand and job quality on the other is not so straightforward and will differ between workers and employers. While some studies establish greater productivity and an association with higher incomes of those doing telework (Eurofound and ILO 2017; Abrams 2019; Kazekami 2020; Harrington and Emanuel 2021), working from home can also bring the risk of a blurring of the boundary between work and time off, which shows itself in less predictable or long working hours (Eurofound and ILO 2017; Abrams 2019; DeFilippis et al. 2020). Overall, there is some indication that workers are generally able to be at least as productive and do their work when working from home. There is also a largely positive association with work-life balance. On the downside, many workers report that they work more hours. This could mean that indeed labour productivity – and possibly, in the longer term, earnings – might increase when working from home but at the cost of more hours and longer work weeks.

2.3 What is the role of structural and institutional factors?

This overview has highlighted that telework itself can be complementary to specific types of tasks and jobs where those who do this type of work benefit from doing some work from home. In this way differences in wages and job quality on the labour market may form along this divide of having access to the opportunity of working remotely. Those that benefit can, to some extent, be more productive and present a possible cost saving for employers as opposed to those who cannot work from home. While some jobs do not allow it, this difference in access can also be due to less relevant factors such as type of employment contract or demographic characteristics (Behrens et al. 2021; Davis et al. 2022). Similar to routine- or skill-biased technological change in general (Autor et al. 2003), the spread of telework could see a widening gap between these two groups.

There is, however, also substantial variation between countries and sectors not only in the adoption of working from home but also in who specifically can access it and its potential link with inequality. Remote working requires technological capabilities within the workplace as well as digital skills on behalf of the worker (Crisciuolo et al. 2021). It is then to be expected that those sectors and countries that invest more heavily in new technologies will see a more rapid increase in the share of workers working from home. This technology is likely to increase gaps between the higher skilled and the lower skilled in which it is disproportionately the former who are accessing remote work.

While technological factors and economic imperatives may lead to greater inequality and division between workers within firms and sectors as to who works remotely, there is also a role to be played by collective agreements and worker representation (Samek Lodovici et al. 2021; Eurofound 2022). Such agreements can formalise the right to work from home and make it more equally available within a firm and sector.

I expect, first, that countries and sectors with greater technological innovation have seen a larger and more unequal increase in workers working from home. Second, I expect that countries and sectors with stronger worker representation or collective agreements have seen a more equal spread between profiles of workers.

3. Data and methods

This chapter uses data from the EU Labour Force Survey, 2018 to 2021, and covers EU Member States as well as Norway with cross-nationally comparable questions. The data are restricted to those aged 15–69.

The main question of interest concerns the location of work. Here, the data differentiates between a person usually working at home, doing so sometimes or never doing so. This question therefore only captures working at home, which is conceptually different from remote work or telework – which are the focus of the literature review and conceptual framework – as it can also contain other forms of work for an employer and which are remunerated, such as domestic industrial production or platform-mediated gig work (ILO 2021). However, within the context of the wealthier European countries, and given that the focus is on the change over time in working from home, most of those workers who report working from home, especially the increase therein since 2020, are likely to be teleworkers.

I distinguish the data on the basis of four characteristics: gender (men and women); highest obtained qualification (low: at most lower secondary; intermediate: upper secondary or post-secondary non-tertiary; or high: tertiary); level of occupational skill (low skilled: elementary occupations; medium skilled: clerical support, services and sales, skilled workers and plant operators; and high skilled: professional, managerial and associate technical); and working time (full-time or part-time) and type of contract (indefinite or temporary).

The first research question concerns the change and the gaps between groups occasioned by the pandemic. To describe this, I analyse whether people never, sometimes or usually worked from home in the year of the survey and allow for trends over time to differ by education, gender, occupational skill and working time or type of contract. The model is estimated through a multinomial logistic regression with weights to be representative of the working age population, including separately entered interaction terms and including country fixed effects as well as control variables.

The second question concerns the relationship between working from home and various dimensions of job quality. While wages are of course a crucial aspect of work,

it is also important to consider this concept more widely, particularly focusing on job security and working conditions. While there is discussion about how to measure job quality, there is consensus on the importance of working time and the intensity of work, the security of a job and its contractual arrangements, all of which capture a worker's conditions and prospects. Based on the available data, this chapter encapsulates job quality through five separate variables in order to go beyond only looking at the wage but to consider the wider dimensions of job quality (Muñoz de Bustillo 2011).

The intensity and reliability of work is measured as (1) whether or not hours vary substantially from week-to-week; and (2) whether someone works 40 hours per week or more. Income (3) is measured through the relative wage (in country-specific income deciles). Under-employment and thereby job security is captured through (4) whether the respondent works under a part-time contract because they could not find a full-time position; or (5) under a temporary contract because they could not find a position with an indefinite contract (Piasna 2017). I model whether each of these aspects of job quality differs by whether workers work never, occasionally or usually from home. To test variation over time I allow this relationship to differ over time.

Finally, the third research question concerns the drivers of the rise in telework and its unequal distribution. To capture variation between sectors I include two key aspects that varied between groups of sectors and countries prior to the pandemic (2018). First, I study the variation between countries and sectors in their level of technological investment. This is captured here through industry-specific investment in ICT equipment, including software and databases, expressed as a share of non-residential gross fixed capital formation (Michaels et al. 2013; Kristal and Cohen 2017; Calvino et al. 2018). This measures investment in new technologies which can then be used for production. Where possible, data are obtained from national accounts provided through the OECD. Where this is not available, I obtain data through the 2018 update of the 2017 EUKLEMS data. Second, the extent to which worker representation, captured by union density at sectoral level within a country, can play a role in the regulation of telework and the division of it provides an important and original dimension. Union density is taken from the Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS version 6.1) by country, sector (12 large groups) and year (Visser 2019).

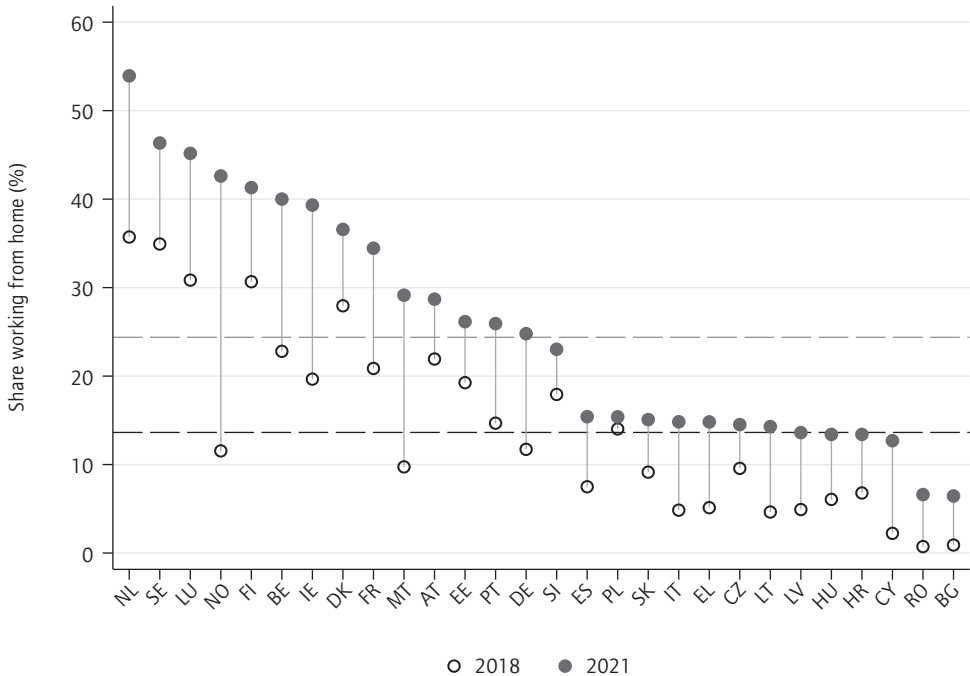
I estimate a model where the difference in the growth of working from home at least occasionally over time, found between workers based on their characteristics (high qualifications, high skilled occupations, young workers, gender, non-standard work), is allowed to differ by technological investment and trade union density. As in all other analyses it is weighted and controls for other aspects of the worker and the work.

4. Findings

4.1 Who is working from home?

The first key question addressed in this chapter is the extent to which the increase in working from home differs between types of worker; specifically, whether inequality of access is on the rise.

Figure 1 Share of workers occasionally working from home



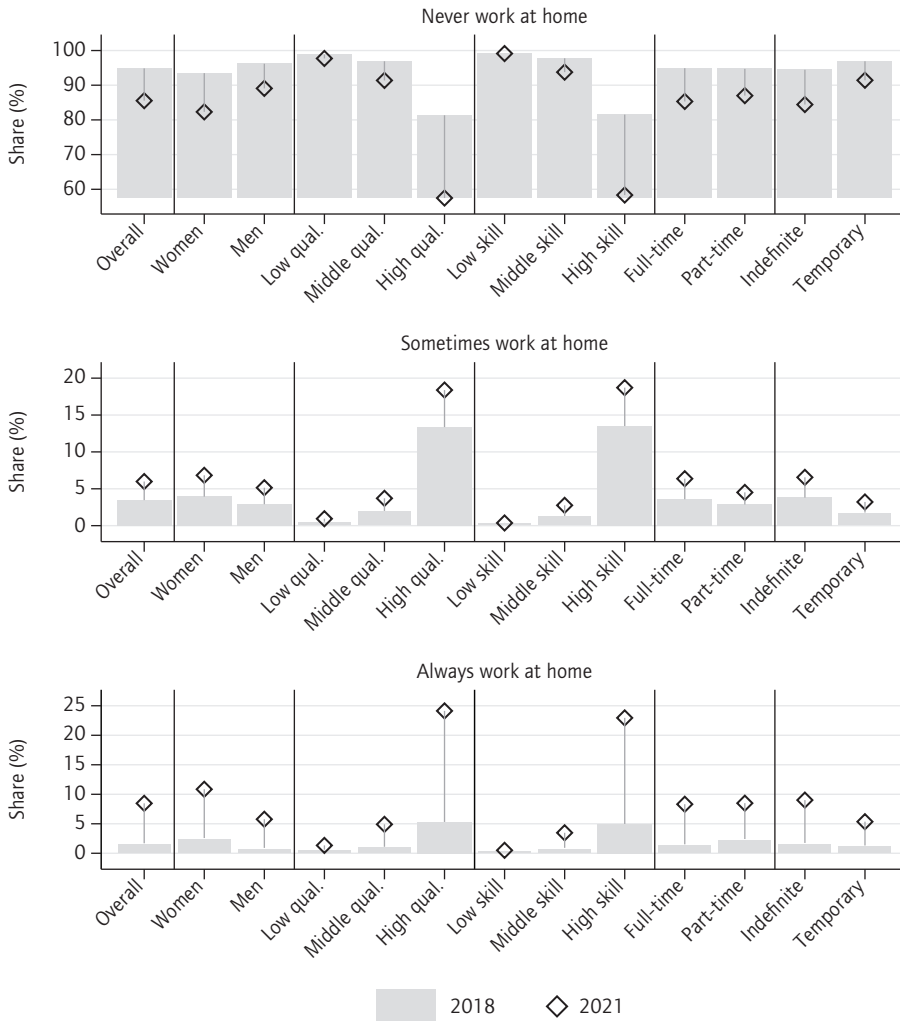
Note: Share of workers occasionally working from home in 2018 and 2021. Lines indicate the weighted average across included countries for 2019 (black) and 2021 (gray).

Source: LFS 2018-2021.

Figure 1 shows the share of workers who work at least sometimes from home. The first major takeaway is that there are massive differences between countries (Sostero et al. 2020; Zwysen et al. 2021). While over a fifth of workers in Sweden, Finland, Denmark, Netherlands, Luxembourg, Belgium, Austria, France, the UK and Ireland – primarily richer, northern and western European countries – already had some experience with working from home in 2018; this was the case for fewer than 5 per cent in Romania, Bulgaria and Cyprus, and was generally very low in the southern and eastern European Union Member States. These country differences partly reflect differences in the tasks carried out and the infrastructure (Sostero et al. 2020), but very much also the extent to which working from home is accepted and generally offered, as well as its regulation (Eurofound 2022). From the onset of the pandemic, there was an increase of around 10 percentage points on average. Up to 2020 there was a particularly stark increase in

Italy, Malta, Luxembourg and Ireland. With the hesitant opening up of the economy in 2021, there was an overall large change in Norway, Ireland, Malta, Netherlands, Belgium, Luxembourg, France and Germany. This suggests that the already existing regional disparity within Europe in the proportion of workers occasionally working from home worsened with time.

Figure 2 Change in working from home by different regularities, 2018 to 2021



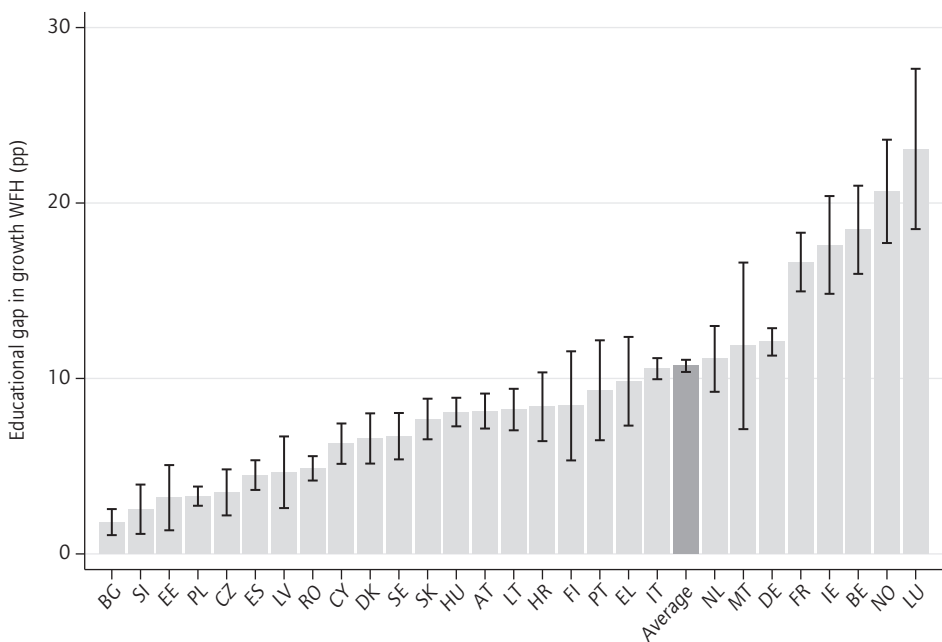
Note: Probability of never, sometimes or always working from home in 2018 and 2021 estimated through multinomial logistic regression controlling for temporary contract, part-time work, gender interacted with age and age squared, education, occupational skill level, being married, presence in the household of a child aged 12 or lower, and country fixed effects, weighted. Analyses are done separately for the full sample for subcategories.
Source: LFS 2018-2021.

However, this increase was not the case for all workers. Figure 2 shows the variation in the increase in working from home between 2018 and 2021. The share of workers who never worked at home declined similarly for those on full-time or part-time work, while it decreased somewhat less for men than women and somewhat less for workers on temporary contracts than those on indefinite contracts.

Strikingly, there was hardly any change for workers with low qualifications or who were carrying out low skilled jobs as close to all of them still never worked from home. There is a slight change for those with intermediate qualifications and medium skilled jobs. The overall increase in working from home is clearly driven by workers with university qualifications and those doing high skilled work. While the rates of such workers who sometimes worked at home increased, there was a massive shift in the number who always worked at home. Again, this shift was largest for the high skilled and for women, and somewhat so for those on contracts of indefinite duration.

Overall, the disparities that already existed in terms of who could work from home in pre-Covid times widened considerably (Milasi et al. 2020).

Figure 3 Difference between workers with university degrees vs. others in the change in working occasionally from home, 2018 to 2021



Note: estimated difference (and 95% C.I.) in the change from 2018 to 2021 in working occasionally from home (at least) for tertiary educated workers compared to less highly qualified workers, by country, estimated from marginal effect of logistic regression of working from home on year by qualification dummy, controlling for gender, age, part-time work, temporary contract, job skill level and presence of child under 12, weighted. Analysis overall (the Average column) includes country fixed effects; others are done separately by country.

Source: LFS 2018-2021.

Figure 3 highlights this difference over time by level of qualification separately for each country. It shows the difference in the change over time in working at least sometimes from home for university educated workers compared to others. On average across EU Member States, those with a university degree saw their rate of (occasional) telework increase by 10 percentage points more than lesser skilled workers in 2021 compared to 2018.

These descriptive findings show clearly that those workers with already more advantaged positions in the labour market are also disproportionately able to work at least somewhat from home, and that the sharp rise in response to the pandemic accentuated these disparities even further. If working from home is associated with better job quality, including wages, this could then be a catalyst for greater inequality and polarisation.

4.2 Association between working from home and job quality

Subsection 4.1 showed that the gaps in access to remote work widened substantially with the Covid-19 pandemic. As the literature suggests, working from home may have a complicated association both with worker productivity, which may increase depending on the tasks, and with job quality where there may be better work-life balance and generally increased wellbeing, but possibly also more time spent on work.

Figure 4 shows the association between several job characteristics related to different aspects for workers who never, sometimes or always work at home; and the extent to which this varies over time.

First of all, teleworkers in general are likely to report having their hours vary too much week-in week-out to give an accurate indication of their usual working time. This is particularly the case for those who always work from home, but this difference related to the frequency of telework reduced substantially in 2020 and, even more so, in 2021. This is likely to mean that, with the greater use of working from home, it has also become somewhat more regulated on average and more in line with working on the employers' premises.

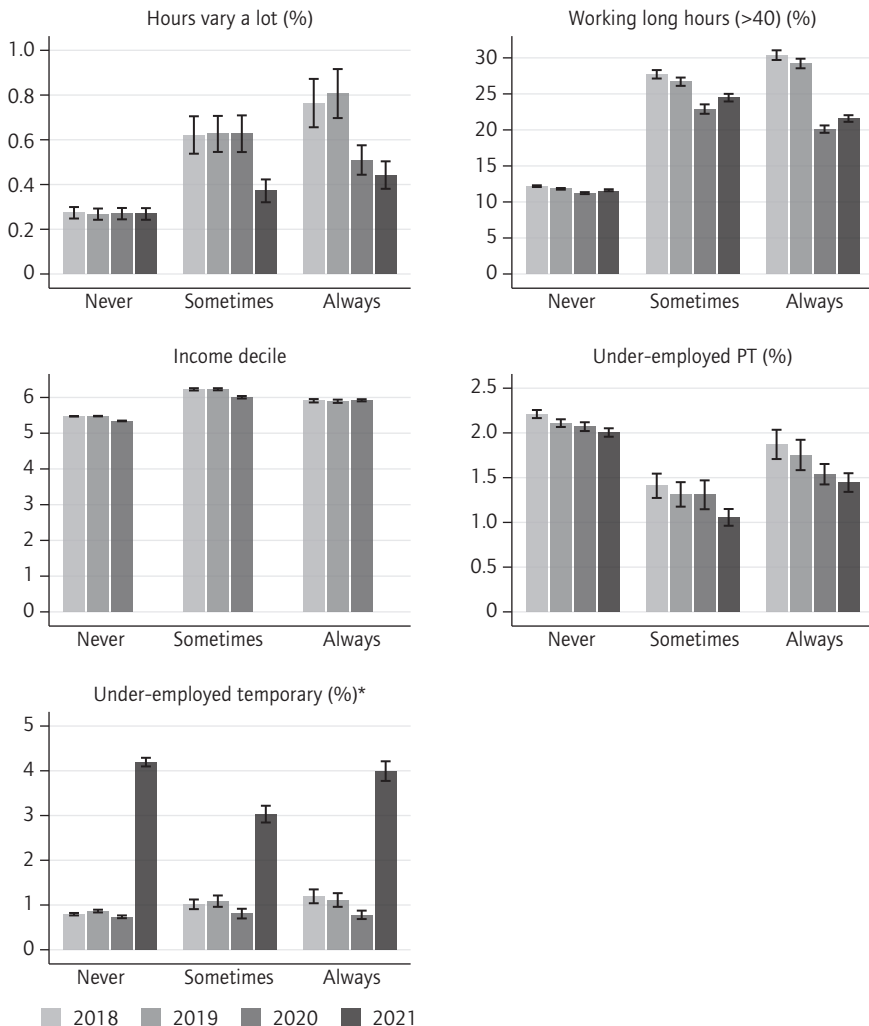
One worry coming out of the literature is the risk of more time spent at work when working from home, possibly as the boundary between work and leisure time weakens. Indeed, I show that workers who sometimes or always work at home are more than twice as likely to work at least 40 hours per week than those who did not do so prior to Covid-19. As with unpredictable hours, this difference has been somewhat reduced with the pandemic, possibly because there is a much more varied group of people working from home.

Workers who work sometimes or always from home do tend to have higher earnings than those who never work from home, even when comparing them to similarly qualified colleagues in the same sector or occupation. There was, however, little change between 2018 and 2021, despite the sizeable inflow into this type of work arrangement.

Those who work from home – particularly on an occasional basis – are much less likely than those never doing so to be on involuntary part-time contracts. Across Europe as a whole there was a decline in involuntary part-time work, on the basis of working from

home at some level, and the gap in this measure of job quality thus increased. Under-employment in terms of working on an involuntary temporary contract was somewhat higher among those working from home at least occasionally than those who never did so in both 2018 and 2019. However, this reversed in 2020 and 2021 as the risk of working on a temporary contract since no permanent contract was available became relatively lower for those who at least occasionally worked from home.

Figure 4 Job quality by working from home and change over time



Note: Estimated probability of having varying hours, working long hours, being under-employed on a part-time or involuntarily temporary basis, and average income decile of earnings (all computed to percentages), over time and by regularity of working from home. Estimated through logistic regression with binary and linear OLS for income, with interaction of working from home and year, controlling for gender interacted with age squared, education, marital status, presence of a child under 12, country fixed effects, industry and occupation fixed effects, all weighted.

* The LFS reworked several questions in the 2021 wave, including the question on reasons for temporary work which now includes two response categories (job only allows temporary contracts; and no permanent contract was available) rather than only the latter. Source: LFS 2018-2021.

4.3 Is unequal access to remote work inevitable?

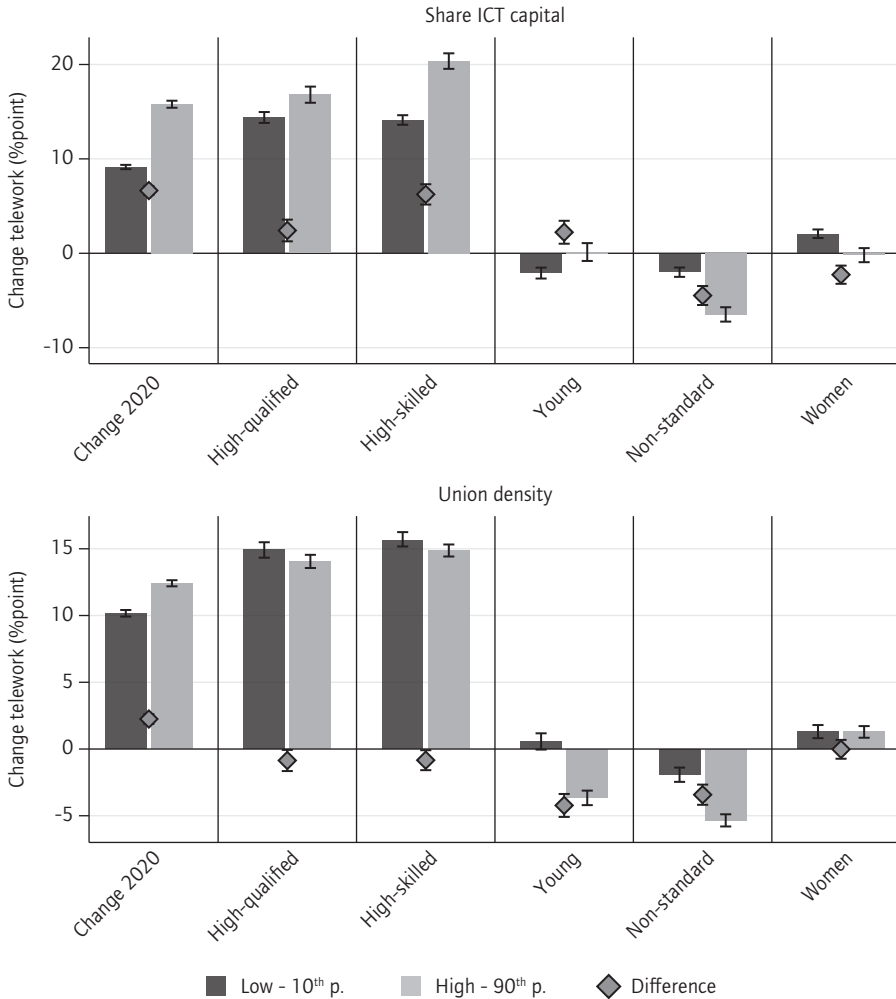
Subsections 4.1 and 4.2 indicated, first, that working from home has risen substantially since 2018 and mainly for those in more advantaged labour market positions: the higher educated; those doing high skilled professional work; and those on indefinite contracts. Second, this may have repercussions for equality as, in general, the pay and job security of those working from home is greater than those who do not have such a possibility. If anything, the conditions of working from home have improved somewhat since the Covid-19 pandemic as the downsides of unreliable hours and a long work week have declined, income has remained stable at a higher level than those who do not work from home and the risk of underemployment has reduced.

Finally, this chapter considers how universal are the disparities between workers in terms of access to working from home. I consider two main factors. First the extent to which people work in a digitally technology intensive sector, which can increase both the ease of working remotely and the inequalities between workers, depending on their type of job, as they are complemented or substituted by technology (Autor et al. 2003; Menon et al. 2019; Zwysen 2022). Second, the relative strength of trade unions within a country and sector which indicates the impact of worker representation. Worker representation can be important in putting forward equitable solutions for the shift to telework.

Figure 5 shows the estimated change in telework in 2021 compared to 2018 for different types of worker in different contexts.

The top panel contrasts the increase in the incidence of working from home for workers who were in a country and sector with relatively low ICT capital investment (10th percentile) in 2018 with workers who were in a sector with relatively high ICT capital investment (90th percentile) that year, keeping other characteristics similar. First, the increase in remote work was around 8 percentage points larger in the context of high ICT capital investment, supporting the literature in that working from home increased most in those contexts where investments have been made and new technologies used (Crisuolo et al. 2021). However, in this context the increase was even more unequally divided between workers – workers with a higher level of education and those in professional and managerial occupations (the high skilled) saw their rates of working (at least occasionally) at home increase at a greater rate than other workers. Similarly, young workers moved relatively more to telework, as did those on standard employment contracts and men. The move to working from home was thus even more divided along traditional labour market lines in those countries and sectors with stronger technological capital investments prior to the pandemic. This is in line with research reporting that digital technologies widen inequality and the gaps between workers (Autor et al. 2003; Zwysen 2022).

Figure 5 Changes in working from home by characteristic, depending on technological and union density context in country and sector



Note: Estimated difference in the change from 2018 to 2021 overall for high educated, high skilled, young, those on non-standard employment contracts and women at low (10th percentile) or high (90th percentile) levels of digital capital intensity or union density, controlling for gender, age, non-standard contract, education, skill, marital status, presence of child under 12, weighted, with fixed effects for country and industry.

Source: LFS 2018-2021; OECD stats and EUKLEMS; ICTWSS.

The bottom panel of Figure 5 contrasts how much and how unequally working from home grew in countries and sectors with very low union density or very high union density. This is taken to indicate the involvement and representation of workers in decisions to work from home. First, again, working from home increased generally somewhat more in countries and sectors with higher rather than lower union density (see also Vandaele and Piasna, this volume) which indicates that areas of high union density are not dissimilar to those with high technological innovation. Second, there is,

in general, the opposite pattern to that of technological innovation – in countries and sectors with higher union density in 2018, the rise in working from home was somewhat less unequally divided on the basis of workers' education or skill level, their age (the difference between young and old was reduced) or their gender. At the same time, similarly to ICT investment, those on standard contracts were relatively more likely to experience an increase in telework where there was higher union density.

This analysis shows that there are differences in how unequally working from home is distributed. This also shows an important way forward: namely that of representation and a strong role for the social partners in limiting potential polarisation in the labour market.

5. Conclusion

This chapter provides an overview of the experience of working from home and the shift induced by the Covid-19 pandemic. Working from home can provide benefits to workers, such as greater flexibility. It may also increase productivity, at least in some tasks. However, there are also risks in terms of a blurring of the boundaries between work and home, invasive surveillance and long hours of work. Importantly, from the perspective of this contribution, the option to work from home is unequally divided – both in respect of those given the right to work from home and those jobs which allow for it: it accrues more to those with already better positions – such as the higher educated and those on standard contracts.

The chapter delivers an overview of the literature and original analysis on the basis of representative data on European labour markets in order to address three key questions. First, how big has the shift to working from home been under the pressure of the Covid-19 pandemic, and how equally has this been divided? I show that there was, on average, a 10 percentage point increase in the share of people occasionally working from home between 2018 and 2021. This increase is driven by 'insiders' on the labour market: the more highly educated, those in high skilled occupations and those on non-temporary contracts.

Second, is working from home linked to job quality? I show that working from home is associated with relatively higher income and more secure contracts, but also a longer work week and greater insecurity through substantial variations in hours. However, the association between working from home and job quality became relatively better after the Covid-19 pandemic as the benefits remained (wage) or even improved (job security) compared to those not working from home whereas the pressure in terms of hours decreased somewhat.

Third, I explore the variation between countries and industries in this unequal growth of working from home. These analyses indicate that there is variation in the growth of working from home and, importantly, in its distribution. Digital technologies are associated with a greater increase in working from home, especially driven by those already more advantaged, thereby increasing inequality. On the other hand, union

density and worker representation is associated with a more equitable increase in working from home which does not exclude the lower educated or the less advantaged to the same extent.

This chapter therefore identifies working from home as a dimension along which the labour market may polarise further, with sharp differences between those who can access it and those who cannot. However, at least some of these inequalities are not inevitable. Through social dialogue and collective agreement there is a possibility to regulate access to telework within countries and sectors and to ensure that those workers who want to work remotely, and whose tasks can be done so, have access to this flexibility regardless of their gender, age or contract status.

References

- Abrams Z. (2019) The future of remote work, *Monitor on Psychology*, 10, 54.
<https://www.apa.org/monitor/2019/10/cover-remote-work>
- Adams-Prassl A., Boneva T., Golin M. and Rauh C. (2022) Work that can be done from home: Evidence on variation within and across occupations and industries, *Labour Economics*, 74, 102083. <https://doi.org/10.1016/j.labeco.2021.102083>
- Adrjan P., Ciminelli G., Judes A., Koelle M., Schwellnus C. and Sinclair T. (2021) Will it stay or will it go? Analysing developments in telework during Covid-19 using online job postings data, *OECD Productivity Working Papers* 30, OECD Publishing. <https://doi.org/10.1787/aed3816e-en>
- Autor D., Goldin C. and Katz L.F. (2020) Extending the race between education and technology, *AEA Papers and Proceedings*, 110, 347–351. <https://doi.org/10.1257/pandp.20201061>
- Autor D.H., Levy F. and Murnane R.J. (2003) The skill content of recent technological change: An empirical exploration, *The Quarterly Journal of Economics*, 118 (4), 1279–1333.
- Baker M.G. (2020) Nonrelocatable occupations at increased risk during pandemics: United States, 2018, *American Journal of Public Health*, 110 (8), 1126–1132.
<https://doi.org/10.2105/AJPH.2020.305738>
- Barrero J.M., Bloom N. and Davis S.J. (2021) Why working from home will stick, Working Paper 2020-174, University of Chicago, Becker Friedman Institute for Economics.
- Battiston D., Blanes i Vidal J. and Kirchmaier T. (2017) Is distance dead? Face-to-face communication and productivity in teams, *CEP Discussion Papers* dp1473, Centre for Economic Performance, London School of Economics and Political Science.
- Behrens K., Kichko S. and Thisse J.-F. (2021) Working from home: Too much of a good thing?, *CEPR Discussion Paper* 15669, Centre for Economic Policy Research.
- Bloom N., Mizen P. and Taneja S. (2021) Working from home is revolutionising the UK labour market, *Voxeu.org*, 15 March 2021. <https://cepr.org/voxeu/columns/working-home-revolutionising-uk-labour-market>
- Bolisani E., Scarso E., Ipsen C., Kirchner K. and Hansen J.P. (2020) Working from home during Covid-19 pandemic: Lessons learned and issues, *Management & Marketing. Challenges for the Knowledge Society*, 15 (s1), 458–476. <https://doi.org/10.2478/mmcks-2020-0027>
- Calvino F., Criscuolo C., Marcolin L. and Squicciarini M. (2018) A taxonomy of digital intensive sectors, *OECD Science, Technology and Industry Working Papers* 2018/14, OECD Publishing. <https://doi.org/10.1787/f404736a-en>

- Criscuolo C., Gal P., Leidecker T., Losma F. and Nicoletti G. (2021) The role of telework for productivity during and post-Covid-19: Results from an OECD survey among managers and workers, OECD Productivity Working Papers 2021-31, OECD Publishing. <https://doi.org/10.1787/7fe47de2-en>
- Davis M.A., Ghent A.C. and Gregory J.M. (2022) The work-from-home technology boon and its consequences, NBER Working Paper 28461, National Bureau of Economic Research. <https://doi.org/10.3386/w28461>
- DeFilippis E., Impink S.M., Singell M., Polzer J.T. and Sadun R. (2020) Collaborating during coronavirus: The impact of Covid-19 on the nature of work, NBER Working Paper 27612, National Bureau of Economic Research. <https://doi.org/10.3386/w27612>
- Del Boca D., Oggero N., Profeta P. and Rossi M. (2020) Women's and men's work, housework and childcare, before and during Covid-19, *Review of Economics of the Household*, 18 (4), 1001-1017. <https://doi.org/10.1007/s11150-020-09502-1>
- Dingel J.I. and Neiman B. (2020) How many jobs can be done at home?, *Journal of Public Economics*, 189, 104235. <https://doi.org/10.1016/j.jpubeco.2020.104235>
- Escudero C. and Kleinman M. (2022) How did working from home during Covid-19 impact productivity? A literature review, The Policy Institute. <https://www.kcl.ac.uk/news/remote-working-the-future-of-work-or-just-shirking-from-home>
- Etheridge B., Wang Y. and Tang L. (2020) Worker productivity during lockdown and working from home: evidence from self-reports, ISER Working Paper Series 2020-12, Institute for Social & Economic Research. <https://www.iser.essex.ac.uk/research/publications/working-papers/iser/2020-12>
- Eurofound (2022) Telework in the EU: Regulatory frameworks and recent updates, Publications Office of the European Union. <https://doi.org/10.2806/42974>
- Eurofound and ILO (2017) Working anytime, anywhere: The effects on the world of work, Publications Office of the European Union and ILO.
- Felstead A. and Reuschke D. (2020) Homeworking in the UK: Before and during the 2020 lockdown, WISERD Report, Wales Institute of Social and Economic Research. <https://wiserd.ac.uk/publication/homeworking-in-the-uk-before-and-during-the-2020-lockdown/>
- Giovanis E. and Ozdamar O. (2021) Implications of Covid-19: The effect of working from home on financial and mental well-being in the UK, *International Journal of Health Policy and Management*, 11 (9), 1635-1641. <https://doi.org/10.34172/ijhpm.2021.33>
- Golden T.D. and Gajendran R.S. (2019) Unpacking the role of a telecommuter's job in their performance: Examining job complexity, problem solving, interdependence, and social support, *Journal of Business and Psychology*, 34 (1), 55-69. <https://doi.org/10.1007/s10869-018-9530-4>
- Harrington E. and Emanuel N. (2021) 'Working' remotely? Selection, treatment, and market provision of remote work (JMP), Harvard University.
- Holgerson H., Jia Z. and Svenkerud S. (2021) Who and how many can work from home? Evidence from task descriptions, *Journal for Labour Market Research*, 55 (1), 4. <https://doi.org/10.1186/s12651-021-00287-z>
- ILO (2021) Working from home: From invisibility to decent work, ILO.
- Kazekami S. (2020) Mechanisms to improve labor productivity by performing telework, *Telecommunications Policy*, 44 (2), 101868. <https://doi.org/10.1016/j.telpol.2019.101868>
- Kristal T. and Cohen Y. (2017) The causes of rising wage inequality: The race between institutions and technology, *Socio-Economic Review*, 15 (1), 187-212. <https://doi.org/10.1093/ser/mww006>

- Künn S., Seel C. and Zegers D. (2020) Cognitive performance in the home office: Evidence from professional chess, IZA Discussion Paper 13491, Institute of Labor Economics. <https://www.iza.org/publications/dp/13491/cognitive-performance-in-the-home-office-evidence-from-professional-chess>
- Lewandowski P., Lipowska K. and Smoter M. (2022) Mismatch in preferences for working from home: Evidence from discrete choice experiments, IBS Working Paper 05/2022, IBS. <https://ibs.org.pl/en/publications/mismatch-in-preferences-for-working-from-home-evidence-from-discrete-choice-experiments/>
- Lewis J., Šiško A. and Tanaka M. (2021) Covid-19 briefing: Working from home and worker productivity, Bank Underground, 2 July 2021. <https://bankunderground.co.uk/2021/07/02/covid-19-briefing-working-from-home-and-worker-productivity/>
- Menon S., Salvatori A. and Zwysen W. (2019) The effect of computer use on work discretion and work intensity: evidence from Europe, *British Journal of Industrial Relations*, 58 (4), 1004-1038. <https://doi.org/10.1111/bjir.12504>
- Michaels G., Natraj A. and Van Reenen J. (2013) Has ICT polarized skill demand? Evidence from eleven countries over twenty-five years, *The Review of Economics and Statistics*, 96 (1), 60-77. https://doi.org/10.1162/REST_a_00366
- Milasi S., Fernández-Macías E. and González-Vázquez I. (2020) Telework in the EU before and after the Covid-19: where we were, where we head to, JRC Policy Brief, European Commission.
- Morikawa M. (2020) Productivity of working from home during the Covid-19 pandemic: Evidence from an employee survey, Discussion Papers 20073, Research Institute of Economy, Trade and Industry.
- Muñoz de Bustillo R. (2011) *Measuring more than money: The social economics of job quality*, Edward Elgar.
- Piasna A. (2017) 'Bad jobs' recovery? European job quality index 2005-2015, Working Paper 2017.06, ETUI. <https://www.etui.org/publications/working-papers/bad-jobs-recovery-european-job-quality-index-2005-2015>
- Rupietta K. and Beckmann M. (2016) Working from home: What is the effect on employees' effort?, WWZ Working Paper 2016/07, University of Basel, Faculty of Business and Economics. <https://doi.org/10.1007/s41464-017-0043-x>
- Samek Lodovici M. (ed.) (2021) *The impact of teleworking and digital work on workers and society: Special focus on surveillance and monitoring, as well as on mental health of workers*, European Parliament.
- Sostero M., Milasi S., Hurley J., Fernandez Macias E. and Bisello M. (2020) Teleworkability and the Covid-19 crisis: A new digital divide?, JRC Technical Report 2020/05, European Commission.
- Troll E.S., Venz L., Weitzenegger F. and Loschelder D.D. (2022) Working from home during the Covid-19 crisis: how self-control strategies elucidate employees' job performance, *Applied Psychology*, 71 (3), 853-880. <https://doi.org/10.1111/apps.12352>
- Valero A., Riom C. and Oliveira-Cunha J. (2021) The business response to Covid-19 one year on: Findings from the second wave of the CEP-CBI survey on technology adoption, CEP Discussion Papers 024, Centre for Economic Performance.
- Visser J. (2019) ICTWSS database. Version 6.1, Amsterdam Institute for Advanced Labour Studies (AIAS), University of Amsterdam.

Weitzer J. et al. (2021) Working from home, quality of life, and perceived productivity during the first 50-day Covid-19 mitigation measures in Austria: A cross-sectional study, *International Archives of Occupational and Environmental Health*, 94 (8), 1823–1837. <https://doi.org/10.1007/s00420-021-01692-0>

Zwysen W., Müller T., Arabadjieva K., Piasna A., Drahekoupil J., Rainone S., Galgóczi B. and Rasnača Z. (2021) Labour market and social developments: Crisis further entrenches inequality, in Countouris N., Jagodzinski R. and Theodoropoulou S. (eds.) *Benchmarking Working Europe 2021*, ETUI. <https://www.etui.org/publications/benchmarking-working-europe-2021>

Zwysen W. (2022) Global and institutional drivers of wage inequality between and within firms, *Socio-Economic Review*, mwac054. <https://doi.org/10.1093/ser/mwac054>

All links were checked on 28.02.2023.

Chapter 6

Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic

Kurt Vandaele and Agnieszka Piasna

1. Introduction¹

One of the consequences of the global Covid-19 pandemic (henceforth: pandemic) has been a trichotomising of the workforce in Europe. One group of workers was furloughed from work via job retention schemes to mitigate the employment impact of the economic crisis (Müller et al. 2022). Another group continued their onsite jobs, especially exposing those workers to the pandemic – the epitome ‘essential’ has been attributed to them by the media. Where technically feasible, a third group was provided with remote work options protecting them during this unprecedented public health crisis (see Zwysen, this volume). Trade unions across Europe have widely supported those options (Brandl 2021). As far as workers are concerned, it looks like hybrid work arrangements – combining remote work and office work – are here to stay in the post-pandemic era (Eurofound 2022b). Unions might therefore want to enhance their efforts in organising remote workers, albeit that the future dynamics of remote work and its magnitude are largely unknown.

While the autonomous Framework Agreement on Telework of 2002, signed by the European social partners, aimed to regulate remote work (Larsen and Andersen 2007), trade unions were usually not entirely enthusiastic about it prior to the pandemic (Eurofound 2010). Remote work basically hampers the day-to-day union work of advocacy and representation, especially if collective agreements or other regulations on teleworking do not foresee compensatory provisions. Looking at member recruitment, then one of the reasons for unions’ reluctance is rooted in their prevailing focus on workplace-oriented organising strategies. Physical co-presence is crucial for installing and maintaining a social norm of union membership in workplaces, with large ones often entailing institutionalised workplace representation (Visser 2002). A scattered, remote workforce is largely detrimental to this: remote workers are evidently less exposed to unions in workplaces.

What kind of strategies could unions then develop for organising them? In tackling this research question, this *explorative* chapter is inspired by and draws on recent research on online communities in low-unionised industries and the gig or platform economy, with the latter similarly comprising a dispersed, isolated workforce.

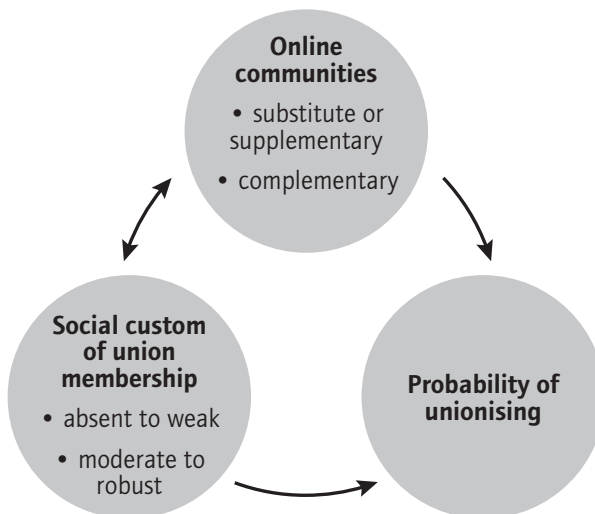
1. We are very grateful for the comments and remarks of Valerio De Stefano, Mark Friis Hau, Raoul Gebert and Silvia Rainone.

Burgeoning studies are highlighting that potential union members and activists can already be active in autonomous, grassroots online communities and networks outside (traditional) unions (Kougiannou and Mendonça 2021; Hau and Savage 2022; Maffie 2020; Pasquier et al. 2020; Walker 2021; Wood and Lehdonvirta 2021). Shared consciousness and collective identities, mutual aid or collective action all have the potential to be inchoate in such communities. Likewise, similar communities of remote workers might have already been active before the pandemic or might have emerged since then. It is not unreasonable to assume that expressing voice online may somehow compensate for the loss of workers' in-person interactions in the workplace.

Contributing to the literature on union revitalisation, this chapter's focus lies therefore on possible online work-based communities of remote workers in Europe during the unprecedented upsurge in remote work during the pandemic. Work-based online communities are conceived here as workers using online communications channels, such as social networking sites, to interact with each other regarding their employment terms and conditions. The objective of this chapter is to examine the possible supporting role that such communities might play in union organising strategies towards remote workers.

The main research question therefore concerns the extent to which workers who are (pre-)organised in online communities are more willing to unionise than workers who shy away from online discussion. Based on a quantitative approach, via an analysis of survey results from 14 European countries, the main argument is developed that work-based online communities of remote workers could be an entry point for unions seeking to recruit and organise them. The argument is developed in two steps.

Figure 1 The role of work-based online communities (in the remote work context)



Source: authors' elaboration.

First, focusing on the context, the chapter analyses how remote work has been developing across different workplace settings in terms of union presence before and during the pandemic. Second, it examines the extent to which the spread and the activity of online communities are associated with patterns of remote work and union presence. To understand the dynamics of such communities better, it also analyses what type of remote workers is more likely to engage online and what issues, such as changes in employment terms and conditions, might drive such engagement. In particular, it explores to what degree online communities might replace trade unions and to what extent online interactions and offline voice mechanisms supplement each other in the workplace.

Online communities may show either a supplementary or a complementary face, depending on the degree of union presence in the workplace – see Figure 1. Online communities might act as a substitute to unions or be *complementary* to them in cases where union presence is absent or weak. If the social custom of union membership is considered relatively robust, then communities might play a *supplementary* role to unions; that is, adding a ‘virtual workplace’ besides the physical one. In grasping the importance of the physical workplace, it is necessary to explain why this locus is crucial for the social custom of union membership and how remote work might undermine such a custom via spatial-temporal fissuring.

2. The workplace as the key locus for unionisation

Theoretical insights from the unionisation literature pinpoint why remote work is challenging for trade unions in their efforts to recruit and organise members. Unions traditionally face two hurdles in unionising workers and developing associational and organisational power (Disney 1990). The first hurdle relates to establishing a union presence in the workplace, which is a prerequisite for sustainable recruitment drives. Union recognition agreements with management or statutory union access via worker interest representation, such as union representatives or works councils, are of importance here (Hancké 1993; Moore et al. 2007), while collective bargaining at the industry level or higher tends to neutralise employer opposition (Cecchi and Visser 2005). It can be assumed that unions will prefer to overcome the first hurdle when it is set as low as possible: hence, member recruitment drives on ‘brownfield’ sites (i.e. companies or industries with a solid existing union presence) are less risky than on ‘greenfield’ ones (i.e. where union membership is absent or very low) (Heery and Adler 2004). Once unions are available via workplace representation, they need to tackle the second hurdle: union representatives and union members need to encourage and convince workers and colleagues to unionise. If the second hurdle is successfully overcome, this enables unions to strengthen their workplace embeddedness.

Various theories on unionisation underline that the decision to become or remain a union member is strongly embedded in the workplace context. Approaches rooted in social psychology put forward how union instrumentality is perceived first and foremost in the workplace (Clark 2009). Likewise, according to social mobilisation theory, grievances and feelings of social injustice are rooted in the employment relationship, which becomes

tangible at workplace level (Kelly 1998). Furthermore, applying the ‘experience good’ theory to union membership implies that the personal recommendations of others – most notably from workplace colleagues – are important in stimulating unionisation, in particular once one gains a working knowledge of the labour market (Gomez and Gunderson 2004; Vandaele 2018).² Finally, from a rational choice perspective, one way to reduce free-riding – that is, non-union members enjoying the public goods produced by unions – is peer pressure at work (Olson 1965). These insights have been further formally developed via the social custom theory of union membership suggesting a norm of union membership (henceforth: ‘union norm’).

Compliance with the union norm stems from reputation effects. Once established and upheld at a certain minimum level by trade union members, then non-compliance with it could result in reputational losses for non-union members, like the shaming of free-riders (Akerlof 1980; Visser 2002). In particular, ‘a substantial share of the variance in joining a union is located at the workplace whereby a union norm has been found self-sustainable in the Danish context if workplace union density ranges between 45 to 65 per cent...’ (Ibsen Lyhne et al. 2017: 510-511). Institutional support for union representation in the workplace is crucial: the higher the workplace union density, and thus the stronger the union norm, then the more likely workers are to join a union as its reputational benefits increase. As such, workplace representation enables not only the provision of support to existing members (Waddington 2014) but, as a proxy for the union norm, it is also a powerful predictor of the probability of new workers unionising (Checchi and Visser 2005; Toubøl and Strøby Jensen 2014).³ Although the norm is strongly contingent on place-specific relationships, like face-to-face organising and workplace representation at company level, other spatial levels can also be of importance. Institutional arrangements supporting union security at the industrial level could also interact with the union norm at the workplace and underpin it, just like participation and trust in civic associations and networks stimulating cooperative behaviour and solidarity do at societal level (Ebbinghaus et al. 2011).

3. Online communities overcoming spatio-temporal fissuring?

Union avoidance or union busting by management and employers have made it more difficult for trade unions to take the first hurdle of unionising (Gall and Dundon 2013) while fissured workplaces, among other factors, are undermining the union norm at the second. Workplace fissuring refers to companies (increasingly) no longer acting as the direct employer of all workers: instead, a core company outsources activities via subcontracting, or otherwise, to smaller businesses with workers having generally less favourable employment terms and conditions and being less unionised (Weil 2014). Fissured workplaces thus weaken the union norm as the intensity and frequency of contacts between workers become looser in upholding the reputation effects (Visser 2002), while more union coordination is needed for effective workplace representation.

2. Union-friendly social networks can also develop beyond the workplace, although family and friends seem especially important in the school-to-work transition.
3. This especially holds true in countries without union involvement in the administration or provision of unemployment benefits (‘Ghent system’) or other benefits such as welfare benefits for pensioners.

Equally, remote work might have a similar effect on the union norm via an amplified spatio-temporal fissuring of physical, centralised workplaces. Spatial fissuring entails that dispersed remote workers now work in different places – at the work premises, at home or elsewhere.⁴ Temporal fissuring implies that remote workers could also work according to their preferred work schedule, which might differ from that of colleagues, or they could potentially be working in different time zones. Moreover, remote work might also invite management and employers to fissure workplaces further by terminating existing (open-ended) contracts and engaging remote workers as freelancers. It can be expected that remote work makes the existing social ties between (unionised) workers weaker, and also between them and the institutions of workplace representation, both of which undermine the union norm. Notably, remote work might also hamper the installation of a union norm among new (young) workers in the workplace so that free-riding among them is more common. Likewise, spatial-temporal fissuring implies that remote workers are less likely to meet and interact in physical, shared ‘free spaces’ (corridor, kitchen, print room) within the company (Ranganathan and Das 2022) – a precondition for building trust and solidarity for collective action. A dispersed workforce due to remote work therefore requires additional union strategies for installing, maintaining or strengthening the union norm than solely workplace-based ones.

Remote work tends to challenge existing union norms and hampers the building of new ones. Simultaneously, however, remote work might foster new (bottom-up) initiatives by workers, such as online communication via social networking sites, to stay connected despite spatio-temporal fissuring. If their use extends beyond the coordination of work processes, online work-based communities might emerge that turn out to be supportive for upholding the norm in a complementary or supplementary way.

Research on unionism in the platform economy suggests that a geographic, city-wide approach to union organisation will become more important in addition to workplace-based unionism (Joyce et al. 2022). Likewise, new online communications and networking technologies fostering online communities might provide a similar function. Online communications and networking technologies like social media are increasingly empowering trade unions to engage and interact with their members and to mobilise them, and to connect with a broader audience (Carneiro and Costa; Hennebert et al. 2021; Wesley Hansen and Hau 2022; Wood 2020). Especially centring on the mobilisation of workers, research on low-unionised industries and on the platform economy has demonstrated how potential union members and activists are already active in autonomous or grassroots online communities and networks (Wesley Hansen and Hau 2022; Maffie 2020; Walker 2021). Such communities are sometimes seen as substituting trade unions, especially in the platform economy (Kalum Schou and Bucher 2022; Kougiannou and Mendonça 2021; Wood and Lehdonvirta 2021). Similar (bottom-up) processes beyond the workplace might also apply to remote workers. It remains an open question, however, whether informal communities are replacing formal unions.

4. Working at home paradoxically implies that the spatial separation between home and the place of paid work is no longer true.

4. Research design, data and union norm regimes

To test the promises of online communities for remote workers, the empirical analysis of this chapter uses data from the Internet and Platform Work Survey (IPWS) carried out by the European Trade Union Institute (see Piasna et al. 2022). This is a representative cross-national survey among a simple random sample of working age adults aged 18-65. The fieldwork was harmonised and coordinated by Ipsos, with interviews conducted via computer-assisted telephone interviewing.⁵ The analysis uses data pooled from two survey waves, carried out in Spring and Autumn 2021, and covering fourteen European countries including seven in central eastern Europe (CEE): Austria, Bulgaria, Czechia, Estonia, France, Germany, Greece, Hungary, Italy, Ireland, Poland, Romania, Slovakia and Spain.⁶ Only currently employed wage- and salary-earners, either engaging in remote work or not, are included in the analysis which, in total, amounts to 22 866 respondents excluding the unemployed, inactive and self-employed. Employees who have never worked remotely are compared with those who declare they have worked from home or teleworked, which this chapter calls remote workers (41 per cent). Remote workers are further differentiated into those with a stable pattern in remote work not affected by the pandemic (5.6 per cent); those who increased their frequency of remote work due to the pandemic (11.6 per cent); and those who started remote work during it (23.8 per cent).

Building on the social custom theory of union membership, the empirical sections of this chapter look through the nuanced lens of union norm regimes. This enables a more bottom-up perspective and a more refined comparative approach instead of the simple dichotomy between non-unionised and unionised workers, or using company size as a proxy for workplace unionisation.

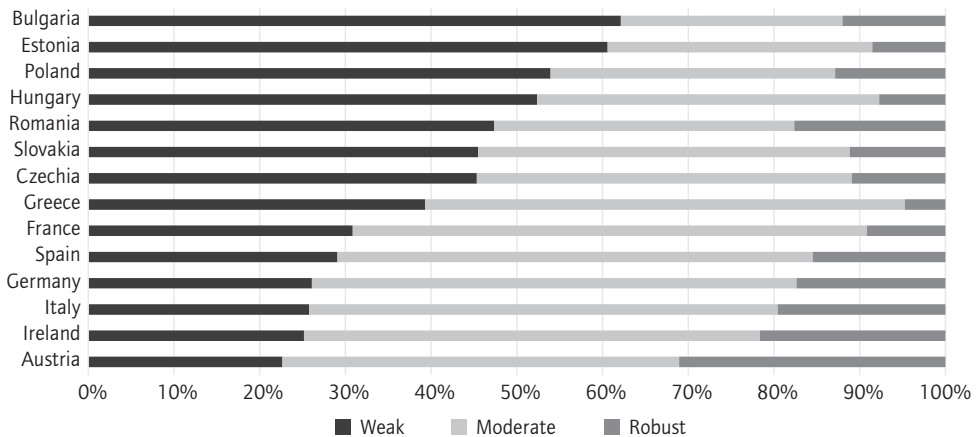
Three regimes are empirically discerned: a weak, a moderate and a robust union norm. This distinction is based on four criteria derived from the following survey questions: (1) being a member of a trade union (0=no; 1=yes); (2) pro-union attitudes expressed as a view that unions help to improve working conditions (0=no; 0.5=yes, somewhat; 1=yes, considerably); having many colleagues or friends in a union or similar organisation (0=no; 1=yes); and (4) presence of a union at the workplace (0=no; 1=yes). The last three indicators are added together to form an index ranging from 0 to 3, as they are all considered to increase the likelihood of unionising according to the social customs theory of union membership (see Visser 2002). If unions are present (and active) in the workplace, then the probability of unionisation is higher as they can mould the union norm. Equally, the more co-workers are unionised at the workplace, the greater this probability as they help to maintain the norm of unionisation via stronger reputation effects.

5. Post-stratification weights are used in the analysis. Further notes on research techniques are put in footnotes for interested readers.

6. High union density countries – those in Nordic Europe – are thus not covered.

In this chapter, a weak union norm is defined as not being a trade union member and scoring below 1 on the index; a robust one is defined as being unionised and scoring 1 or higher on the index; and a moderate one captures all the remaining respondents for whom union membership status is known. In this group, only a small minority (6.8 per cent) is unionised while their index scores lie mostly within the 1-2 range.⁷ Overall, 40.7 per cent of respondents can be considered working in non-unionised workplaces, i.e. with a weak union norm, while 44.8 per cent and 14.5 per cent have a moderate and robust norm, respectively.

Figure 2 Union norm regime in 14 European countries (%)



Note: Ordered by weak union norm.

Source: ETUI IPWS.

Figure 2 shows the variation in union norm regimes across the 14 countries considered. A regional divide becomes clear: a stronger norm – moderate or robust – applies rather to western European countries than to CEE countries where workplace representation is generally weaker or less widespread across industries and where collective bargaining at the industrial level is (much) more weakly developed, especially in the private sector (Waddington et al. 2023).⁸ This indicates that trade unions in CEE countries need, in many instances, to take the first hurdle of unionising via (riskier) greenfield organising campaigns. The rest of this chapter, however, adopts a more holistic approach instead of highlighting country differences or similarities, with union norm regimes as an analytical framework for helping, among others, to explain the propensity of remote workers to unionise.

7. As a robustness check a hierarchical cluster analysis was performed based on the four variables described above. This confirmed that the solution best describing the data consists of three groups and that union membership most distinctively defines the clusters.
8. Additionally, business structure in terms of company size and social capital at societal level might both play a role in understanding country differences in the union norm regime.

5. Diffusion in remote work before and during the pandemic

Before the possible strategies of trade unions towards organising remote workers via online communities can be identified, it is key to know first where those workers are employed and how the pandemic has influenced the prevalence of and change in remote work. This section therefore charts the patterns in remote work before and during the pandemic by union norm regime.

Prior to the pandemic, the survey results show that remote work was, in general, more likely to be present among workers where the union norm is considered weak or moderate. The percentage of remote work stands here at a similar level: 17.7 per cent and 18.4 per cent, respectively. The percentage of remote workers before the pandemic was (notably) lower in workplaces where the norm is robust – 12.4 per cent. Although remote work is not unknown in workplaces with a robust norm, it is relatively less common compared to settings with a weaker one.

To illustrate the patterns in remote work, Table 1 provides an overview of some occupational examples, sorted by prevailing union norm regime. The examples are taken from industrial and service sectors, both in public and private settings, as well as different skill levels in terms of their exposure to remote work before and during the pandemic.⁹ Where workers employed in workplaces with a robust union norm are concerned, then typical in-person women-dominated services, like healthcare, are marked by a relatively low share of remote work prior to the pandemic. This also holds true for clerks in public administration, whereas remote work is somewhat more common in education. Turning to a moderate union norm, then manual workers in male-dominated manufacturing are typically employed onsite, whereas professionals in finance, clerks in business services and technical experts and technicians are more exposed to remote work. Finally, the union norm is weak in retail and wholesale, as well as in ICT. The share of remote work among retail and wholesale workers is (obviously) smaller than among ICT workers who are working remotely to a greater extent.

This overview provides evidence that experience with telework or working from home before the pandemic was less common among workers where the union norm was robust. At the same time, the occupational examples make clear that remote work cross-cuts union norm regimes.

What, however, has altered in the pattern in remote work since the pandemic and the onset of lockdowns? Four patterns are considered: (1) having never worked remotely; (2) stability in remote work (i.e. a similar degree before and since the pandemic); (3) working remotely more often due to the pandemic; and (4) having started remote work due to the pandemic – see again Table 1. Two inferences on the diffusion of remote work during the pandemic can be made.

9. In doing so, eleven broad occupational groups were selected, encompassing 7 704 respondents (33.7 per cent of the sample), and defined through occupational class (ISCO) by economic sector (NACE). The selection is based on established classifications (e.g. Oesch and Piccitto 2019) and available sample sizes.

Table 1 Remote work before and during the pandemic (%), by union norm

Selected occupations	Union norm			Remote work before pandemic	Remote work during pandemic			
	Weak	Moderate	Robust		No remote	Stable	Increase	New
Teaching professionals in education	26.6	46.1	27.3	19.8	26.1	4.7	15.3	54.0
Health (associate) professionals in healthcare	30.3	47.9	21.8	14.7	69.5	7.5	7.2	15.9
Skilled clerks in public administration	31.3	40.2	28.5	12.3	44.5	4.8	7.5	43.3
Personal care and services in healthcare	32.5	46.6	20.9	10.5	76.1	3.5	7.0	13.4
(Associate) professionals in finance	32.9	51.4	15.7	28.9	26.3	6.4	22.5	44.8
Skilled clerks in business services	37.9	49.6	12.5	23.9	36.1	8.4	15.5	40.0
Skilled manual workers in manufacturing	39.7	44.4	15.9	4.7	87.7	3.0	1.7	7.7
Technical experts and technicians in professional, scientific and technical services	41.0	45.6	13.4	26.8	35.6	7.0	19.8	37.6
Low-skilled manual workers in manufacturing	41.5	45.4	13.1	3.1	88.2	2.4	0.8	8.6
Technical experts and technicians in ICT	47.2	42.6	10.3	36.2	28.6	5.9	30.3	35.2
Sales workers in retail and wholesale	54.8	35.1	10.1	9.8	72.2	4.4	5.4	18.1
All occupations	40.7	44.8	14.5	17.2	59.0	5.6	11.6	23.8

Note: Ordered by weak union norm.

Source: ETUI IPWS.

First, in general, the experience of remote work has not changed for almost two-thirds of workers during the pandemic – see Table 2. Either remote work has simply been impossible, or it has not (yet) entered their working lives; or the experience of remote work has otherwise been stable throughout the pandemic. The percentage of never having done remote work stands at 62.3 per cent, 55.1 per cent and 61.4 per cent of workers characterised correspondingly by a weak, moderate or robust union norm. Examples of occupational groups can be found in all regimes. Self-evidently, healthcare workers, marked by a robust union norm, have been far less confronted with remote work. This also holds true for most manufacturing workers with a moderate union norm and for sales workers in retail or wholesale with a weak one. Stability in remote work, with its frequency not affected by the pandemic, has been relatively less common. It

amounts to 6.0 per cent among employees with a weak union norm, 5.8 per cent for a moderate one and 3.8 per cent where it is considered robust.

Table 2 Remote work before and since the pandemic (%), by union norm

	Union norm			Overall
	Weak	Moderate	Robust	
Remote work before pandemic	17.7	18.4	12.4	17.2
Remote work since pandemic started				
No remote work	62.3	55.1	61.4	59.0
Stable	6.0	5.8	3.8	5.6
Increased due to pandemic	11.7	12.6	8.6	11.6
New: started due to pandemic	20.1	26.5	26.2	23.8

Source: ETUI IPWS (2021).

Second, changes in the exposure to remote work since the onset of the pandemic have differed across union norm regimes. Remote work has become even more widespread since the pandemic among workers with a weak union norm – though the growth has actually been steeper for workers with a moderate or robust one. A sudden increase in remote work has occurred for 11.7 per cent of workers with a weak union norm and it is new for 20.1 per cent of them. On balance, compared to workers with a moderate or robust norm, the change in remote work where the norm is weak is driven relatively more by an increase in instances of remote working than by its apparent novelty. A typical example is technical experts and technicians in ICT.

Furthermore, remote work has especially increased where the norm is moderate; that is, where exposure was already most prevalent prior to the pandemic. While 12.6 per cent of workers with a moderate norm report an upsurge during the pandemic, 26.5 per cent of them have started working remotely. This applies, for example, to workers in finance, in business services and in scientific, technical services.

Finally, where the norm is robust, a rise in remote work during the pandemic was the case for 8.6 per cent of workers while, in particular, 26.2 per cent report that this was novel for them. This typically holds true for teachers, being related to school closures, and clerks in public administration. So, while remote work was less common where the union norm was robust before the pandemic, this has clearly changed since then.

6. Remote work, online communities and their composition

The above mapping has revealed that the spread of remote work has occurred in workplaces with diverse union norm regimes prior and during the pandemic. This section explores if, and to what degree, online communities are associated with remote work patterns and union norm regimes.

As a proxy for measuring such communities, survey respondents were asked whether they discuss work-related issues online with other workers.¹⁰ It can be assumed that they are making use of already-existing (interactive) social networking sites, either internally or externally. It is unknown, however, if work-based communities are self-organised; that is, created and controlled by workers, or if they have been initiated and are supervised by trade unions or management, with the latter aiming to nurture an online company culture. As shown in Table 3, the proportion of workers discussing their employment terms and conditions with colleagues online can differ considerably by exposure to remote work and union norm regime.

Table 3 Share of workers discussing work-related issues online (%), by remote work pattern and union norm

Pattern in remote work	Trade union norm			Overall
	Weak	Moderate	Robust	
No remote work	27	36	37	32
Stable	34	35	52	37
Increased: due to pandemic	47	49	57	49
New: started due to pandemic	45	51	56	50
Overall	33	42	44	39

Source: ETUI IPWS.

Workers who have seen an increase in remote working, or who started it during the pandemic, are the ones most likely to be discussing employment terms and conditions with their colleagues online. The expansion of remote work appears to breed online communities. Equally important, regarding union norm, more workers are engaging online where this is considered stronger – the difference is only negligible between a moderate and a robust union norm in the case of no remote work.

Online communities are not only complementarily filling the gap between workers and non- or weakly unionised workplaces; they can also serve a more supplementary role in cases of (strongly) unionised ones.¹¹ In providing voice mechanisms, online

10. This is gauged by the question ‘Do you discuss online with other workers any issues related to your working conditions?’, with ‘no’ or ‘yes’ as answer categories. It is assumed that this question largely excludes organisational communications. The question does not distinguish between internal platforms like MS Teams or external social networking sites like Facebook.

11. It is unknown whether workplace representatives have set up or were involved in instigating those online communities. In other words, the social networking sites used might differ between online communities in a complementary and supplementary role.

communities amount to an extension of face-to-face interactions in physical workplaces. While remote work seems to have necessitated online interaction, the findings thus also provide indirect evidence that (informal) online forums can go hand-in-hand with formal, established workplace representation. Whether such interaction is fruitful, or not, is an empirical question, however.

Table 4 Share of workers discussing work-related issues online (%), by demographic characteristics and union norm

Characteristics	General participation	Participation by trade union norm		
		Weak	Moderate	Robust
Women	47.5	42.5	48.9	55.4
Men	48.6	45.6	48.7	57.0
Age 18-34	49.3	48.2	49.1	56.8
Age 35-44	49.6	45.7	51.8	52.9
Age 45-65	45.9	38.3	46.4	57.5
Migrant background	48.9	42.3	51.2	60.3
Non-migrant background	48.0	44.2	48.4	55.8

Source: ETUI IPWS.

Who is participating in these online communities? Table 4 gives an overview of some selected demographic characteristics of remote workers only; that is, those workers who have been teleworking or working from home at the time of the survey in 2021. Overall, men, younger workers and those with a migrant background are more likely to participate in online communities – although only slightly. The differences are much more striking across the three union norm regimes: the stronger the norm, the higher the online participation and this is so irrespective of demographic characteristics. For instance, remote workers with a migrant background are mostly active online in workplaces with a robust union norm and their increasing online participation as the norm strengthens is more visible compared to workers without a migrant background.

It is regarding age that the variation is particularly considerable, however. Young remote workers, aged 18-34, in workplaces with a weak union norm are especially active in online communities: while over 48 per cent of them engage in online discussions, this is the case for only 38 per cent of older workers aged 45-65. Yet it is among these older workers where the strongest impact of union norm on online participation can be found. In robust norm workplaces, older workers are even more likely than younger ones to engage in online communities. This age contrast is likely to reflect the difference between the complementary and supplementary role of online communities. Younger workers are more often employed in smaller companies without workplace representation (Vandaele 2018), while this is less the case for older workers who are typically employed in larger ones with representation. This age contrast might also entail that younger generations are using different social networking sites than their older counterparts. Younger workers probably tend to use online communities more in a complementary role whereas older workers are more likely to rely on internal platforms in a supplementary one.

All in all, these findings echo the recent literature on union organising that de-emphasises the centrality of the workplace from a workers' identity perspective. Heterogeneous or multiple identities – worker identities like gender, ethnicity, sexuality and disability – have become more salient in today's diverse societies calling for a 'whole worker-approach' to organising (Doellgast et al. 2021). Such a complex, intersectional approach on worker issues thus accentuates other identities than those solely rooted in the employment relationship (at the workplace). Put differently, online communities linked to a weak or moderate union norm tend in particular to house a promising membership base for trade unions; reaching out to this requires unions to re-orient their strategies towards a stronger inclusiveness of groups and generations that are, so far, under-represented within them (Greene and Kirton 2003).

7. Possible issues in online communities: adjustments in wages and working hours

Remote work has been associated, among others, with higher workload and longer working hours, social isolation and mental health issues, staff monitoring and surveillance, the blurring of professional and private lives and gender inequality (Atkinson 2022; Eurofound 2022a; Fan and Moen 2022; ILO 2021).¹² In addition, the reimbursement of adequate equipment and other costs, like electricity and heating (Felstead 2022), could be issues feeding the trade union agenda. This section examines what changes and issues arising in work and employment due to the pandemic have been linked to greater activity in online exchanges with co-workers. As a result, some proposals can be put forward as to those issues which do have the potential to stimulate online communities.

The survey considers two core issues – wages and salaries; and working hours – and respondents were asked whether these have decreased, stayed stable or increased due to the pandemic. Table 5 provides an overview of such adjustments according to the patterns in remote work.

Wages and salaries and working hours have, overall, been stable for over one-half of workers during the pandemic, with the least changes being found among non-remote workers. Adjustments in wages and salaries are less common than those in working hours.

12. See also Arabadjieva and Franklin, this volume.

Table 5 Change in wage/salary and working hours due to the pandemic (%), by remote work pattern

Pattern in remote work	Wage/salary			Working hours		
	Decrease	Stable	Increase	Decrease	Stable	Increase
No remote work	22.3	64.7	13.1	19.4	64.1	16.5
Stable	20.7	60.7	18.6	17.5	59.4	23.1
Increase	19.7	61.4	18.9	17.8	55.0	27.3
New	21.7	61.8	16.5	19.8	51.4	28.8
Overall	21.8	63.4	14.9	19.2	59.7	21.1

Source: ETUI IPWS.

Looking at the nature of the adjustments, these are slightly more associated with a decrease where wages and salaries are concerned and with an increase when it comes to working hours. Stability or a reduction in wages and salaries are rather linked to non-remote workers whereas wage increases are generally observed among workers who have seen stability or an increase in remote work. Concerning adjustments in working hours, more than one in four workers who noted an increase in remote work, or who started this arrangement during the pandemic, have been confronted with an increase in working hours. Non-remote workers have rather observed stability or even a decrease in working hours. Together with reductions in wages and salaries, this might indicate that some part of these workers was furloughed from work via job retention schemes.

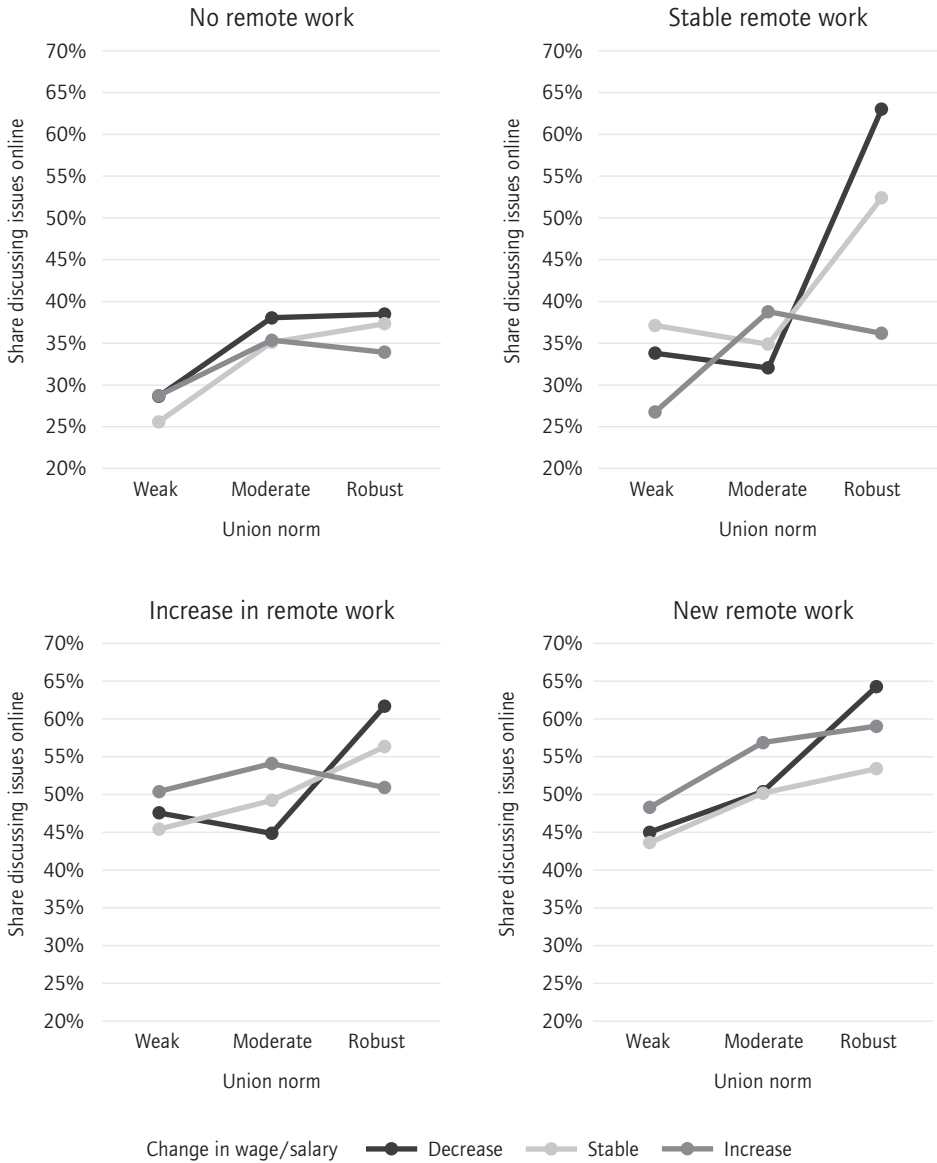
To what extent have adjustments in wages and salaries and in working hours been associated with more activity in online communities? Figures 3 and 4 shed light on this.¹³ Both figures depict the percentage of workers discussing working conditions online, by union norm regime and by adjustments to wages and salaries or working hours.¹⁴ The analysis is conducted for each of the four patterns identified in remote work.

As noted earlier in Table 3, remote workers are, in general, more likely to engage in online communities as are workers in workplaces with a robust union norm. Online engagement is particularly pronounced in situations of wage reductions – see Figure 3. Cuts in wages did not increase the online involvement of non-remote workers – perhaps they had other communications channels on which to rely to voice their grievances. Among remote workers, a robust union norm was seemingly a catalytic factor for engaging online when faced with wage cuts. When it comes to changes in working hours, workers who started working remotely during the pandemic were most likely to experience an extension of their working hours (Table 5). Increases in working hours are also associated with their visibly higher involvement in online communities, and this across all regimes – see Figure 4.

¹³. The survey provides no information on what was actually discussed online; this can only be *indirectly* extracted via making an association between adjustments and online activity.

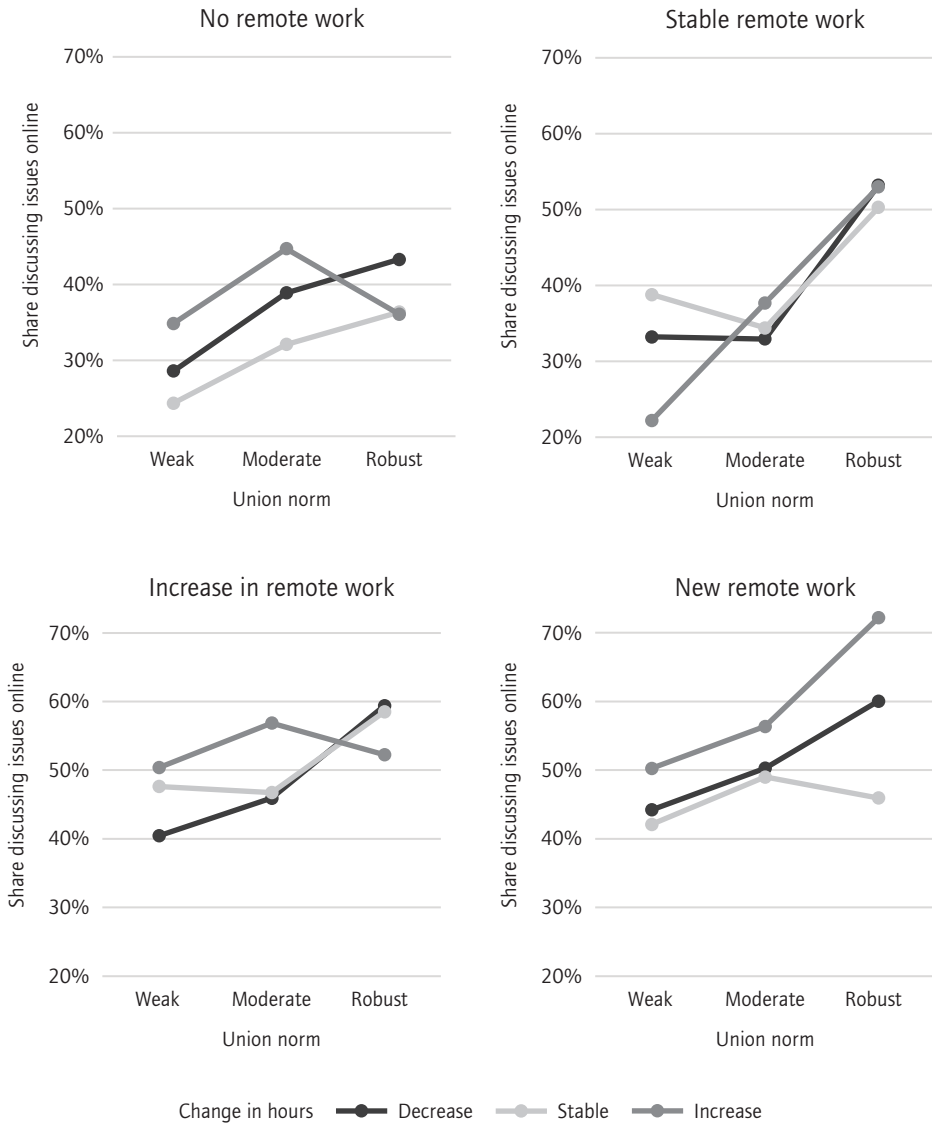
¹⁴. The size of those adjustments is unknown as this was not asked in the survey.

Figure 3 Discussing online work issues (%), by remote work pattern, union norm and change in wage/salary



Note: Vertical axes do not start at zero.
 Source: ETUI IPWS.

Figure 4 Discussing online work issues (%), by remote work pattern, union norm and change in working hours



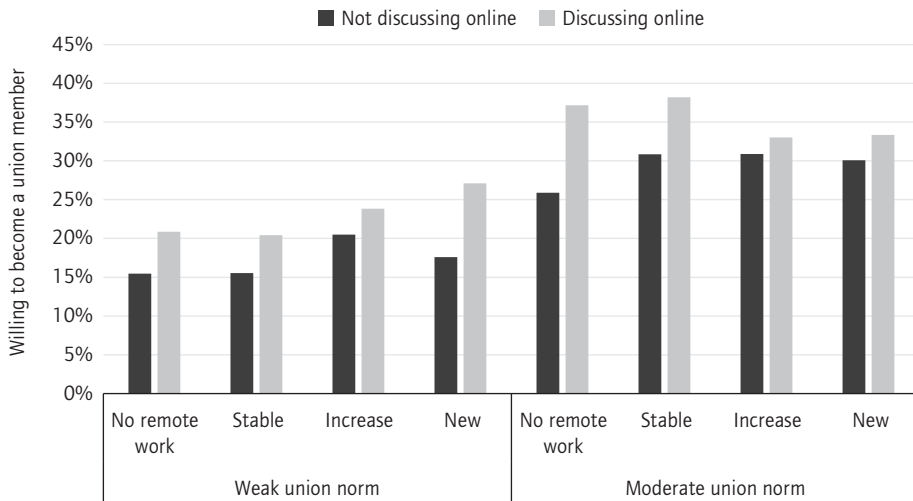
Note: Vertical axes do not start at zero.
 Source: ETUI IPWS.

8. Non-robust union norms, online communities and future unionisation

What does the participation of (remote) workers in online communities entail for union strategies? Do online communities of workers affect their probability of unionising where the union norm is weak or moderate?¹⁵ Following social custom theory, it is expected that this probability is generally higher where the union norm is stronger. In addition, we examine whether workers who are engaged in online communities show a stronger will to unionise.¹⁶ This analysis can be conducted for the four patterns in remote work.

Making a distinction between non-participation and active online engagement, Figure 5 shows the averages in the likelihood of joining a trade union, with outcomes ordered by union norm regimes and remote work patterns.

Figure 5 Online communities and the probability of unionisation, by union norm and remote work pattern



Note: The share of workers willing to become a union member in the near future is estimated through logistic regression, weighted with post-stratification weights, controlling for gender, age, country of birth (migrant or non-migrant), detailed occupational group (2-digit ISCO) and country of residence.

Source: ETUI IPWS.

15. As a reminder, among other variables, 'robust workplaces' are defined by respondents being unionised. Respondents who are union members where the union norm is moderate are obviously omitted from the analysis.

16. The latter is gauged by the question 'Would you be willing to become a trade union member in the near future?', with 'no' or 'yes' as the answer categories.

Three inferences can be drawn from Figure 5.

First, the marked differences between a weak union norm and a moderate one indicate why trade unions tend to prefer brownfield organising to greenfield sites. The results provide indirect evidence that reputation effects play a stronger role in workplaces with a moderate union norm, so that organising efforts might be relatively more fruitful compared to non-unionised workplaces.

Second, the probability of unionisation differs across the remote work patterns. In general, remote workers declare an intention to join a union in the future somewhat more often than non-remote workers. In particular, although this needs further analysis, it is apparent that workers who have seen an increase in remote work, or who have started such an arrangement as a result of the pandemic, are more likely to unionise than non-remote workers in workplaces characterised by a weak norm.

Last but not least, online communities do indeed seem to sow the seeds of unionisation. This holds true irrespective of remote work pattern and union norm regime. Compared to non-online participation, workers communicating about work-related issues within online communities have a higher probability of unionisation for each pattern of remote work (as shown in Figure 5). Equally, in comparison to workers who are not engaging online, their counterparts who are discussing employment terms and conditions with co-workers online are more likely to unionise no matter whether the union norm is considered weak or moderate. The gap is especially considerable for newly started remote workers in workplaces with a weak union norm, and for non-remote workers and workers facing stability in remote work in workplaces with a moderate one.

The data do not allow an indication of the possible ‘mechanisms’ between online, work-based communities and the likelihood of unionising. It can be expected, however, that worker-led ones provide a fertile ground for collectivism by fostering a sense of shared identities and unified interests. Overall, allowing for multiple identities and personalised action frames such as, for instance, individual stories, online communities might enable trade unions to build a union norm there via ‘connective action’ and to maintain it in a more de-centred, multi-directional and non-hierarchical way (Hau and Savage 2022; Pasquier et al. 2020; Wood 2020).

9. Conclusions

Virtually all trade unions are primarily focused on the workplace for recruiting and organising members. There is little doubt that this locus will continue to be of significance for them. It is at the workplace where they have the most control over the social norm of union membership. Remote work challenges this locus since it is likely to hamper workplace-based organising and the union norm. This chapter has not directly analysed whether remote work during the pandemic has weakened existing union norms, however, or whether it has made it more difficult to install these. Instead, its focus has been on the work-based online communities as potentially fertile ground for engaging and organising remote workers. Remote work in the pandemic context has

instituted and promoted new online channels to communicate and forge communities among workers. Such channels open new potential for unions in an era of fissuring workplaces. Put differently, in a Polanyian way, remote work has probably deteriorated the connection between workers, yet it has simultaneously offered new channels or ways to connect.

The chapter has several limitations. Based on a quantitative analysis of cross-sectional survey data, it could only be explorative in nature. Only associations have been identified: the analysis has neither established causalities nor mechanisms. For instance, while there is a clear association between online activity and the likelihood of unionisation, it could not be revealed precisely how this linkage works. It can only be assumed that online communities are spaces where collective consciousness and solidarities are fostered as prerequisites for unionisation (Maffie 2020; Walker 2021).

The findings are also presented at an aggregate level without accounting for contextual (historical) variation. Different approaches between trade unions towards organising, whether face-to-face or digital; (remote) workers' and unions' understanding of the affordance and constraints of social networking sites (Hennebert et al. 2021); the type of work affecting, for instance, internet experience; and country differences in terms of remote work arrangements – all of these might influence online engagement by individual workers.

Finally, the survey data do not allow us to examine online work-based communities themselves. The frequency of online participation is unknown as is its objectives, drivers, dynamics and consequences. Also, the nature of the work-related issues discussed are unknown, although discontent with wage cuts or an increase in working hours are likely to be one of the driving factors in online exchanges. The latter hints at a future research agenda: to what extent could online communities compensate for the impact of remote work on the day-to-day union work of advocacy and representation? Furthermore, differentiating between social networking sites has not been possible. Equally, the data do not make it possible to distinguish between worker- and management-controlled online communities. From a policy perspective, however, in cases of remote work or otherwise, statutorily mandated channels of online communications should be free from management monitoring and interference, just like unions' offline ability to use notice boards at the workplace.

Applying a nuanced analytical framework based on union norms, and analysing survey results from 14 European countries, this chapter makes three main empirical contributions.

First, regarding the context, (occupational) patterns in remote work before and during the pandemic have been mapped out, while accounting for the union norm. Workplaces with robust norms saw less remote work prior to the pandemic compared to places with weaker ones. Remote work has, however, expanded remarkably during the pandemic in such workplaces. Evidence from the German context (Behrens and Pekarek 2022) shows that such workplaces have been more successful in terms, for instance, of job and income security, skills development and reconciling work and family life during

the pandemic. Presumably, unions have been more strongly involved here in managing this massive shift, especially if collective agreements on teleworking had already been in place before the pandemic providing provisions on, for example, the right to disconnect.

Second, in general, online interactions between workers undeniably intensify with increased remote work and a stronger union norm. Remote workers are more prone to engage in work-based online communities in comparison to non-remote workers as the latter could be likely to rely on face-to-face interactions with their colleagues instead. Looking closer, the online involvement of workers who started remote work in the pandemic increases along with a strengthening in the union norm. Also, a greater involvement in online communities coincides with a robust norm among those who have worked remotely more often due to the pandemic. Online communities have often been portrayed as operating in anti-union contexts (Cohen and Richards 2015) or union-free environments, with communities being considered an alternative to unions for instance in the gig or platform economy (Kalum Schou and Bucher 2022; Wood and Lehdonvirta 2021). The empirical data presented here indirectly demonstrate that online communities could also go hand-in-hand with trade unions. The survey results provide support for the notion that active online contributions occur more in workplaces with stronger union norms, irrespective of the pattern in remote work. Importantly, pointing to the complementary face of online communities, younger workers are more likely to participate in communities in workplace settings with a weak union norm; and older workers in settings with a stronger one.

Third, activity in self-organised or other digital spaces of workers is associated with a stronger probability of unionisation. In accordance with social custom theory, this probability is larger where the union norm is stronger. This indirectly indicates that online communities are more than simply coping with remote work (see also Cohen and Richards 2015); they are connecting workers whether in remote work or not. This offers the opportunity for trade unions either to be ‘orchestrators’ (Hecksher and McCarthy 2014) within those communities, establishing links with (pre-organised) workers, or to act there as facilitators for worker participation (Hau and Savage 2022).

All of this entails that unions should step up their efforts towards digital organising, especially as online communities will have, in all probability, a relevance beyond remote work. Future research should thus explore how unions, as bureaucratic organisations, could reconcile with individual participation in horizontal online networks, especially if those are marked by a weak union norm. This should, in turn, explore the potential for a fusion between the traditional collective action of unions and the ‘connective action’ of network-like online communities (Wesley Hansen and Hau 2022).

Also, while there are some complexities regarding remote work patterns, it seems that the picture of remote work is not entirely bleak when it comes to unionisation. In addition, remote work due to the pandemic has brought both familiar and relatively new issues to the fore for union organising. Surveys naturally provide a snapshot and it is therefore unclear if online communities have solely served as an ephemeral coping mechanism during the pandemic or whether they may have a more lasting impact. Even so, the pandemic context might have made a ‘discursive opening’ possible in the

neoliberal mantra on macroeconomic policies, in particular in countries where effective institutions for social dialogue exist (Meardi and Tassinari 2022).

Whether or not the pandemic will be a historic turning point, it might be a catalyst for a ‘new wave of labour activism’ (Maffie 2022: 216). The current cost-of-living crisis, as a new, sudden macroeconomic shock, certainly adds to such activism. ‘Essential workers’ are often considered the (new) protagonists of such activism (McCallum 2022). Yet, while the use of this epitome by trade unions might be helpful in building and fostering solidarity among those workers, it might simultaneously exclude other workers such as those who have mainly been teleworking and who continue to prefer hybrid work arrangements. A dispersed workforce due to remote work or otherwise calls for a diversification of union strategies adapting to occupational, work-based online communities and prevailing union norms for complementing or supplementing traditional workplace-based unionism. This is not without its challenges, but it would be too pessimistic to conclude that remote workers are unorganisable.

References

- Akerlof G. (1980) A theory of social custom, of which unemployment may be one consequence, *The Quarterly Journal of Economics*, 94 (4), 749–775. <https://doi.org/10.2307/1885667>
- Atkinson C.L. (2022) A review of telework in the COVID-19 pandemic: Lessons learned for work-life balance?, *COVID*, 2 (10), 1405–1416. <https://doi.org/10.3390/covid2100101>
- Behrens M. and Pekarek A. (2022) Delivering the goods? German industrial relations institutions during the COVID-19 crisis, *Industrial Relations*. <https://doi.org/10.1111/irel.12319>
- Brandl B. (2021) The cooperation between business organizations, trade unions, and the state during the COVID-19 pandemic: A comparative analysis of the nature of the tripartite relationship, *Industrial Relations*. <https://doi.org/10.1111/irel.12300>
- Carneiro B. and Costa H.A. (2022) Digital unionism as a renewal strategy? Social media use by trade union confederations, *Journal of Industrial Relations*, 64 (1), 26–51. <https://doi.org/10.1177/0022185620979337>
- Checchi D. and Visser J. (2005) Pattern persistence in European trade union density A longitudinal analysis 1950–1996, *European Sociological Review*, 21 (1), 1–21. <https://doi.org/10.1093/esr/jci001>
- Clark P. (2009) *Building more effective unions*, 2nd ed., Cornell University Press.
- Cohen N. and Richards J. (2015) ‘I didn’t feel like I was alone anymore’: Evaluating self-organised employee coping practices conducted via Facebook, *New Technology, Work and Employment*, 30 (3), 222–236. <https://doi.org/10.1111/ntwe.12051>
- Disney R. (1990) Explanations of the decline in trade union density in Britain: an appraisal, *British Journal of Industrial Relations*, 28 (2), 165–177. <https://doi.org/10.1111/j.1467-8543.1990.tb00361.x>
- Doellgast V., Bidwell M. and Colvin A.J.S. (2021) New directions in employment relations theory: Understanding fragmentation, identity, and legitimacy, *ILR Review*, 74 (3), 555–579. <https://doi.org/10.1177/0019793921993445>

- Ebbinghaus B., Göbel C. and Koos S. (2011) Social capital, 'Ghent' and workplace contexts matter: Comparing union membership in Europe, *European Journal of Industrial Relations*, 17 (2), 107–124. <https://doi.org/10.1177/0959680111400894>
- Eurofound (2010) *Telework in the European Union*, Eurofound. https://www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn0910050s/tn0910050s.pdf
- Eurofound (2022a) *Working conditions in the time of COVID-19. Implications for the future*, Publications Office of the European Union. <https://doi.org/10.2806/056613>
- Eurofound (2022b) *The rise in telework. Impact on working conditions and regulations*, Publications Office of the European Union. <https://doi.org/10.2806/069206>
- Fan W. and Moen P. (2022) Working more, less or the same during COVID-19? A mixed method, intersectional analysis of remote workers, *Work and Occupations*, 49 (2), 143–186. <https://doi.org/10.1177/07308884211047208>
- Felstead A. (2022) *Remote working: A research overview*, Routledge.
- Gall G. and Dundon T. (2013) *Global anti-unionism: Nature, dynamics, trajectories and outcomes*, Palgrave Macmillan.
- Gomez R. and Gunderson M. (2004) The experience good model of trade union membership, in Wunnava P.V. (ed.) *The changing role of unions: New forms of representation*, Sharp, 92–112.
- Greene A.-M. and Kirton G. (2003) Possibilities for remote participation in trade unions: Mobilising women activists, *Industrial Relations Journal*, 34 (4), 319–333. <https://doi.org/10.1111/1468-2338.00278>
- Hancké B. (1993) Trade union membership in Europe, 1960–1990: Rediscovering local unions, *British Journal of Industrial Relations*, 31 (4), 593–613. <https://doi.org/10.1111/j.1467-8543.1993.tb00415.x>
- Hau M.F. and Savage O.G. (2022) Building coalitions on Facebook: 'Social media unionism' among Danish bike couriers, *New Technology, Work and Employment*. <https://doi.org/10.1111/ntwe.12261>
- Heckscher C. and McCarthy J. (2014) Transcient solidarities: Commitment and collective action in post-industrial societies, *British Journal of Industrial Relations*, 52 (4), 627–657. <https://doi.org/10.1111/bjir.12084>
- Heery E. and Adler L. (2004) Organizing the unorganized, in Kelly J. and Frege C. (eds.) *Varieties of unionism: Strategies for union revitalization in a globalizing economy*, Oxford University Press, 45–70. <https://doi.org/10.1093/acprof:oso/9780199270149.001.0001>
- Hennebert M.-A., Pasquier V. and Lévesque C. (2021) What do unions do... with digital technologies? An affordance approach, *New Technology, Work and Employment*, 36 (2), 177–200. <https://doi.org/10.1111/ntwe.12187>
- Ibsen Lyhne C., Toubøl J. and Jensen Sparwath D. (2017) Social customs and trade union membership: A multi-level analysis of workplace union density using micro-data, *European Sociological Review*, 33 (4), 504–517. <https://doi.org/10.1093/esr/jcx055>
- ILO (2021) *Teleworking arrangements during the COVID-19 crisis and beyond*, ILO. https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/multilateral-system/g20/reports/WCMS_791858/lang--en/index.htm
- Joyce S., Stuart M. and Forde C. (2022) Theorising labour unrest and trade unionism in the platform economy, *New Technology, Work and Employment*. <https://doi.org/10.1111/ntwe.12252>

- Kalum Schou P. and Bucher E. (2022) Divided we fall: The breakdown of gig worker solidarity in online communities, *New Technology, Work and Employment*.
<https://doi.org/10.1111/ntwe.12260>
- Kelly J. (1998) *Rethinking industrial relations: Mobilisation, collectivism and long waves*, Routledge.
- Kougiannou N.K. and Mendonça P. (2021) Breaking the managerial silencing of worker voice in platform capitalism: The rise of a food courier network, *British Journal of Management*, 32 (3), 744–759. <https://doi.org/10.1111/1467-8551.12505>
- Larsen T. and Andersen S.K. (2007) A new mode of European regulation? The implementation of the autonomous framework agreement on telework in five countries, *European Journal of Industrial Relations*, 13 (2), 181–198. <https://doi.org/10.1177/0959680107078252>
- Maffie M.D. (2020) The role of digital communities in organizing gig workers, *Industrial Relations*, 59 (1), 123–149. <https://doi.org/10.1111/irel.12251>
- Maffie M.D. (2022) The global ‘hot shop’: COVID-19 as a union organising catalyst, *Industrial Relations Journal*, 53 (3), 207–219. <https://doi.org/10.1111/irj.12367>
- McCallum J.K. (2022) *Essential: How the pandemic transformed the long fight for worker justice*, Basic Books.
- Meardi G. and Tassinari A. (2022) Crisis corporatism 2.0? The role of social dialogue in the pandemic crisis in Europe, *Transfer*, 28 (1), 83–100.
<https://doi.org/10.1177/10242589221089785>
- Moore S., Jefferys S. and Cours-Salies P. (2007) Why do Europe’s unions find it difficult to organise in small firms?, *Transfer*, 13 (1), 115–130.
<https://doi.org/10.1177/102425890701300110>
- Müller T., Schulten T. and Drahoukoupil J. (2022) Job retention schemes in Europe during the COVID-19 pandemic – different shapes and sizes and the role of collective bargaining, *Transfer*, 28 (2), 247–265. <https://doi.org/10.1177/10242589221089808>
- Oesch D. and Piccitto G. (2019) The polarization myth: Occupational upgrading in Germany, Spain, Sweden, and the UK, 1992-2015, *Work and Occupations*, 46 (4), 441–469.
<https://doi.org/10.1177/0730888419860880>
- Olson M. Jr. (1965) *The logic of collective action: Public goods and the theory of groups*, Harvard University Press.
- Pasquier V., Daudigeos T. and Barros M. (2020) Towards a new flashmob unionism: The case of the Fight for 15 movement, *British Journal of Industrial Relations*, 58 (2), 336–363.
<https://doi.org/10.1111/bjir.12507>
- Piasna A., Zwysen W. and Drahoukoupil J. (2022) The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey (IPWS), Working Paper 2022.05, ETUI.
<https://www.etui.org/publications/platform-economy-europe>
- Ranganathan A. and Das A. (2022) Speak up or stay silent: Impact of remote work on worker mobilization, Remote Work Conference (slides), Stanford University, 12-14 October 2022.
<https://www.remoteworkconference.org/>
- Toubøl J. and Strøby Jensen C. (2014) Why do people join trade unions? The impact of workplace union density on union recruitment, *Transfer*, 20 (1), 135–154.
<https://doi.org/10.1177/1024258913516902>
- Vandaele K. (2018) How can trade unions connect with young workers?, in O’Reilly J., Leschke J., Ortlieb R., Seeleib-Kaiser M. and Villa P. (eds.) *Youth labor in transition: Inequalities, mobility, policies in Europe*, Oxford University Press, 660–688.
<https://doi.org/10.1093/oso/9780190864798.003.0022>

- Visser J. (2002) Why fewer workers join unions in Europe: A social custom explanation of membership trends, *British Journal of Industrial Relations*, 40 (3), 403–430. <https://doi.org/10.1111/1467-8543.00241>
- Waddington J. (2014) Trade union membership retention in Europe: The challenge of difficult times, *European Journal of Industrial Relations*, 21 (3), 205–221. <https://doi.org/10.1177/0959680114538708>
- Waddington J., Müller T. and Vandaele K. (eds.) (2023) *Trade unions in the European Union: Picking up the pieces from the neoliberal challenge*, Peter Lang. [Forthcoming]
- Walker M. (2021) Peer-to-peer online voice as emergent collective action, *Journal of Industrial Relations*, 63 (5), 777–797. <https://doi.org/10.1177/00221856211031940>
- Weil D. (2014) *The fissured workplace: Why work became so bad for so many and what can be done to improve it*, Harvard University Press.
- Wesley Hansen N. and Hau M.F. (2022) Between settlement and mobilization: Political logics of intra-organizational union communication on social media, *Work, Employment and Society*. <https://doi.org/10.1177/09500170221122537>
- Wood A.J. (2020) Beyond mobilisation at McDonald's: Towards networked organising, *Capital & Class*, 44 (4), 493–502. <https://doi.org/10.1177/0309816820906354>
- Wood A.J. and Lehdonvirta V. (2021) Antagonism beyond employment: How the ‘subordinated agency’ of labour platforms generates conflict in the remote gig economy, *Socio-economic Review*, 19 (4), 1369–1396. <https://doi.org/10.1093/ser/mwab016>

All links were checked on 03.03.2023.

Chapter 7

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

Birte Dedden, Stan De Spiegelaere and Maureen Hick

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 the case 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.¹

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

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 consultation² 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.³ 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.

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.⁴ 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).

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.⁵ There should be no difference between remote work and other forms of work organisation when it comes to the employer's collective responsibility

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.⁶

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.⁷ 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)⁸ 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.

8. EU Commission, 5 March 2021 (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.

References

- Aguilera A., Lethiais V., Rallet A. and Proulhac L. (2016) Home-based telework in France: Characteristics, barriers and perspectives, *Transportation Research Part A: Policy and Practice*, 92, 1–11. <https://doi.org/10.1016/j.tra.2016.06.021>
- Allinger B. and Adam G. (2021) Mixed impacts of COVID-19 on social dialogue and collective bargaining in 2020, Eurofound, 27 April 2021. <https://www.eurofound.europa.eu/publications/article/2021/mixed-impacts-of-covid-19-on-social-dialogue-and-collective-bargaining-in-2020>
- Barrero J.M., Bloom N., Davis S.J., Meyer B.H. and Mihaylov E. (2022) The shift to remote work lessens wage-growth pressures, Working Paper 30197, National Bureau of Economic Research. <https://doi.org/10.3386/w30197>
- Buomprisco G., Ricci S., Perri R. and De Sio S. (2021) Health and telework: New challenges after COVID-19 pandemic, *European Journal of Environment and Public Health*, 5 (2), em0073. <https://doi.org/10.21601/ejeph/9705>
- De Spiegelaere S., Hoffmann A. and Jagodziński R. (2021) COVID-19 as a stress test for workers' participation: The case of European Works Councils, paper presented at the EWPC Annual Conference, Brussels, 29 March 2021.
- De Spiegelaere S. and Jagodziński R. (2019) Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives, ETUI. <https://www.etui.org/publications/guides/can-anybody-hear-us>
- EIGE (2021) The Covid-19 pandemic and intimate partner violence against women in the EU, Publications Office of the European Union. <https://doi.org/10.2839/959007>
- ETUC, UNICE, UEAPME and CEEP (2002) Framework Agreement on Telework. <https://etuc.org/en/framework-agreement-telework>
- Eurofound (2017) 6th European Working Conditions Survey: Overview Report, 2017 update, Publications Office of the European Union. <https://doi.org/10.2806/422172>
- Eurofound (2020a) Employee monitoring and surveillance: The challenges of digitalisation, Publications Office of the European Union. <https://doi.org/10.2806/424580>
- Eurofound (2020b) Living, working and COVID-19, COVID-19 series, Publications Office of the European Union. <https://doi.org/10.2806/467608>
- Eurofound (2021) Right to disconnect: Exploring company practices, Publications Office of the European Union. <https://doi.org/10.2806/748556>
- Eurofound (2022) The rise in telework: Impact on working conditions and regulations, Publications Office of the European Union. <https://doi.org/10.2806/069206>
- Eurofound and ILO (2017) Working anytime, anywhere: The effects on the world of work. Publications Office of the European Union and ILO. <http://eurofound.link/ef1658>
- European Union (2000) Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, C 364, 18 December 2000.
- ILO (2021) Teleworking arrangements during the COVID-19 crisis and beyond, ILO.
- Jagodziński R. (2021) The palette of workers' participation rights, ETUI.
- Lodovici Samek M. (2021) The impact of teleworking and digital work on workers and society, European Parliament. [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)662904](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)662904)
- López-Igual P. and Rodríguez-Modroño P. (2020) Who is teleworking and where from? Exploring the main determinants of telework in Europe, *Sustainability, Multidisciplinary Digital Publishing Institute*, 12 (21), 8797. <https://doi.org/10.3390/su12218797>

- Lyons H. (2022) Brussels office market rocked by corporate down-sizing, *The Brussels Times*, 27 April 2022. <https://www.brusselstimes.com/219831/brussels-office-market-rocked-by-corporate-down-sizing>
- Müller K. (2020) The right to disconnect, Briefing, 9 July 2020, European Parliament. [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2020\)642847](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)642847)
- OECD (2022) Teleworking in the COVID-19 pandemic: Trends and prospects, OECD Policy Responses to Coronavirus (COVID-19), 21 September 2021. <https://www.oecd.org/coronavirus/policy-responses/teleworking-in-the-covid-19-pandemic-trends-and-prospects-72a416b6/>
- Predotova K. and Vargas Llave O. (2021) Workers want to telework but long working hours, isolation and inadequate equipment must be tackled, No. EF21068, Eurofound. <https://www.eurofound.europa.eu/publications/article/2021/workers-want-to-telework-but-long-working-hours-isolation-and-inadequate-equipment-must-be-tackled>
- Salas-Nicas S., Llorens-Serrano C., Navarro I., Gine A. and Moncada I Lluís S. (2020) Condiciones de trabajo, inseguridad y salud en el contexto del Covid-19 : Estudio de la población asalariada de la encuesta COTS, UAB & ISTAS-CCOO.
- Sanz de Miguel P., Caprile M. and Arasanz J. (2021) Regulating telework in a post-COVID-19 Europe, European Agency for Safety and Health at Work. <https://osha.europa.eu/en/publications/regulating-telework-post-covid-19-europe>
- Senatori I. and Spinelli C. (2021) (Re-)regulating remote work in the post-pandemic scenario: Lessons from the Italian experience, *Italian Labour Law E-Journal*, 14 (1), 209–260. <https://doi.org/10.6092/issn.1561-8048/13376>
- UN Women (2020) Policies and collective agreements on domestic violence, 8 July 2020.
- UNI Global Union (2022) Remote work: A review of unions' collective bargaining response, UNI Global Union.

All links were checked on 28.02.2023.

Chapter 8

Out of sight, out of mind?

Remote work and contractual distancing

Nicola Countouris and Valerio De Stefano

1. Introduction

Since the Covid-19 pandemic, remote work has acquired quasi-Marmite status. It has become difficult, if not impossible, to approach the issue in a measured and dispassionate way, which is one of the reasons books such as the present one are being published. Remote work is often seen as anathema by some who associate it with laziness, low productivity and the degradation of the social fabric of firms and of their creative and collaborative potential. The notorious views of CEOs such as Tesla and Twitter's Elon Musk or JP Morgan's Jamie Dimon come to mind, indicative – in the view of the authors of this chapter – of a certain managerial culture fearing the 'loss of control' that comes with remote work. It should be acknowledged that, even in certain worker-friendly quarters, the spread of remote work is accompanied by concerns about social isolation, unsustainable work intensification, the blurring of private life-working life boundaries and the deterioration of career prospects (Balzano 2022). But remote work is also sometimes portrayed as a kind of new Jerusalem for the future of work, allowing better work-life balance, greater productivity, autonomy and creativity, and higher levels of mental and physical well-being.

This type of polarisation inevitably leads to tensions in the workplace. When Elon Musk purchased Twitter – an early, pre-pandemic, adopter of working from home practices – and became its CEO, one of his first circulars to staff mandated the end of remote work within 48 hours (Milmo and Hern 2022), a move that was allegedly met with a large enough number of employees threatening to resign rather than return on a full-time basis to their offices that the 'Chief Twit' was forced to water down, at least temporarily, his new policy (Wagner et al. 2022). There is mounting anecdotal evidence that some workers are willing to resign rather than accept 'return to the office' mandates, with some organising and taking industrial action in defence of 'remote' or 'hybrid work' practices established during the pandemic (Molla 2022).

This chapter argues that some of the tensions surrounding the use of remote work are, to a large extent, a reflection of a certain managerial culture profoundly rooted in a pre-modern understanding of managerial control, understood as direct or bureaucratic control, over the labour force. These remain widely prevalent in spite of the existence of alternative, more nuanced and trust based, models of human resource management and of novel and more sophisticated (though no less intrusive) forms of control. This observation is developed further in Section 2 of this chapter which identifies managerial control as a key factor in determining the future trajectories of remote work, linking this analysis to the analysis of the contractual arrangements used by businesses to source

labour. This is not the only factor, however: more trust based alternative managerial cultures, skill levels and the potential deployment of other forms of control also play a role in dictating the contractual and relational dimensions of future remote work patterns.

Sections 3 and 4 identify and explore in greater detail four main examples of contractual distancing and how they may intersect with some of the existing labour standards that have sought to manage and mitigate previous waves of contracting out or even outsourcing. This brings us to see remote work as a phenomenon capturing forms of digitally assisted work activities that are executed outside the paradigm of the employment relationship (mainly or entirely) performed from the premises of an employer, such as online platform work, including crowdwork, and of course telework.

This is followed by Section 5 which argues that dealing effectively with the challenges explored in this chapter may ultimately require a more radical set of reforms seeking to grant labour rights and protections beyond the traditional concept of the contract of employment while, at the same time, encouraging and fostering managerial cultures that are less insistent on control and more accepting of higher levels of cooperation, autonomy and trust. This is something that could be facilitated by reducing the centrality of the concept of subordination in work relations and substituting it with other concepts that, for instance, focus on notions of personality.

The chapter concludes that, under certain conditions, remote work can be perfectly reconcilable with high levels of employment protection, as enshrined in labour legislation, collective agreements and secure contractual arrangements, with both companies and workers profiting from this virtuous configuration. But it also warns against the risk that, for many workers providing their labour to ‘unadjusted’ employers (i.e. companies or workplaces that remain insistent on traditional forms of direct managerial control), remote work may come at a price of contractual distancing, a notion we explore below, with the progressive fragmentation and deterioration of employment protections and standards, a phenomenon also discussed by Rainone in this volume.

2. Take back control – adjusted and unadjusted managerial cultures

There is little doubt that the Covid-19 pandemic that ground much of Europe – and the world’s – economy to a halt in March 2020 represented a fundamental watershed moment for the type of working practices that we broadly associate with the concept of remote work, and working from home in particular. Almost overnight, literally millions of workplaces and companies shifted a substantial part of their activities from the physical to the virtual environment, though without necessarily changing their structures, corporate cultures and working practices to an online, working from home milieu.

There is no denying that, for all its material challenges and drawbacks, working from home has the benefit of relieving millions of employees (Fernandes 2022), in Europe

and beyond, from the daily grind of long commutes, the toxicity of certain office environments and part of the drudgery of the 9-to-5 routine. It offers at least the prospect of better work-life balance, greater flexibility and an unprecedented degree of autonomy. And, of course, it allowed many to continue to earn a living and businesses to avoid bankruptcy in spite of the challenges posed by social distancing mandates. Unsurprisingly, in spite of two long winters of seemingly endless Zoom meetings, blistering home schooling sessions and worrying levels of social isolation, surveys continue to suggest a strong attachment of workers to at least some measure of home or remote working and a reluctance to contemplate a full return to the office in the post-pandemic world (Harvard Business School 2021).

Employers have perhaps been more ambivalent about the issue. As noted in the opening paragraphs, some see home working as an aberration to be rectified as soon as possible (Makortoff 2021). Others are increasingly tempted by, and many have embraced, the cost-saving element associated with the reduction of office space (Reuters 2021; Putzier 2021).

It is fair to say that this sudden shift to remote work did come with its own challenges for both workers and managers. The latter in particular were troubled, it seems, by the loss of control that – perhaps inevitably – resulted from this sudden redrawing of the physical boundaries of ‘their’ firms and the geographical displacement of the workforce (Abgeller et al. 2022). ‘Out of sight, out of mind’, as the expression goes, became a real concern for several CEOs. Such was the managerial discomfort with this lack of day-to-day control over the workforce that several companies spent the early months of the first lockdown figuring out how to deal with this new state of affairs, which often simply meant replacing direct control with slightly spruced up versions of bureaucratic control or intrusive forms of remote proctoring (Fana et al. 2020). Measures such as tracking the number of keystrokes in a certain period, weaponising green, yellow and red presence statuses against workers, sometimes with paradoxical and abusive outcomes, including wage theft (De Stefano and Taes 2023), and using laptop cameras and screenshots for stealth surveillance became commonplace in many work environments (Aloisi and De Stefano 2021).

Post-pandemic, the dust of mandatory teleworking having finally settled down, it is becoming clear, and evidenced by data referred to in Zwysen (this volume), that remote work is destined to be far more prevalent than it used to be before the pandemic, although certainly less widespread than during its lockdown phases. It is equally clear that ICT developments and a certain popularisation – trivialisation even – of technologies that, until 2020, looked almost esoteric to most workers and employers have greatly contributed to expanding the range and typologies of these practices that now include various working from home modalities, such as the almost ubiquitous hybrid arrangement whereby some days are worked from home and others from the office, but also a growing range of peripatetic and even virtual collaborative forms of work.

But it is also becoming increasingly evident that not all workplaces have genuinely adjusted to, let alone embraced, a new remote work culture and – in particular – few

appear to have shifted from a direct control mindset to one based on higher levels of trust or, as defined by some of the specialist literature on the subject, on ‘responsible autonomy’ (Abgeller et al. 2022). In effect most businesses appear to have simply migrated pre-existing onsite working and managerial practices to the online environment, their corporate cultures never quite overcoming a certain unease associated with ‘distance’ and the challenges it poses to more mundane and traditional forms of managerial supervision, micro-management, control and unapologetic opportunities for personal domination. For these unadjusted corporate cultures, remote work remains a challenge, a foreign body, worthy of being expunged or scaled down, including by guile or, when needed, brute strength.

Writing as labour lawyers specialising in the regulation of the contract of employment and of work relations, we are hardly surprised by this state of affairs. It is plainly clear to any employment law expert that the idea of managerial authority, and perhaps the very idea of management, has been traditionally associated with (and even shaped by) the very power of control that, in most legal systems, is also inextricably linked to the traditional concept of the contract of (subordinate) employment (Deakin and Wilkinson 2005). The centrality of authority and employer *fiat* in the operation of businesses, particularly since the start of the Second Industrial Revolution, is a manifest reality even without disturbing Coase and his ‘Nature of the Firm’ theory, in particular his central insight that a firm’s comparative cost advantage derives from its ability to coordinate activities through administrative direction rather than market-centred transactions based on price. This is something that, as far as the domain of labour activities is concerned, labour sociologists and lawyers have traditionally imputed to the power of administrative direction inherent within the contract of employment (see Freeland 2016). Conventionally, a firm means managerial authority, managerial authority means managerial control, and managerial control is channelled through the medium of contracts of employment which, in effect, encapsulate the idea of the subordination of labour to capital and workers to management. Subordination is so deeply ingrained in the legal construction of the contract of employment that, in systems such as that in Italy, the very legal definition of an employee is ‘subordinate worker’. So, in that sense, the idea of managerial authority and the idea of the contract of employment have been mutually reinforcing ones, the contract becoming a vehicle for the lawful exercise of managerial prerogatives and control.

As vividly manifested by the substantial processes of outsourcing and contracting-out of the 1980/90s and, more recently, by the emergence of the gig economy and platform work, following decades of undisputed misclassification and casualisation practices, it is certainly possible for capital to control labour even in the absence of contracts of employment, as further discussed in Rainone (this volume) and, more generally, in Weil (2014). If anything, the so-called gig economy has proven the potential for technological control over the performance of both peripheral but also core corporate and business activities, even in the absence of secure contractual arrangements. It is also perfectly possible to develop managerial cultures that are less hierarchical, more trust based and more collaborative and that effectively delegate important aspects of control and supervision to horizontal interactions between peers and teams of workers, fostering both autonomy and responsibility. But, as pointed out by experts working in

this field, ‘Trust is the glue in responsible autonomy, yet exists in tension with intrusive managerial control’ (Abgeller et al. 2022). In other words, in the minds of several CEOs and in widespread managerial culture, not to mention mainstream policymaking, a strong nexus of association remains between direct control and the use of contracts of employment. And – conversely – that other contracts for work (such as self-employment contracts, contracts for services, quasi-subordinate contracts) are typically associated (at least nominally) with lower degrees of managerial direction and interference. The flip-side of this nexus between degree of control and contractual type is that, whenever management is not satisfied that the circumstances under which labour is provided allow it the degree of full, direct or bureaucratic, control which it is accustomed to and expecting, it is more likely to offer casual contracts or contracts for services as opposed to secure contracts of employment. This is also – and to a large extent – to diminish its liabilities in terms of labour, social security and tax obligations which corporations and management (reluctantly) accept as a quid pro quo for full control over ‘their’ ‘subordinates’.

In Section 3 we posit that these, still surprisingly prevalent, managerial tendencies which, overtly or covertly, idealise direct control may prove of fundamental importance in shaping the future trajectories of remote work, including by effectively imposing on workers a different quid pro quo between a greater use of remote labour (perceived as less controllable) and lower levels of employment protection.

3. Remote, removed, restructured, replaced. The risks of contractual distancing

Both early and more recent studies on remote work have rightly focused on a number of largely unforeseen, but clearly emerging, risks associated with remote working, teleworking in particular. Rising gender inequalities (Rubery and Tavora 2020) and growing psychosocial risks (Franklin et al. 2020) are increasingly documented as some of the main hazards associated with these forms of work (ILO 2020). A heightened blurring of work and private life, a stretching of working hours throughout the entire time that people are awake and an inherent tension between remote monitoring and privacy are also reasons for concern.

In this chapter, however, we would like to draw attention to an additional risk, namely the impact that the establishment of remote work as the ‘new normal’ could have on the future of employment relations and, in particular, on the likely emergence of new forms of contractual distancing between the firm and its remote workforce (Kuper 2021). By the term ‘contractual distancing’ we refer to a range of HR strategies, including increased recourse to (bogus) self-employment and on-demand arrangements that could have the effect of thinning down the responsibilities and obligations that employers typically take charge of when hiring labour under standard contracts of employment. A study published by consultancy firm McKinsey towards the middle of the pandemic

had already alerted us to this danger (McKinsey Global Institute 2021),¹ noting that ‘Businesses have ... been rewiring their organizational policies ... to better leverage a flexible workforce and use independent workers’ skills to help adapt to a postpandemic world’, and that, of the 800 business executives it surveyed, ‘70 percent report an intent to hire more on-site independent workers and freelancers after COVID-19’. More recent studies, such as those reported in a recent article in *The Economist*, seem to confirm these fears (The Economist 2023).

It should not be thought that, in the coming months, all businesses will rush to reclassify their workers as self-employed contractors working remotely. A first group of workers, whose size would vary depending on the type of business or sector employing them, and of course on managerial cultures, is likely to be able to enjoy the benefits of remote working, perhaps even from the safety of employer-sponsored home offices, while retaining contractual security and labour rights. These would probably be employees with highly desirable and hard to find, firm specific, ‘core’ skills. Their employers will want to keep them close to their chest in terms of their contractual arrangements, grant them a modicum of trust, autonomy and freedom in the manner and location in and from which their work is performed, though likely in exchange for greater intrusiveness regarding the content of their work and their output (including through digital surveillance and monitoring) and some exclusivity expectations over their services. Think of the university professor, top lawyer or cutting-edge software developer.

But a second group of workers, whose services may be perceived as being less high skilled (though not necessarily unskilled or peripheral either) and more readily available in the labour market, could quickly be on the receiving end of restructuring and contractual variation processes that could see them working remotely, on a more or less regular basis, but as freelancers or independent contractors. They would become ‘outforced’ remote contractors. Think of the lecturer (seasonal or otherwise) now teaching on the new online course convened by the senior professor mentioned above, the junior associate assisting that top lawyer and the army of IT experts that will be needed to sustain the growth in teleworking and other forms of remote work, including in the ‘metaverse’.

There is then a third group of workers whose labour risks being restructured as needed on an intermittent or on-demand basis and which could readily be shifted to platform-intermediated forms of work, including through offshoring processes. As further discussed by Rainone (this volume), algorithmic management has abundantly proven its ability ‘in chopping up a multipart work into its smallest components and submitting each of them to always available and geographically dispersed “legions” of workers’ (De Stefano and Aloisi 2018: 16). It has been so effective at this that there could be a genuine blurring between this third group and the previous one, whose members could also be pushed into performing gigs. These groups will arguably suffer the harshest of trade-offs between the advantages of physical distancing and the disadvantages of contractual distancing and precarisation.

1. See our blog post at <https://www.socialeurope.eu/the-long-covid-of-work-relations-and-the-future-of-remote-work>

Finally, as already predicted by Stiglitz (2020) in the early days of the pandemic, and confirmed by the McKinsey report, some workers who perform low skill and repetitive tasks are likely to be increasingly substituted with bots and artificial intelligence (AI), although human labour may still remain a feature, albeit a hidden one, of these processes of ‘heteromation’. While automation, understood as full substitution, that is to say as technology entirely taking on a task that would usually be undertaken by a worker, naturally does not amount to a form of contractual distancing, we suggest that more subtle forms of heteromation do in fact amount to a, perhaps extreme, version of contractual distancing. In this context, heteromation, a concept originally defined by Ekbia and Nardi (2017), can be understood as the concealed outsourcing of work tasks – that would traditionally be completed by workers – to customers, consumers or clients, a process occurring behind a façade of ‘automation’ – think of completing a flight check-in online: no automation is involved here; it is simply a task that an airline employee once completed behind an airport check-in desk and which is now completed by another human, the passenger, for free. Heteromation can thus be seen as a type of ‘faux automation’ which still eminently relies on human activity and even on human labour and which, in that sense, represents a rather insidious form of contractual distancing.

4. Regulatory frameworks and contractual distancing

We should be careful, however, not to suggest some degree of inevitability when assessing these risks: many will, in effect, be shaped by the broader and specific regulatory framework and the extent to which it promotes, tolerates or resists any such possible transformations.

The first group of workers discussed above is most likely to succeed in retaining existing protections or even accruing additional contractual rights and benefits, perhaps also accumulating several jobs except that some employers may start to reduce their freedom to work for multiple employers by means of exclusivity clauses – a topic that would, eventually, attract greater regulatory intervention than it has done in the past. Think, for example, of a very senior, stellar academic, tied to one (or more) universities around the globe while essentially being based in her or his villa in Napa Valley, California. These workers are likely to suffer, at most, some blurring between their private and their work life dimensions and, maybe, some subtle yet intrusive forms of remote and digital surveillance, but not of the kind or degree to which workers in the second and third groups are likely to be exposed, a point that is discussed further in the following paragraphs. Perhaps at some point one of the university employers of the above academic decides to introduce an exclusivity clause under which she or he commits to providing lectures and research only for that university and not for other global competitors. Were this group of highly coveted professionals instead to become genuine digital nomads, with their ‘home offices’ being located in different jurisdictions to the ones in which their employer is based, they may also experience some of the procedural inconveniences and conflicts of law explored at greater length by Grušić and by Rasnaća (both this volume).

But it is the second and third groups discussed above – the ‘outforced’ remote contractors and the gig workers – that will face the greatest disruptions and erosion of employment status and rights and for whom novel protections are needed. In terms of addressing ‘outforcing’ practices we know, for example, that previous outsourcing waves, those that we could generally associate – in slightly broad-brush terms – with the shift from Fordism to Toyotism in the 1980s and 1990s, were significantly shaped by a European regulatory instrument, the Acquired Rights Directive. This Directive, which was originally designed to offer some protection to the contractual and collective rights of workers when the ownership of their undertaking was transferred from one corporate hand to another, ended up guaranteeing a modicum of labour protection when private corporations and, later, the public sector began outsourcing to private contractors (and, to a lesser extent, sub-contractors) such non-core activities as catering, cleaning, security and waste collection.

Rainone (this volume) draws on the example of the Acquired Rights Directive to argue for the need to reinterpret certain core labour law notions, such as ‘assets’, or ‘undertaking’, which are in danger of losing their meaning in a fully dispersed workplace. We argue that, in addition to the wording, some of the central provisions of the Acquired Rights Directive would need to be revised for it to remain relevant in the context of restructuring processes that could be accompanied by a visible geographic fragmentation of the very units (the individual workers) of the ‘economic entity’ that is being, in effect, outsourced to remote work/home working locations. As noted elsewhere by Rainone, the Court of Justice of the European Union has somewhat struggled in terms of consistency when requiring that a ‘transferred entity must be an *organised* group of assets and persons’, occasionally ‘holding that an *organisational* structure is actually not decisive, and that rather [it] is important to have an *operational* grouping of assets and workers’ (Rainone 2018: 319).²

This has proved to be one of the Directive’s weaknesses in cases involving the radical reorganisation of the transferred business (or part of the business) across scattered geographical locations resulting, in the Court’s words, in ‘the functional link between the various elements of production transferred [no longer being] preserved’.³ For example, on the basis of this jurisprudence, national courts have established that the Acquired Rights Directive would not apply to the situation in which the restructuring of a care home business for vulnerable adults resulted in the care home structure closing down and the residents being re-housed into homes of their own, their care being performed by two new firms specialising in care provisions and which recruited the previous care home staff.⁴ While the deciding court, in this case, pointed out that the change in the geographical location of the service provision was not, per se, a reason to deny that the Acquired Rights Directive could apply, it effectively drew the conclusion that ‘the service was ... fundamentally different from that operated’ before as ‘these clients were *being moved from “Institution” to home*’.⁵

2. Emphasis in original.

3. Judgment of the Court of Justice of the European Union of 12 February 2009, *Dietmar Klarenberg v Ferrotron Technologies GmbH*, C-466/07, ECLI:EU:C:2009:85, para. 45.

4. *Nottinghamshire Healthcare NHS Trust v Hamshaw & Ors* [2011] UKEAT/0037/11/JOJ.

5. *Ibid.* para. 17. Emphasis added.

There is a genuine risk, under this type of jurisprudence, that the social distancing process in the provision of labour could easily be seen as altering the nature of the service that is being provided, or at least altering it sufficiently to permit that contractual terms be changed without the Acquired Rights Directive applying to the transfer. This risk is only magnified by the presence in the Directive of provisions such as those contained in Article 4(1), allowing a free hand to management to fire and rehire on different terms transferred staff by way of ‘economic, technical or organisational reasons entailing changes in the workforce’. This is a type of provision that, in some jurisdictions, has facilitated the transfer of workers previously on secure contracts of employment to contracted-out franchising arrangements⁶ and that could well be used in the context of the contractual distancing processes linked to remote work. There are reasons to believe that the Acquired Rights Directive would need to be reviewed and to recognise that any gains in terms of autonomy which may come with remote work will not magic such workers into genuine small businesses capable of functioning independently on the market.

Similar concerns would apply in respect of those groups of workers for which social distancing and remote work could result in both a geographical and a temporal fragmentation of the way in which their labour is sourced and performed, a group that – as noted in the opening paragraphs of this section – may well be sucked into the growing gig economy. In this respect, there are inevitably very high expectations that the pending draft Platform Work Directive may offer some help in underpinning the rights of these workers.

This Directive, which has now entered the trilogue process, would establish a rebuttable presumption of employment for platform workers. In the draft proposed by the EU Commission, the presumption would be triggered if the platform controlled ‘the performance of work’ of a platform worker. To establish this kind of control, at least two out of five indicators should be met: remuneration setting by the platform; a restriction of the worker’s freedom to organise their work, including through sanctions; a limitation on the ability to work for other parties; the imposition of standards of conduct; and the platform’s supervision of the work performance or the verification of the quality of the results, including by electronic means.

Establishing a presumption of employment in the field of platform work is, in general, a positive development. If the presumption were too difficult to activate, however, it would be more harmful than not intervening since a failure to activate it would most likely result in the worker being unable to obtain reclassification (i.e. as an employee) by ordinary means. This risk would hardly be a theoretical one were the current draft to be approved. The current indicators that point to the existence of control and subordination in a platform work relationship are drafted in a very narrow way and are easy to circumvent simply by tweaking the terms and conditions of platform work and introducing boilerplate clauses that would nominally escape the draft’s indicators.

6. *Meter ULTD v Hardy & Ors* [2012] UKEAT 0207_11_2802.

Moreover, some of these indicators should already be strong indicia of the existence of an employment relationship and would already imply reclassification in several European domestic jurisdictions with no need for a rebuttable presumption. For instance, it is difficult to imagine how the kind of control and subordination that is sufficient to determine employment status could be absent when one party ‘effectively restrict[s] the freedom, including through sanctions, to organise [the other party’s] work’. Yet, if the current draft Directive were adopted, this element would be ‘declassified’ to just one of the several indicators that, in addition to the presence of one other, could trigger a rebuttable presumption of employment. So, platforms could restrict the freedom of workers to organise their work and still prove that this should not result in reclassification even were one of the other indicators above to be met. For these reasons, amending the current Commission’s draft would be crucial. In this respect, the amendments recently voted by the EU Parliament to the draft Directive are to be welcomed. Although definitely not watertight, the Parliament’s criteria strengthen the presumption by making it more complicated to avoid through boilerplate clauses compared to the original version.

A functional Platform Work Directive would be vital in mitigating the risks of contractual distancing mentioned above. However, a weak presumption of employment would have the opposite effect of providing a blueprint for sham terms and conditions of work that would escape both the Directive and possibly other venues of reclassification. To avoid the paradoxical outcome of favouring contractual distancing and a further ‘gigification’ and casualisation of European economies, the Directive should thus arguably be fine-tuned to the realities of online platform work by fixating less on elements such as stringent supervision, and concentrating more on the integration of personal work performance in someone else’s business, either as platform or as client. This instrument should, at least on paper, be able to do that as some of its provisions – for instance those introducing transparency rights on the use of automated monitoring and algorithmic management – do in fact refer to broader concepts of the employment relationship, applying as they do to all ‘persons performing platform work’; that is to say, to ‘any individual performing platform work, irrespective of the contractual designation of the relationship between that individual and the digital labour platform by the parties involved’ (see Articles 2(3) and 6 of the Draft Directive).

Finally, coming back to the issue of augmented managerial control coupled with the shedding of employers’ responsibilities, remote work undoubtedly engenders the risk of a further exacerbation of monitoring and surveillance on the part of employers who are only willing to concede direct control for far more subtle and intrusive forms of digital and remote control and surveillance. This greater subtlety is desired to allow them to have their contractually distanced/low liabilities ‘cake’ and, at the same time, ‘eat’ it by enjoying substantial amounts of the managerial prerogative of direction and supervision. In this respect we are rather adamant that neither the provisions contained in the GDPR, nor those enshrined in the AI Act or currently being discussed in the context of the Platform Work Directive negotiations, are up to the task.

The AI Act mentions:

AI systems [that are] intended to be used for recruitment – for instance in advertising vacancies, screening or filtering applications, evaluating candidates in the course of interviews or tests – as well as for making decisions on promotion and termination of work-related contractual relationships, for task allocation and monitoring and evaluating work performance and behaviour,

and provides that these be classified as ‘high-risk’. However, it also specifies that these systems’ conformity will essentially be subject to mere ‘self-assessment by the provider’. This is a much weaker kind of safeguard than the one applying to those high risk systems requiring ‘stricter conformity assessment procedures through the involvement of a notified body’. Introducing an *ex ante* assessment by third parties instead of self-assessment would be vital in protecting workers’ rights (De Stefano and Wouters 2022). Moreover, the AI Act has a ‘liberalising’ legal basis which would be likely to imply that, if the AI systems used at work comply with its procedural requirements, these systems should be allowed. Even more protective national regulation could thus be overridden or pre-empted, paving the way to dystopian scenarios of substantially unregulated mass algorithmic surveillance and discipline.

For those remote workers captured in trends towards platformisation, the EU Platform Work Directive could act as a *lex specialis* that would prevail on conflicting legal standards and avoid the outright deregulation of algorithmic management that the AI Act could cause (De Stefano 2022). The draft Directive also allows for more favourable regulation to be adopted at national level and establishes information and consultation duties for platforms when they adopt and operate algorithmic management systems. Even these provisions, however, would be likely to fall short of providing adequate safeguards. First, the Directive accepts that these systems be allowed in principle. It could be argued, instead, that algorithmic management should not be assumed as a given and its introduction made subject to actual negotiation with workers’ representatives and the oversight of administrative bodies, in line with the provisions of several national legislations within Europe concerning the use of previous technologies, such as cameras, that may allow the remote monitoring of work performance. It seems unreasonable that algorithmic management should be held to lower regulatory standards than past, potentially less intrusive, surveillance practices.

Moreover, the Directive would only apply to platform work and, even in that field, collective information and consultation duties would not extend to self-employed platform workers and would thus fail to cover many remote workers subject to contractual distancing and bogus self-employment. It is impossible to overstate what an incentive this loophole represents for businesses to avoid the application of the Directive, and particularly its collective rights provisions, by moving around the definition of ‘digital labour platform’ included in the text and, even more, to engage in further misclassification and contractual distancing. Once again, without calling into question the good faith behind the current formulation of the draft Directive, the risk that its adoption in its current form would do more harm than good when it comes to remote work is striking.

5. Conclusions – remote work between adjusted and unadjusted regulatory frameworks

This chapter argues that what it refers to as adjusted vs unadjusted corporate culture will emerge as an important factor – among others, of course – in shaping the future trajectories of remote work, with equally fundamental consequences for the nature and typology of the contractual arrangements that will sustain future remote working. In practice, of course, several workplaces and companies will be swinging between the two ends of the adjusted vs unadjusted spectrum, exploring difference mixes of in-presence and remote work and other hybrid arrangements. These authors believe that the more successful a working or corporate culture will be at adjusting to, and genuinely embracing, remote work (including in the context of ‘semi-adjusted’ cultures and hybrid working arrangements), the less likely it is that remote work will be rolled back or result in a loss of employment rights. And vice versa. Surely other factors will come into play, including skills and human capital, labour supply, the opportunity costs associated with office space and – no less importantly from our point of view – the ability of regulation and collective bargaining to shape the direction of these processes.

This chapter examines in particular the role that rules on the transfer of undertakings, on platform work and on digital surveillance could have on shaping and regulating these dynamics and providing a contrast to the risks of contractual distancing, which – we argue – are considerable, clear and present. By way of conclusion we also suggest that a more radical reconceptualisation of the personal scope of application, beyond the traditional conception of the subordinate contract of employment and as applicable to all ‘personal work relations’ (Freedland and Kountouris 2011; Countouris and De Stefano 2019), could act as a powerful force to counteract these trends in two crucial ways.

First, it would mitigate and possibly eliminate the effects of contractual distancing by extending labour protections to all those workers providing personal work or services, regardless of their stated contractual or employment status (in this respect, see the important judgment in *JK v TP*).⁷ So even if a remote worker is reclassified as, say, a self-employed contractor or a platform worker, all labour rights would still apply.

Second, it would reduce the temptation for employers to engage with contractual distancing in the first place, both by virtually eliminating any labour, waged and non-waged, advantages arising from the contractual reclassification processes discussed above and, no less importantly, by progressively reducing the fetishised attraction that some managerial cultures feel towards the idea of subordination. As the European social partners embark on a process of renegotiation of the 2002 Telemwork Agreement (ETUI 2022) this is a useful time to reflect on these challenges and on their impact on the future of remote work arrangements.

7. Judgment of the Court of Justice of the European Union of 12 January 2023, *TP (Monteur audiovisuel pour la télévision publique)*, C-356/21, ECLI:EU:C:2023:9.

The world of work has a long and proud tradition of defying the prophets of doom predicting its final demise. This could, and should, be one of those instances. As recently noted by the International Labour Office, there is nothing novel about home working (ILO 2021). Yet this form of work has not historically been associated with decent or secure employment conditions. The home connotes private space which does not lend itself to regulatory action by the state, trade union activity or administrative inspection. A societal shift in favour of remote and home working could, nevertheless, prove a historic opportunity for the labour movement, liberating millions of workers – at least those fortunate enough to be able to perform their work remotely (European Commission 2020) – from the excesses of managerialism and go as far as reshaping the very idea of work, in which they are controlled and subordinate, in favour of an idea of more autonomous, collaborative and trust based personal labour. It could give a new impetus to the much needed ‘human-centred agenda for the future of work’ (ILO 2019: 24).

This liberation, however, is not what most remote workers have experienced during the pandemic, nor what they are experiencing in unadjusted workplaces. To have a truly liberating effect, future remote work schemes must swiftly depart from these ‘lockdown work’ paradigms and reshape corporate cultures (Aloisi and De Stefano 2020), something that can realistically only be achieved through collective and union action. And workers, unions and regulators will need to be much better aware of the pitfalls of contractual distancing.

References

- Abgeller N., Bachmann R., Dobbins T. and Anderson D. (2022) Responsible autonomy: The interplay of autonomy, control and trust for knowledge professionals working remotely during COVID-19, *Economic and Industrial Democracy*.
<https://doi.org/10.1177/0143831X221140156>
- Aloisi A. and De Stefano V. (2020) This is not a drill: People and work in times of the Covid19 emergency, *Rivista il Mulino News*, 19 May 2020. https://www.rivistailmulino.it/news/newsitem/index/Item/News:NEWS_ITEM:5121
- Aloisi A. and De Stefano V. (2021) Essential jobs, remote work and digital surveillance: Addressing the COVID-19 pandemic panopticon, *International Labour Review*, 161 (2), 289-314. <https://doi.org/10.1111/ilr.12219>
- Balzano S. (2022) *Contro lo smart working*, Laterza.
<https://www.laterza.it/scheda-libro/?isbn=9788858144442>
- Countouris N. and De Stefano V. (2019) New trade union strategies for new forms of employment, *ETUC*. <https://www.etuc.org/en/publication/new-trade-union-strategies-new-forms-employment>
- Deakin S. and Wilkinson F. (2005) *The law of the labour market: Industrialization, employment, and legal evolution*, Oxford University Press.
<https://doi.org/10.1093/acprof:oso/9780198152811.001.0001>
- De Stefano V. (2022) The EU Commission's proposal for a Directive on Platform Work: An overview, *Italian Labour Law e-Journal*, 15 (1), 107-117.
<https://illej.unibo.it/article/view/15233>

- De Stefano V. and Aloisi A (2018) European legal framework for digital labour platforms, European Commission. <https://doi.org/10.2760/78590>
- De Stefano V. and Taes S. (2023) Algorithmic management and collective bargaining, Transfer. <https://doi.org/10.1177/10242589221141055>
- De Stefano V. and Wouters M. (2022) AI and digital tools in workplace management and evaluation: An assessment of the EU's legal framework, European Parliament. <https://digitalcommons.osgoode.yorku.ca/reports/219/>
- Ekbja H. and Nardi B. (2017) *Heteromation, and other stories of computing and capitalism*, The MIT Press.
- ETUI (2022) European social partners signed a joint Work Programme including negotiations on the right to disconnect, News, 4 July 2022. <https://www.etui.org/news/european-social-partners-signed-joint-work-programme-including-negotiations-right-disconnect>
- European Commission (2020) *Telework in the EU before and after the COVID-19: Where we were, where we head to*, JRC Policy Brief. https://joint-research-centre.ec.europa.eu/system/files/2021-06/jrc120945_policy_brief_-_covid_and_telework_final.pdf
- Fana M., Fernández-Macías E., González-Vázquez I., Milasi S. and Napierala J. (2020) *Telework during the COVID-19 crisis: New reality, old questions*, Social Europe, 18 December 2020. <https://www.socialeurope.eu/telework-during-the-covid-19-crisis-new-reality-old-questions>
- Fernandes D. (2022) *Pandemic sends almost half EU employees into remote working*, EurActiv, 8 March 2021. <https://www.euractiv.com/section/digital/news/pandemic-sends-almost-half-eu-employees-into-remote-working/>
- Freedland M. and Kountouris N. (2011) *The legal construction of personal work relations*, Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199551750.001.0001>
- Freeland R. (2016) *The employment relation and Coase's theory of the firm*, in Ménard C. and Bertrand E. (eds.) *The Elgar Companion to Ronald H. Coase*, Edward Elgar, 148-159.
- Franklin P., Schaapman M., Musu T. and Bérastégui P. (2020) *Covid-19: a 'stress test' for workers' safety and health*, in Countouris N. and Jagodziński R. (eds.) *Benchmarking Working Europe 2020: Covid-19 and the world of work: the impact of a pandemic*, ETUI, 118-135.
- Harvard Business School (2021) *HBS online survey shows most professionals have excelled while working from home*, Harvard Business School Online, 25 March 2021. <https://online.hbs.edu/blog/post/future-of-work-from-home>
- ILO (2019) *Work for a brighter future - Global Commission on the Future of Work*, ILO.
- ILO (2020) *Teleworking during the COVID-19 pandemic and beyond: A practical guide*, ILO.
- ILO (2021) *Working from home: From invisibility to decent work*, ILO.
- Kuper S. (2021) *Are superstar employees about to be offshored?*, The Financial Times, 25 March 2021. <https://www.ft.com/content/9414f45c-6f03-4b8f-85c5-537d7e4f4932>
- Makortoff K. (2021) *Goldman Sachs' boss wants bankers back to their desks asap*, The Guardian, 25 February 2021. <https://www.theguardian.com/business/2021/feb/25/goldman-sachs-boss-wants-bankers-back-to-their-desks-asap>
- McKinsey Global Institute (2021) *The future of work after COVID-19*, McKinsey & Company. <https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19>
- Milmo D. and Hern A. (2022) *Elon Musk scraps Twitter for work-home staff*, The Guardian, 10 November 2022. <https://www.theguardian.com/technology/2022/nov/10/elon-musk-scraps-twitter-work-home-staff>

- Molla R. (2022) How workers fought back in 2022: Workers unionized, quit their jobs, and refused to go back to the office, Vox, 15 December 2022. <https://www.vox.com/recode/2022/12/15/23505303/workers-2022-quits-remote-work-unions>
- Putzier K. (2021) JPMorgan, Salesforce join growing list of firms dumping office space, The Wall Street Journal, 31 March 2021. <https://www.wsj.com/articles/jpmorgan-salesforce-join-growing-list-of-firms-dumping-office-space-11617096603>
- Rainone S. (2018) Labour rights in the making of the EU and in the CJEU case law: A case study on the Transfer of Undertakings Directive, European Labour Law Journal, 9 (3), 299-325. <https://doi.org/10.1177/2031952518801609>
- Reuters (2021) British Airways considers selling its headquarters after homeworking switch, Reuters, 19 March 2021. <https://www.reuters.com/article/us-britain-airlines-idUSKBN2BBORT>
- Rubery J. and Tavora I. (2020) The Covid-19 crisis and gender equality: Risks and opportunities, in Vanhercke B., Spasova S. and Fronteddu B. (eds.) Social policy in the European Union: state of play 2020, ETUI, 71-96. <https://www.etui.org/publications/social-policy-european-union-state-play-2020>
- Stiglitz J. (2020) Conquering the Great Divide: The pandemic has laid bare deep divisions, but it's not too late to change course, Finance and Development, September 2020, IMF. <https://www.imf.org/Publications/fandd/issues/2020/09/COVID19-and-global-inequality-joseph-stiglitz>
- The Economist (2023) How technology is redrawing the boundaries of the firm: Companies are reorganising themselves in the wake of digital upheaval, The Economist, 8 January 2023. <https://www.economist.com/business/2023/01/08/how-technology-is-redrawing-the-boundaries-of-the-firm>
- Wagner K., Alba D. and Bloomberg (2022) Elon Musk softens his remote-work mandate at Twitter after many staffers opt to quit rather than continue in his 'hardcore' office environment, Fortune, 17 November 2022. <https://fortune.com/2022/11/17/elon-musk-remote-work-mandate-twitter-employees-hardcore-office/>
- Weil D. (2014) The fissured workplace: Why work became so bad for so many and what can be done to improve it, Harvard University Press.

All links were checked on 01.03.2023.

Chapter 9

Digital and remote work: pushing EU labour law beyond its limits

Silvia Rainone¹

1. Introduction

Remote work, broadly comprehended as situations in which work is performed outside the employer's premises, is placed in this chapter in the context of the incremental digitalisation and gigification of the labour market. The premise of this reflection is that digital infrastructure can be counted as a key enabler of remote work, encompassing everything from task management apps and productivity tracking software to the more extreme cases of platform work (see Rani, this volume; Risi and Pronzato 2021). Thus conceived, remote work is discussed here as a disruptor to the reach and efficacy of existing labour law systems. This chapter provides an overarching mapping of the challenges to existing labour norms and suggests possible avenues for their reorientation, even at the cost of reshaping their scope.

Enabled through a digital ecosystem, work when done remotely seems to lose its connotations, leading to a relationship with existing labour law instruments that appears precarious and unstable. The increasing diffusion of remote work, especially when performed as gig and platform work, is therefore exerting a transformative effect on the world of work which is framed here along two interlinked trends.

First, there is the rarefaction of the basic and central normative notions on which workers' rights are traditionally anchored (ILO 2021b: 133). An example is the notion of 'worker', meaning a person in an employment contract the existence of which is, in many jurisdictions, linked to the element of control by the employer of the performance of work; historically this is related to physical proximity between both parties. Another example is the concept of 'establishment', traditionally referring to a (physical) space where workers carry out work. Or, again, the notions of 'undertaking' or 'assets' that labour norms use to identify elements inherent to the economic entity acting as the employer and which are inevitably being cut to the bone in business models based on dispersed and outsourced labour provision (Zwysen 2023).

The second challenging development relates to the aggravation of power imbalances between (certain) business players and workers that goes hand-in-hand with the digital and remote work trend (OECD 2022: 132). The shift towards a digital and dispersed workplace exacerbates the vulnerability of workers who not only risk falling outside the scope of existing labour protection but are also isolated and likely to elude the dynamics

1. I would like to thank Nicola Countouris, Valerio De Stefano, Agnieszka Piasna and Wouter Zwysen for their helpful comments.

of workforce mobilisation and unionisation (see Vandaele and Piasna, this volume). At the same time, it enables corporate business actors to reinforce their (labour) market position as they can take advantage of the geographical dispersion of labour, allowing them to hire in different jurisdictions on the basis of labour cost considerations. This leads to the emergence of strong and quasi-monopsonistic firms capable of imposing significant downward pressure on labour standards (Zwysen 2023). Such a dynamic is further aggravated by the domination by such firms of digital technology and algorithmic management which consolidates their control of the conditions under which labour is provided.

By touching upon these disruptive trends, this chapter sheds light on the limits of labour law. It also brings forward the idea that, to avoid the marginalisation of labour law both as a legal field and as a discipline, it is necessary to make a revitalising and innovating effort. In this regard, while reinterpreting the scope of existing labour provisions might be a first step, it might also not be a sufficient one. In the context of digitally mediated remote work, the worker-employer relationship needs to be rebalanced through the introduction of new sets of rights and obligations. In exploring possible regulatory paradigms, this chapter seeks inspiration from competition law, a discipline that has so far been more responsive to the impact of the digital economy. After all, digital and remote work will have a more structural and impactful role in the future of our society and it is worth exploring a broader epistemological perspective in order to avoid a further dismantling of the redistributive and social justice contribution that labour law is able to make.

2. Framing the issue: remote work as a labour law disruptor

Remote working has existed for years, long before the advent of the internet and digitalisation (see Messenger, this volume). However, the phenomenon has been somewhat circumscribed to specific types of workers (Felstead 2022: 16). The expansion of digital technology, boosted by the necessity of social distancing during the Covid-19 pandemic, has instead made remote working substantially more widespread, with different implications for workers (ILO 2021b). For some, the impact has been rather limited up to now: hybrid telework arrangements have either been introduced for the first time or, alternatively, made more generous, benefiting workers including university staff, public administration personnel and other employees in conventional economies. On the other hand, there are certain industries where more and more businesses are choosing a fully remote workplace for at least part of the production process (Alexandri et al. 2023).

Existing projections predict a widening of the pool of individuals who will work fully remotely in the future (Eurofound 2023). This is also driven by the alluring and propagandistic narrative with which certain businesses present the ‘revolutionary’ model of remote work. The consultancy firm Deloitte, for instance, depicts remote work as a move towards autonomy and flexible work models offering a ‘way to promote workers’ sense of belonging’ and allowing them to ‘design their workday around their responsibilities’ (Dagelet et al. 2021). For companies, the advantages of this model are

obvious, since remote work not only enables employers to draw from a broader pool of workers in their hiring processes but also to reduce administrative red tape and to rely on digital infrastructure constantly to monitor and coordinate aspects of work itself (McKinsey Global Institute 2021: 20). Moreover, remote work also has a certain appeal for local regulators: investment in connectivity, digital skills and lifelong learning is inviting environments for digital nomads and remote work-based service provision and, in turn, facilitating further investments (Ferreira 2022; Rasnača, this volume).

Precisely because of this expansive potential, fully remote working arrangements need to be strictly monitored by labour observers. Especially where remote work is enabled by a digital ecosystem, it can be approached from the perspective of the progressive gigification and platformisation of the labour market. It is no coincidence that recent taxonomies on the different types of remote work include internet work and on-demand online work, as well as gig and platform economy work (when not carried out on location) (Caruso 2019; Piasna et al. 2022; Alexandri et al. 2023).

Alongside the reduction or even obviation of office space, the workforce is dispersed and workflow coordinated and monitored through digital interfaces. Algorithmic management is now a feature of several digital platforms which organise workflow, although it does vary in its degree of sophistication (Risi and Pronzato 2021). Software which offers services in the area of work operating systems, such as Monday.com, are actually quite user-dependent as the use of AI for the optimisation of work organisation is optional and such services rely mainly on manual input. Algorithmic management is instead much more pervasive on digital platforms that enable on-demand gig work, like PPH (PeoplePerHour) or MTurk (Amazon Mechanical Turk) (Aloisi and De Stefano 2022: 86). Still, in both cases, and thus even when algorithmic management is less invasive, digitally mediated workplaces are characterised by a stronger emphasis on the realisation of externally defined results and tasks than in offline work (Althoff et al. 2022). The combination of the geographical dispersion inherent in remote work and an overreliance on digital technology is therefore producing transformative effects with respect to the world of work that go far beyond the emergence of ‘atypical’ forms of labour. Rather, it is triggering an evolutionary process that is reshaping the capitalistic approach to labour and which is manifesting itself in a series of disruptive dynamics.

First, it is enabling a purposive recourse to the notion of autonomy as an easy way out from the reach of protective labour norms (Countouris and De Stefano, this volume). The glorified autonomy which is often associated with forms of remote (and digital) work often boils down to flexibility for the worker to determine his or her own work schedule and location, and not in the actual possibility of managing the workstream nor in determining the terms and conditions under which work is performed (Aloisi 2016: 662). The idea of working without a boss is thus most often a myth. In such a case, remote work arrangements place firms in the privileged position of being able to count on a global offer for labour (ILO 2021a: 145). This inevitably triggers a spiral of downward regulatory pressure between national legal systems, with depressive effects on the value that is attributed to labour (Rani, this volume). Moreover, the ease with which labour can be performed from the other side of the globe in competitive conditions entails that, even for ‘traditional’ firms, the outsourcing of productive and operational processes has

become quite an attractive option. While global labour supply chains are certainly not new phenomena, digital technology has made their operationalisation in the service sector substantially simpler and more widespread as it ensures the smooth integration of externalised activities in the overall economic process. The result is the aggravation of workplace fissuring, with the dismantling of traditional businesses into a network of alienated contractors (Weil 2019). Such a practice is heading towards a future in which white collar jobs increasingly resemble gig and piece work (Schor 2022).

To these disruptive trends, it should be added that the Covid-19 pandemic has further strengthened the infrastructural role of digital platforms as enablers of remote work (both when performed in hybrid or full mode). As Risi and Pronzato explain (2021: 110), remote work inevitably makes use of a digital ecosystem in which the few biggest players are utterly dominant (Alphabet (best known as Google), Amazon, Microsoft, Apple and Meta (i.e. Facebook)). These firms can dispose of an extraordinarily rich and continuous flow of data that further consolidates their market power and the expansion of surveillance capitalism (Guarascio et al. 2022).

When digitally mediated, remote work is therefore strictly interlinked with the very processes that are fundamentally changing the world of work and economic production. There is the risk, however, that regulators continue to perceive these transformative dynamics as little more than marginal, pertaining to the still limited phenomenon of the gig economy. Such a short-sighted approach would eventually condone a model in which dispersed contractors (workers) make their labour available to a limited number of globally dominant business players and where labour relationships become increasingly intangible and unregulated, with labour thus being recommodified. (On the pressing need for regulation, see ILO 2021a: 244; Steinbaum 2019; Gawer and Srnicek 2021.)

In the following sections, these transformative drivers are translated into two major challenges to the efficacy and resilience of existing labour law systems which regulators ought to address: the thinning of the normative concepts on which labour law provisions have traditionally been grounded (Section 3); and the enhanced ability of corporate players to influence working conditions (Section 4). While these challenges are more acutely present in the most extreme cases of digital remote work carried out in the context of the gig economy, they can also apply to more traditional professional figures when labour is performed fully remotely and enabled through digital infrastructure.

3. The thinning of key labour law normative concepts

Remote work, especially when reliant on a strong digital component, reveals the increasing inadequacy of the regulatory and definitional paradigms that legal systems use to allocate obligations and protections in labour relations.

Regardless of the extent of automation of work processes, when labour is performed through digital infrastructure workers assume a role close to that of on-demand content creators and are both dispersed and atomised. The assignment of customers, the

management of complaints and human resources, as well as the processing of payments, is (in whole or in part) entrusted to the work-management digital platform. Needless to say, this model of business organisation is very different from that prevailing at the time when existing labour laws were conceived. Labour law systems define their scope of application through normative notions such as that of (subordinated) worker, asset, establishment and undertaking, which historically refer to a certain degree of physicality of the work performance and the workplace. These concepts are struggling to capture the increasingly liquid and, in a way, non-material work that is typical of digital and dispersed work environments (Risi and Pronzato 2021).

3.1 The notion of worker

In EU law, the concept of ‘worker’ designates those individuals who are in an employment relationship and who thus fall within the personal scope of employment protection. Workers are indeed the holders of the rights conferred by labour norms. As discussed by Countouris and De Stefano (this volume), the contract of employment is traditionally linked to a relationship of subordination between the labour provider and the employer. However, the granularity of work performance and its spatiotemporal dispersion confer on digitally mediated work a perception of autonomy regarding its execution. This has tangible repercussions for the applicable juridical regime as digital remote workers are predominantly classified as ‘freelancers’ and excluded from employment protection (Caruso 2019; Gruber-Risak 2022; Alexandri et al. 2023). The thinning of the legal concept of worker has been partially mitigated by the Court of Justice of the EU (hereinafter CJEU), which has gradually developed a wider EU notion that may help pierce digital remote work’s veil of autonomy.

3.1.1 An evolving definition

First, it must be noted that, in EU labour law, there is no univocal approach to the notion of worker (Kountouris 2018). Some legal instruments make simple reference to this concept without further qualifying it, leaving the definitional task to the CJEU.² Other EU labour laws instead indicate that the notion of worker should be defined in accordance with the law, collective agreements or practices of the Member States.³ More recently, an intermediate wording has appeared establishing that, in addition to the national definitions, consideration should be given to CJEU case law.⁴ This formulation can be expected to become prevalent in future EU lawmaking and to act as a bridge between the two classical definitions so as to bring greater uniformity in the scope of application of EU labour norms (Szpejna and Boudalaoui-Buresi 2020).

2. For instance: Directive 98/59/EC on collective redundancies and Directive 2003/88/EC concerning certain aspects of the organisation of working time.

3. Examples are Directive 97/81/EC concerning the framework agreement on part-time work; Directive 1999/70/EC concerning the framework agreement on fixed-term work; and Directive 2001/23/EC on employees’ rights in the event of transfers of undertakings.

4. Examples are Directive 2019/1152 on transparent and predictable working conditions; Directive 2019/1158 on work-life balance for parents and carers; and Directive 2022/2041 on adequate minimum wages.

The extent to which remote workers are included in these notions will largely depend on the nature of remote work and on which of these three definitions is used. It is quite plausible that a scenario of fully remote and digital (or ‘platformised’) work would fall outside EU labour laws whose scope of application is defined with reference to national notions of the employment relationship, especially if those are anchored to rigidly interpreted requirements of subordination, direction or control. Still, these interpretative formalisms may, to some extent, be curbed in the light of CJEU case law which has established that the discretion granted to Member States cannot jeopardise the achievement of the objectives pursued by EU norms so as to deprive them of their effectiveness (Menegatti 2020). In particular, in *O’Brien*⁵ and *Betriebsrat*,⁶ the Court ruled that, even if an EU labour law directive covers only those who are ‘workers’ within the meaning attributed by national law, it also applies to those who are in a contractual relationship that ‘by its nature’ is not substantially different from an employment relationship which, under national law, is defined as being subordinate. Admittedly, however, this functional interpretation may have a limited effect, bringing into the notion of ‘worker’ only the most obvious cases of misclassification (Kountouris 2018).

When, on the other hand, EU labour law simply refers to the concept of ‘worker’ without linking it to national definitions, the scope of application of labour rights is determined by the (broader) EU notion of worker as developed by the CJEU over the years (Szpejna and Boudalaoui-Buresi 2020). The first real defining formula appeared in the *Lawrie-Blum* judgment where the concept of worker was interpreted in relation to Article 45 of the Treaty on the Functioning of the European Union (TFEU) on freedom of movement: a worker is a person who, over a given period of time, performs an activity of an economic nature for and under the direction of another person in return for remuneration.⁷ Although the reference to the element of direction reflects the traditional approach to subordinate employment that can be found in most national legal systems, subsequent rulings have substantially broadened the definition (Kountouris 2018; Menegatti 2020).

In particular, in interpreting the EU notion of worker, the CJEU has formulated a series of specifications that might be helpful in bringing certain cases of fully remote and digitally mediated work within the realm of the employment relationship. First, in *Allonby*, the CJEU established that the classification of a person as self-employed under national law does not exclude that his or her independency is merely notional.⁸ Rather, it is important to look at the factual circumstances that characterise the contractual relationship between the labour (or service) provider and the party which has contracted him or her.⁹ In this regard, the CJEU has also ruled that it is not particularly meaningful, concerning the decision whether or not a contractor should be classified as a worker,

5. Judgment of 1 March 2012, *Dermod Patrick O’Brien v Ministry of Justice, formerly Department for Constitutional Affairs*, C-393/10, ECLI:EU:C:2012:110.

6. Judgment of 17 February 2016, *Betriebsrat der Ruhrländklinik GmbH v Ruhrländklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883.

7. Judgment of 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284.

8. Judgment of 13 January 2004, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, C-256/01, ECLI:EU:C:2004:18, para. 71.

9. *Ibidem*, para. 69.

whether the individual has the right to accept or refuse a certain assignment.¹⁰ This clarification is particularly interesting in the context of digital and remote work, where tasks are assigned through digital interfaces which can be freely accepted or rejected without explicit or contractual repercussions.

Furthermore, to determine the presence of a de facto employment relationship, in the *Danosa* ruling the CJEU stressed the importance of looking at the nature of the duties, at the overall context in which these are performed and at the actual extension of the individual's power to determine their content.¹¹ The retention of a margin of discretion in the performance of tasks is not deemed significant when the execution of the activity has to be reported to and coordinated with the party which has contracted out the work.¹² With these specifications, the CJEU has made an intervention on the concept of 'autonomy': the focus has been moved to the overall performance of the service (labour) and in a manner which is better suited to the capture of remote and digital work, often consisting of the execution of pre-defined assignments.

In further rulings the CJEU has established that an additional indicator of the notion of a worker is the integration of labour performance in the principal business and the absence of the assumption of business risk, making them part of the same economic unit.¹³ Such integration can be found in many cases of digital remote work, even in the most extreme situations of gig work (Rainone and Countouris 2021), where integration occurs when the service being performed converges in the business process of the party receiving the service. Digital remote work goes hand-in-hand with an increase in the outsourcing of production processes and with the fissuring of the workplace, with traditional businesses being dismantled and turned into a network of dispersed but integrated service contractors. Moreover, most digital remote workers perform their tasks without substantial capital investment and do not share business risk, just like employees (Georgiou 2022).

Finally, another element that, in its case law, the CJEU has considered to qualify the notion of worker are the circumstances under which a person can be removed from his (or her) position.¹⁴ When such a prerogative is retained by the entity which also has the prerogative of coordinating the work and to which the work activity has to be reported, then it is a sign of an employment relationship. While the CJEU has established this principle in relation to a member of a board of directors, it also bears significance for digitally mediated work. As digital and remote labour providers are often integrated into the business to which they are contracted, the latter organises and manages the

10. Ibidem, para. 72.

11. Judgment of 11 November 2010, *Dita Danosa v LKB Lizings SIA*, C-232/09, ECLI:EU:C:2010:674, para. 47.

12. Ibidem, paras. 49 and 50. Similar conclusions were reached in the judgment of 10 September 2015, *Holterman Ferho Exploitatie BV and Others v F.L.F. Spies von Büllesheim*, C-47/14, ECLI:EU:C:2015:574; and in the judgment of 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455.

13. Judgment of 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411, para. 36.

14. C-232/09, *Danosa*, para. 47.

delivery of the tasks while the authority to remove a person from that business can easily be conceived of as an extension of such coordinating prerogatives.

3.1.2 The limits of the classical divide based on autonomy vs control

EU case law has thus drawn a notion of who is a worker that could be relied upon to bring certain digital ‘freelancers’ within the scope of the labour protection conferred by EU labour law. However, there are still serious normative obstacles that prevent a full alignment of the CJEU definition of worker with the actual reality of work in the digital and remote context (Gyulavári 2020).

First, the CJEU has never overcome the principle whereby a person’s freedom to choose their timetable and place of work is a strong indicator of self-employment.¹⁵ This principle is hardly satisfied in digital remote work unless it is recognised that the freedom to choose the timetable is seriously constrained by tight assignment deadlines and unless the place of work is understood as the digital infrastructure through which work is performed, namely the digital space provided by the platform.

Secondly, even if the CJEU’s consideration of the power of coordination of the work activity may have the effect of opening the door of employment protection to workers who would otherwise be excluded from definitions anchored to the more rigidly interpreted power of direction, this reference to the notion of coordination can be a double-edged sword. In most gig work platforms, for instance, the coordination and surveillance of work performance certainly occur but they are effectively concealed through systems of reward and sanctioning (Adams-Prassl 2019). In these cases, much thus depends on the interpreter’s sensitivity to going below the surface and acknowledging the pervasiveness of algorithmic management (Aloisi 2022).

Similar considerations apply with respect to the indicator pertaining to the integration of the worker into the business when the economic unit is disaggregated and fragmented. This occurs in business models largely based on outsourcing, leading to highly fissured workplaces in which the notion of ‘integration’ risks losing meaning. As further argued in subsection 3.2, this might require a functional reinterpretation that takes into account overall economic and production processes (Zwysen 2023).

Lastly, even the criterion of the business risk assumption may turn out not to be an adequate qualifier in respect of businesses which have become particularly fragmented as a result of outsourcing. In those cases, business risk tends to be distributed to a multiplicity of solo self-employed people who, as Georgiou notes, end up taking it on involuntarily (Georgiou 2022).

It is important to mention that, recently, by proposing an EU directive on platform work, the European Commission has created an unprecedented opportunity to correct the shortcomings deriving from the fragmented coverage of the concept of worker. The

15. C-256/01, *Allonby*; C-413/13, *FNV Kunsten Informatie en Media*; judgment of 22 April 2020, *B v Yodel Delivery Network Ltd*, C-692/19, ECLI:EU:C:2020:288.

result does not seem likely, however, to lead to any significant paradigm change (De Stefano 2022). On the one hand, the directive introduces a presumption of employment which will certainly facilitate labour law enforcement in cases of misclassification. At the same time, its provisions are still anchored to an old-fashioned notion of control that may even frustrate the more flexible interpretation that has emerged from CJEU case law (Rainone 2022a).

Far more innovative is the approach adopted by the European Commission in its (non-legislative) Guidelines on competition rules and collective bargaining (European Commission 2022). With this initiative, the Commission has sought to identify a series of criteria to ensure that the exercise of collective bargaining rights by the self-employed can coexist with the prohibition in EU competition law on concluding anti-competitive commercial agreements. Going beyond the subordination/autonomy divide, the Commission has placed emphasis on the imbalance of bargaining power between service (labour) providers and the party with which they are contracting, thus reaching also the solo self-employed who are not in a situation compatible with that of subordinate employees. Interestingly, a similar paradigm has emerged in the recent *JK v TP* ruling, in which the CJEU extended EU rules on discriminatory dismissals to the genuinely self-employed (in this case, an independent contractor working for a tv broadcaster) (Countouris et al. 2023).¹⁶ Admittedly, the Court did not go as far as the Advocate General who had proposed a broadening of the scope of application of EU labour norms to all cases in which a person is engaged in personal work, irrespective of the legal form under which the work is provided.¹⁷ Still, this has opened the way for the recognition of labour rights beyond employment status, putting forward a precedent which may be highly relevant for those digital and remote workers who do not fall within the notion of worker.¹⁸

3.2 Notions relating to the business activity of the employer

Even if the concept of worker were to be properly revisited, the question of the scope of labour law would not be resolved. Another problematic aspect concerns the increasingly wide distance between the legal notions pertaining to the business activity of the employer – such as ‘asset’, ‘establishment’ and ‘undertaking’ – and the reality in which remote and digital work is actually articulated. Although it is still scarcely discussed in the labour law literature, it is a quite relevant issue since those notions are used in legal norms to identify specific contexts and situations to which the legal system recognises a need for the protection of workers and thus has a link to specific labour rights.

16. Judgment of 12 January 2023, *JK v TP (Monteur audiovisuel pour la télévision publique)*, C-356/21, ECLI:EU:C:2023:9.

17. Opinion of Advocate General Capeta of 8 September 2022, *JK v TP (Monteur audiovisuel pour la télévision publique)*, C-356/21, ECLI:EU:C:2022:653, para. 66.

18. The CJEU had already, albeit indirectly, considered the importance of the personal nature of the performance of work as a meaningful indicator of the existence of an employment relationship in its decision in *Yodel*, where it excluded from the notion of worker those who could appoint a subcontractor or substitute for the whole or part of the service provision (C-692/19, *Yodel Delivery Network*). The notion of personal work was, however, not as explicit and unpacked as in the Advocate General Opinion in the *JK v TP* case.

3.2.1 Asset

Starting from the notion of ‘asset’, in terms of labour law this describes the instruments and tools that are necessary for the business to function. In traditional firms, the definition of assets is quite simple. In an urban transport company, for example, these are the buses used to provide the service. There are then those cases, such as in the cleaning sector, in which the contribution of assets is quite marginal and the business can be defined as ‘labour intensive’ since the service is mainly performed through human labour (Beltzer 2007; McMullen 2021).

The determination of the main assets of a company is not a doctrinal exercise but it is decisive for the application of, for instance, directive 2001/23/EC on transfers of (part of) undertakings (Bennet and Belgrave 1996; Even 2014). This directive recognises the employment rights of workers who have been transferred from one firm to another, and the taking over of a majority of the assets (or personnel, if in a labour intensive firm) has crucial importance in determining whether a transfer has occurred and thus whether labour protection applies (Rainone 2018).¹⁹ But how can the scope of application of this directive be transposed to the context of remote and digital work, for instance when a smaller digital business becomes incorporated in a larger platform? It is necessary to determine whether digital platforms are labour intensive businesses or whether the contribution of assets is predominant. Precisely what business assets are constituted from also needs to be clarified: the personal laptop that workers use to perform their tasks; or rather the algorithms, software and data that actually keep the business going? In such a scenario, a narrow interpretation that fails to consider the technological component of the business would ultimately fail to deliver full implementation of the employment protection rules laid down in the directive.

While no meaningful interpretation effort readapting the notion of asset to the digital world of work is surfacing in EU policymaking in the field of labour law, interesting developments have emerged in the area of EU competition law. In a recent competition law guidance note on the enforcement of the EU Merger Regulation (European Commission 2021), the Commission has recognised that, in the digital economy, the market value of a firm can additionally be determined by its ability to build up significant data inventories. According to the Commission, transactions that concern undertakings which have significant access to data may have a restrictive impact on competition within the internal market. Competition law thus considers data an important business asset with a high capacity to generate competitive potential. It would be timely for a similar interpretation to make its way into the field of labour law.

A promising – but not yet sufficiently explicit – step in this direction occurred in the recent *Dodič* judgment where, in a ruling on the application of the Transfer of

19. Recently, in the judgment of 27 February 2020, *Reiner Grafe and Jürgen Pohle v Südbrandenburger Nahverkehrs GmbH and OSL Bus GmbH*, C-298/18, ECLI:EU:C:2020:121, the CJEU showed a departure from the classical dichotomy between asset and labour intensive businesses. Nevertheless, the relevance of the transfer of assets remains pivotal, in line with the *Spijkers* doctrine (judgment of 18 March 1986, *Jozef Maria Antonius Spijkers v Gebroeders Benedik Abattoir CV and Alfred Benedik en Zonen BV*, C-24/85, ECLI:EU:C:1986:127).

Undertakings Directive in the banking sector, the CJEU stressed the importance of intangible assets.²⁰ In particular, the CJEU considered that records concerning clients' accounts (in a way, a term comparable to data), as well as the documentation relating to investment services, might also fall within the notion of 'asset'.²¹ This case might thus, in the labour law domain, offer an opening for a future functional reinterpretation grounded on the principle of the effectiveness of the concept of asset as encompassing the digital infrastructure that enables and regulates workflow in the digital and remote work context (see Nagy 2019 on the adaptation of traditional normative legal concepts based on the principle of effectiveness).

3.2.2 Establishment

Another legal notion whose meaning is in danger of being emptied out by digital remote work is that of 'establishment'. This concept is central to two EU law instruments conferring information and consultation rights on workers: directive 98/59/EC on collective redundancies and directive 2002/14/EC establishing a general framework for information and consultation practices (Rainone 2022b). In both instruments, information and consultation rights are anchored to the attainment of a minimum quantitative threshold calculated on the number of workers who are assigned to, and/or are dismissed from, a particular 'establishment'.²² It follows that the scope of application of these directives will be more or less comprehensive depending on how broadly this notion is interpreted. This emerges as a serious problem when considering the context of remote and digital work and the geographical dispersion that characterises it. How should a regulatory concept introduced at a time when work was carried out almost exclusively in terms of physical presence, on industrial sites or offices, be adapted to a reality in which economic processes take place through digital infrastructure?

Directive 2002/14/EC indicates that 'establishment' means a unit of business, defined in accordance with national law and practice, in which an economic activity is carried out on an ongoing basis with human and material resources.²³ Directive 98/59/EC, on the other hand, does not provide any definition, leaving the notion undetermined until 1995 when the CJEU, in the *Rockfon* judgment, ruled that it refers to the unit to which workers are assigned to carry out their duties.²⁴ In *Athianaiiki* the CJEU further specified

20. Judgment of 8 May 2019, *Jadran Dodič v Banka Koper and Alta Invest*, C-194/18, ECLI:EU:C:2019:385. While intangible assets have been included since the *Spijkers* case as among the relevant factors to consider in transfer cases, in *Dodič* the CJEU showed that this notion can also be interpreted to reflect the digital nature of business assets.

21. C-194/18, *Dodič* (para. 37).

22. Directive 98/59/EC applies only if 10 workers are made redundant in an establishment employing more than 20 and less than 100 workers; at least 10 per cent of workers in establishments normally employing between 100 and 300 workers; at least 30 workers in establishments normally employing 300 workers or more; or, in the alternative, at least 20 over a period of 90 days. Directive 2002/14/EC applies to establishments employing at least 20 employees.

23. Article 2 Directive 2002/14/EC.

24. Judgment of 7 December 1995, *Rockfon A/S v Specialarbejderforbundet i Danmark*, C-449/93, ECLI:EU:C:1995:420.

that an establishment does not require any legal, economic, financial or technological autonomy.²⁵

Clearly, such definitions can be more easily applied to work carried out in physical workplaces rather than in digital ones. Especially in firms where the workspace is digital (and thus non-material), it might be enough for the employer purposively to organise workers into micro units, or for a business to adopt a model based on subcontracting, to avoid reaching the threshold and thus activating information and consultation rights.²⁶

To curb the emptying out of the notion of establishment, functional reinterpretation is needed. Ideally, it should be recognised that, for digital workers, the place of work is within the digital ecosystem. The ‘unit to which workers are assigned’ should thus be understood as the digital infrastructure through which the tasks are distributed, performed and then delivered.

3.2.3 Undertaking

Equivalent interpretative issues arise with respect to the notion of ‘undertaking’ on which depends, for example, the application of the already discussed directive 2002/14/EC on information and consultation rights. Article 3 refers to ‘undertaking’ as an alternative reference point to ‘establishment’ in determining whether the minimum quantitative threshold of employed workers which determines the scope of application of the directive has been reached.²⁷ It is also a crucial notion for directive 2009/38/EC which establishes a procedure for the creation of European Works Councils in community-scale undertakings. Here too, ‘undertaking’ is used to define the scope of application of the directive,²⁸ while it is additionally functional in terms of identifying the central management to which the demands of workers’ representatives to start negotiations on the creation of a European Works Council might be addressed.²⁹ Finally, ‘undertaking’ is a core concept for directive 2001/23/EC on the transfer of undertakings as it constitutes the very object of the transfer operations to which the directive applies.³⁰ In these instruments, the concept of undertaking is not defined with the effect that, across the labour law discipline, it is widely understood as coinciding with the legal person (the ‘company’) as defined in its founding statute.³¹

25. Judgment of 15 February 2007, *Athinaiki Chartopoïia AE v L. Panagiotidis and Others*, C-270/05, ECLI:EU:C:2007:101; then confirmed in the judgment of 13 May 2015, *Valerie Lyttle and Others v Bluebird UK Bidco 2 Limited*, C-182/13, ECLI:EU:C:2015:317; in the judgment of 30 April 2015, *Union of Shop, Distributive and Allied Workers (USDAW) and B. Wilson v WW Realisation 1 Ltd and Others*, C-80/14, ECLI:EU:C:2015:291; and the judgment of 13 May 2015, *Andrés Rabal Cañas v Nexea Gestión Documental SA and Fondo de Garantía Salarial*, C-392/13, ECLI:EU:C:2015:318.

26. This issue was raised, in relation to physical stores, in C-182/13, *Lyttle and Others* where the referring judge indicated that the existing predominant interpretation of the notion of establishment leaves room for abuse but the CJEU did not engage and confirmed the *Rockfon* doctrine.

27. Directive 2002/14/EC applies to undertakings employing at least 50 employees.

28. Article 2(1)c.

29. Article 2(1)e, Article 3, Article 5(2)c, Article 6(1), Article 9.

30. Article 1.

31. The closest we have to a definition is in Article 2 in Directive 2002/14/EC: ‘Undertaking’ means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States.

Digital and non-integrated businesses, outsourcing practices, fissured workplaces and dispersed workforces have inevitably created a perception of a thinning of the legal concept of undertaking. Such a notion now appears less relevant from a (labour) market perspective than the overall network of integrated businesses (Weil 2019). For instance, in relation to two of these directives, why should the exercise of information and consultation rights be attached to the number of workers in an undertaking, as juridically defined, when the decisions affecting the workforce are taken by other business actors; namely, those who control the actual business processes?

In this case too, it may be worth moving towards a functional reinterpretation of the notion of undertaking, realigning it with the effective expression of economic power. In EU law there are already examples of such hermeneutic reorientation. Substantial interpretative flexibility is found in the field of competition law where, based on the principle of effectiveness, the notion of undertaking transcends legal status and covers the whole economic unit (Stănculescu 2018; Nagy 2019). This consents to the inclusion of situations where, due to ‘organic and functional links’ between two firms, one controls the other.³² Admittedly, in competition law this interpretative flexibility is facilitated by the normative rationale of this discipline which was conceived to focus, among other things, on the market power of business actors and on transactions that provoke market power concentrations.³³

A purposive approach has, instead, been remarkably slower to emerge in the field of labour law. Still, an innovative opening recently occurred in the *Ellinika* judgment regarding the transfer of undertakings. In *Ellinika*, the CJEU was confronted with an elusive scheme whereby an economic entity was deliberately fragmented with a view to laying off a portion of the workforce without incurring adverse financial consequences. The Court approached the issue in a functionalist manner and ruled that, if an undertaking is dependent upon the economic choices unilaterally made by another undertaking (in this case, affecting access to the factors of production), then the autonomy between the two undertakings is fictitious.³⁴ If transposed and developed in the field of the digital economy, this reasoning could be used as a first step in refuting the artificial atomisation of economic contractors and in proposing a revisited notion of undertaking, as well as of autonomy, that bears a rather closer resemblance to reality.

4. Growing labour market asymmetries

In addition to exposing the limited reach of the traditional normative concept of labour law, the spread of digital remote work is causing an alteration in the distribution of

32. Judgment of 10 January 2006, *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA, Fondazione Cassa di Risparmio di San Miniato and Cassa di Risparmio di San Miniato SpA*, C-222/04, ECLI:EU:C:2006:8 (para. 117).

33. For instance, Council Regulation 139/2004 (the EC Merger Regulation), in order to determine the impact of a concentration of competition in common markets, also considers operations leading to the creation of joint ventures performing the functions of ‘autonomous economic entities’ (Article 3(4)).

34. Judgment of 13 June 2019, *Ellinika Nafpigeia AE v Panagiotis Anagnostopoulos and Others*, C-664/17, ECLI:EU:C:2019:496 (para. 69).

bargaining power between labour providers (the workers, however classified) and labour receivers (the de facto employers) in favour of the latter (ILO 2021a: 51). This is reflected in the substantial impoverishment of working conditions which the existing body of labour rights does not appear adequately equipped to address.

Several studies show that technological innovation and (remote) work through digital platforms are concurrent factors that contribute to conferring on a limited number of firms the ability to dictate the conditions under which labour is provided in certain labour markets (Steinbaum 2019; Posner 2021: 118). Among the causes of this is the increasing concentration of (labour and product) market power in the hands of a few dominant players in the tech and digital industries (Guarascio et al. 2022; Traina and Kirov 2022). The emerging dynamics point towards the creation of semi-monopsonistic labour markets; namely, labour markets which are concentrated and thus non-competitive, there being only a few 'buyers of labour' and where labour tends to be 'sold' at a lower price than in competitive labour markets (Marinescu and Posner 2019).

Concentrated markets having a degrading effect on labour standards is not a recent discovery, but this notion has recently attracted increasing attention from scholars and expert observers (OECD 2022) as it appears to be further exacerbated by the digital economy and especially in the context of digital labour platforms. For instance, studies based on elasticity conducted into crowdworking platforms, such as Amazon Mechanical Turk and PeoplePerHour, found that not only do (certain) digital labour platforms hold a strong market power but that they have learned how to use it in order to exert a downward pressure on labour costs (Dube et al. 2020; Duch-Brown et al. 2022).³⁵

The concentration of labour market power among tech and digital business players is not the only factor that gives these firms the ability to control the conditions under which (digital) remote workers provide their labour. Another key element can also be found in the informational asymmetries which have a strong impact on the contractual conditions that workers are willing to accept since they make them more inclined to take prices below market value. For instance, it has been shown that a policy change in a crowdworking platform demanding prospective clients/contractors to disclose more information (for instance, the rate they are willing to pay and the level of experience required) has a positive effect on wages (Duch-Brown et al. 2022).

Furthermore, the bargaining imbalance between the tech and digital business players and workers has been aggravated by businesses' direct access to digital technology as well as their leading role in technological innovation (Traina and Kirov 2022). Using Eeckhout's metaphor, the domination of digital technology has allowed digital economy players to build a moat around themselves (Eeckhout 2021: 23). Not only does this protect and make inaccessible the key drivers of their market power, but it also boosts their data collection and data mining capabilities. This enhances firms' ability to extract

35. The correlation between market concentration and declining working conditions can be measured by looking at elasticity in a given firm or sector which quantifies the sensitivity with which workers react to changes in wages (Posner 2021: 21; Dube et al. 2020). Put simply, low elasticity indicates that, when faced with a reduction in wages, few workers will leave the company.

revenues from work processes without there then being effective legal mechanisms to redistribute this additional revenue to workers (Schechter 2021). The monopolisation of technology thus proves to be a tool of domination, causing a further widening of the bargaining gap between employers and workers (Guarascio 2022).

While tech and digital employers are increasing their bargaining power, among workers the opposite phenomenon is occurring (Zwysen and Piasna 2023). Digital remote work is often performed by freelancers; atomised workers who are unable to determine the terms and conditions of their labour and who, even when they are classified as ‘workers’, see their bargaining power losing its bite. Remote digital labour confounds the traditional dynamics of unionisation and workers thus have fewer prospects of engaging in effective collective bargaining practices with the powerful parties with which they contract.

The growing gap in the distribution of bargaining power between business and labour calls for an intervention in the legal framework so as to ensure that (excessive) labour market power is better embedded in its regulatory paradigms. To this end, it is not necessary to dig very deep: addressing the distribution of bargaining power between business and labour is one of the fundamental principles that originally shaped labour law as a discipline (Hendrickx 2012). So far, however, labour law has engaged with this function by focusing on the contractual relationship between employers and workers while it is clear that the scope of action should also be expanded. To this end, two avenues could be explored.

The first is to establish, preferably at supranational level across the European Union, a system that ensures that wages are not pushed below market value across the entire production and value generating process and in respect of all labour providers, regardless of status (Manning 2020; Posner 2021: 120). This could be achieved, for instance, through the introduction of social and labour clauses to be observed throughout the whole network of contractual and commercial relationships, both within the economic unit and beyond. Ideally, such social clauses would prevent outsourced labour from being cheaper for the company than hiring its own staff (for a discussion on wage differentiation in relation to outsourcing practices, see Zwysen 2023).

The second is to strengthen the bargaining power of workers through the active promotion of collective bargaining and union representation (Posner 2021: 138; Picard 2019). The recently adopted Minimum Wage Directive goes in that direction in as much as it requires Member States to reach certain standards in terms of collective bargaining coverage. However, the directive only applies to those which EU law already recognises as workers while regulatory support for social dialogue needs to be expanded to take into account the growth of self-employed work, especially among digital and remote workers.³⁶

36. Directive (EU) 2022/2041 of the European Parliament and the Council of 19 October 2022 on adequate minimum wages in the European Union, Article 2.

It is worth noting that, in undertaking this renewal exercise, labour law would be able to rely on a multidisciplinary justification which could strengthen its normative legitimacy. By means of such a regulatory reorientation, labour law would in fact not only reinforce its traditional social function of improving working conditions but it would also curb the excessive bargaining power of tech and digital business players and thus respond to an economic rationale (Steinbaum 2019). And this means that, in a way, and at least vis-à-vis the specific goal of readdressing power asymmetries in the digital economy, labour law would find competition law as an ally. While originally focused on product markets, scholars in both the field of economics and competition law have recently been stressing the importance also of addressing the labour market distortions that aggravate the accumulation of economic power (see the work of scholars such as Eric Posner, Jan Eeckhout, Ioana Marinescu, Arindrajit Dube and Alan Manning, among others). Therefore, and rather interestingly, a certain support has emerged in the competition law field for reinforcing collective bargaining and the wage setting capacity of labour. Remarkably, this has found a first institutional expression in the 2021 Guidelines on collective bargaining and the solo self-employed (Rainone 2022a).

Finally, in order to contain the ability of tech and digital business players to shape the labour market, new norms should be introduced to ensure that data ownership or access does not result in excessive information asymmetries to the detriment of labour providers. Here too, labour law could look at synergies with other disciplines. In particular, improved transparency on the functioning of digital platforms and greater accountability on the part of business players could be obtained through stronger interactions between labour laws, AI, data and algorithmic management regulations (Aloisi 2022; De Stefano 2019; Ponce Del Castillo and Naranjo 2022; Hendrickx 2022). A radical but desirable solution has been proposed by Dario Guarascio and his colleagues who view the core of the problem as lying in the private nature of digital information; they advocate instead for the decommodification of personal data as well as of digital platform infrastructure (Guarascio et al. 2022).

5. Concluding remarks

This chapter has provided a broad cartography of the disruptive impact of digitally mediated remote work on the sustainability and effectiveness of labour law. With online gig work as the tip of the iceberg, work carried out remotely and through digital infrastructure means that labour law is losing its bite. Digital remote workers no longer resemble the prototype found in existing labour norms, but neither are they in the position of actually enjoying economic freedoms. And that's not all: the normative concepts related to the employer's business activity assume blurred boundaries as traditional interpretations of these notions do not even come close to capturing the actual expressions of economic power. At the same time, the existing body of workers' rights appears inadequate to address the unprecedented amassing of economic and bargaining power in the hands of the few tech and digital business players.

While discussing these challenges, several constructive insights have emerged. First, opting for a functional reinterpretation of specific normative notions would help readjust

the scope of otherwise outdated and inapplicable notions. A purposive hermeneutic approach should not be perceived as a taboo: the current EU legal system provides the space to conduct such an operation since a similar renewal effort has already occurred in other fields of law, including competition law.

The second insight is that business strategies based on digital, remote and outsourced labour will continue to aggravate labour market power asymmetries as long as legal systems allow it. Evidently, current labour law frameworks are ill-equipped to curb the deregulatory pressure that the tech and digital business players are exerting on working conditions. New instruments are necessary. Regulators should thus evolve innovative solutions to mitigate the hegemonic drift of the platforms and these players. In this respect, it seems particularly urgent to provide active support to collective bargaining and to ensure a minimum floor for labour standards across the entire labour supply chain. Such interventions are not only required to promote the improvement of working conditions in the EU but they can also count on an economic justification since they would contribute to mitigating the expanding economic and labour market power of certain dominant economic players.

Finally, a time when working conditions are so heavily influenced by private actors, and when the key to their power is access to data and the dominance of digital technology, is also a time for the emergence of new paradigms and for a creative and multifocal approach to be taken to normative solutions. A cross-disciplinary perspective – looking at competition law but also at privacy and AI regulations – would therefore bring added value to improving the effectiveness of existing labour norms. A consideration of the developments which are occurring in other fields of law can prove helpful in the effort to modernise the interpretation of classical normative notions, as can exploring innovative regulatory avenues. But, before regulatory solutions can be developed along those axes, that cross-disciplinary perspective itself needs to emerge more structurally from scholarly research. The answer may be close, yet it will be unreachable if one does not know where to look for it.

References

- Adams-Prassl J. (2019) What if your boss was an algorithm? Economic incentives, legal challenges, and the rise of artificial intelligence at work, *Comparative Labor Law & Policy Journal*, 41 (1), 123-146.
- Alexandri E., Seymour D., Thoung C.M. and Suta C. (2023) Short and medium-term sectoral employment: forecasting the future development of remote work, Report, ETUI [forthcoming].
- Aloisi A. (2016) Commoditized workers: Case study research on labour law issues arising from a set of 'on-demand/gig economy' platforms, *Comparative Labor Law & Policy Journal*, 13 (3), 653-690.
- Aloisi A. (2022) Platform work in Europe: Lessons learned, legal developments and challenges ahead, *European Labour Law Journal*, 13 (1), 4-29. <https://doi.org/10.1177/20319525211062557>
- Aloisi A. and De Stefano V. (2022) *Your boss is an algorithm*, Bloomsbury.

- Aloisi A. (forthcoming) Regulating algorithmic management at work in the European Union: Data protection, non-discrimination and collective rights, *International Journal of Comparative Labour Law and Industrial Relations*.
- Althoff L., Eckert F., Walsh S. and Ganapati C. (2022) The geography of remote work, *Regional Science and Urban Economics*, 93, 1-21. <https://doi.org/10.1016/j.regsciurbeco.2022.103770>
- Beltzer R.M. (2007) The transfer of undertakings and the importance of taking over personnel: A vicious circle, *International Journal of Comparative Labour Law and Industrial Relations*, 23 (1), 139-155.
- Bennett J. and Belgrave S.L. (1996) Taking stock after Rygaard, *Public Procurement Law Review*, 1, 16-25.
- Caruso B. (2019) Il lavoro digitale e tramite piattaforma: profili giuridici e di relazioni industriali, *Diritto delle relazioni industriali*, 29 (4), 1005-1039.
- Countouris N., Freedland M. and De Stefano V. (2023) Making labour law fit for all those who labour, *Social Europe*, 17 January 2023. <https://www.socialeurope.eu/making-labour-law-fit-for-all-those-who-labour>
- Dagelet F., Havas A. and Wevers M. (2021) The future of work is here, *Liberty Global policy series March 2021*, Deloitte.
- De Stefano V. (2019) 'Negotiating the algorithm': Automation, artificial intelligence and labour protection, *Comparative Labor Law & Policy Journal*, 41 (1), 15-46.
- De Stefano V. (2022) The EU Commission's proposal for a Directive on Platform Work: An overview, *Italian Labour Law e-Journal*, 15 (1), 107-117. <https://doi.org/10.6092/issn.1561-8048/15233>
- Dube A., Jacobs J., Naidu S. and Suri S. (2020) Monopsony in online labour markets, *American Economic Review: Insights*, 2 (1), 33-46. <https://doi.org/10.1257/aeri.20180150>
- Duch-Brown N., Gomez-Herrera E., Mueller-Langer F. and Tolan S. (2022) Market power and artificial intelligence work on online labour markets, *JRC Digital Economy Working Paper 2021-10*, European Commission.
- Eeckhout J. (2021) *The profit paradox: How thriving firms threaten the future of work*, Princeton University Press.
- Eurofound (2023) *The rise in telework: Impact on working conditions and regulations*, Publications Office of the European Union. <https://doi.org/10.2806/069206>
- European Commission (2021) *Communication from the Commission: Guidance on the application of the referral mechanism set out in Article 22 of the merger regulation to certain categories of cases*, COM(2021) 1959 final, 26 March 2021.
- European Commission (2022) *Communication from the Commission: Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons*, Official Journal of the European Union, C 374/02, 30 September 2022.
- Even Z. (2014) Distinction asset-intensive/labour intensive not decisive; all Spijkers criteria relevant, *European Employment Law Cases*, 6, 6-10.
- Felstead A. (2022) *Remote working: A research overview*, Routledge.
- Ferreira S. (2022) *Welcome to digital nomadland*, Wired, 16 December 2022. <https://www.wired.com/story/digital-nomad-village-madeira-portugal/>
- Gawer A. and Srnicek N. (2021) *Online platforms: Economic and societal effects*, Study, March 2021, European Parliament. <https://doi.org/10.2861/844602>

- Georgiou D. (2022) 'Business risk-assumption' as a criterion for the determination of EU employment status: a critical evaluation, *Industrial Law Journal*, 51 (1), 109-137. <https://doi.org/10.1093/indlaw/dwaa031>
- Gruber-Risak M. (2022) Classification of platform workers: A scholarly perspective, in Gyulavári T. and Menegatti E. (eds.) *Decent work in the digital age: European and Comparative Perspective*, Hart Publishing, 85-104.
- Guarascio D., Coveri A. and Cozza C. (2022) Amazon and the power of big digital platforms, *Social Europe*, 17 January 2022. <https://www.socialeurope.eu/amazon-and-the-power-of-big-digital-platforms>
- Gyulavári T. (2021) Collective rights of platform workers: The role of EU law, *Maastricht Journal of European and Comparative Law*, 27 (4), 406-424. <https://doi.org/10.1177/1023263X20932070>
- Hendrickx F. (2012) Foundations and functions of contemporary labour law, *European Labour Law Journal*, 3 (2), 108-129. <https://doi.org/10.1177/201395251200300202>
- Hendrickx F. (2022) Regulating worker privacy and data protection: Exploring the global source system, in Gyulavári T. and Menegatti E. (eds.) *Decent work in the digital age: European and Comparative Perspective*, Hart Publishing, 293-310.
- ILO (2021a) *World Employment and Social Outlook 2021 – The Role of Digital Labour Platforms in Transforming the World of Work*, Flagship Report, ILO.
- ILO (2021b) *Teleworking arrangements during the COVID-19 crisis and beyond*, ILO.
- Kountouris N. (2018) The concept of 'worker' in European labour law: Fragmentation, autonomy and scope, *Industrial Law Journal*, 47 (2), 192-225. <https://doi.org/10.1093/indlaw/dwx014>
- Manning A. (2020) Why we need to do something about the monopsony power of employers, *LSE Blog*, 5 September 2020. <https://blogs.lse.ac.uk/usappblog/2020/09/05/why-we-need-to-do-something-about-the-monopsony-power-of-employers/>
- Marinescu I.E. and Posner E.A. (2019) Why has antitrust law failed workers?. <http://dx.doi.org/10.2139/ssrn.3335174>
- McKinsey Global Institute (2021) *The future of work after COVID-19*, McKinsey & Company. <https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19>
- McMullen J. (2021) Leaving a legacy: Recent jurisprudence of the European Court on Transfer of Undertakings, *Industrial Law Journal*, 50 (1), 130-157. <https://doi.org/10.1093/indlaw/dwab004>
- Menegatti E. (2020) Taking EU labour law beyond the employment contract: The role played by the European Court of Justice, *European Labour Law Journal*, 11 (1), 26-47. <https://doi.org/10.1177/2031952519884713>
- Nagy C.I. (2019) Has the time come to federalize private competition law? The autonomous concept of undertaking in the CJEU's Ruling in Case C-724/17 *Vantaan kaupunki v. Skanska Industrial Solutions Oy and Others*, *Maastricht Journal of European and Comparative Law*, 26 (5), 720-728.
- OECD (2022) *OECD employment outlook 2022: Building back more inclusive labour markets*, OECD Publishing. <https://doi.org/10.1787/1bb305a6-en>
- Piasna A., Zwysen W. and Drahoukoupil J. (2022) *The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey (IPWS)*, Working Paper 2022.05, ETUI. <https://www.etui.org/publications/platform-economy-europe>
- Picard S. (2019) *Competition issues in labour markets*, Note by TUAC, OECD.

- Ponce Del Castillo A. and Naranjo D. (2022) Regulating algorithmic management: An assessment of the EC's draft Directive on improving working conditions in platform work, Policy Brief 2022.08, ETUI. <https://www.etui.org/publications/regulating-algorithmic-management>
- Posner E.A. (2021) *How antitrust failed workers*, Oxford University Press.
- Rainone S. (2018) Labour rights in the making of the EU and in the CJEU case law: A case study on the Transfer of Undertakings Directive, *European Labour Law Journal*, 9 (3), 299-325. <https://doi.org/10.1177/2031952518801609>
- Rainone S. and Countouris N. (2021) Collective bargaining and self-employed workers: The need for a paradigm shift, Policy Brief 2021.11, ETUI. <https://www.etui.org/publications/collective-bargaining-and-self-employed-workers>
- Rainone S. (2022a) Labour rights beyond employment status: Insights from the competition law guidelines on collective bargaining, in Addabbo T., Ales E., Curzi Y., Fabbri T., Rymkevich O. and Senatori I. (eds.) *Defining and protecting autonomous work: A multidisciplinary approach*, Palgrave Macmillan, 167-191.
- Rainone S. (2022b) Enforcing EU information and consultation rights, in Rasnača Z., Koukiadaki A., Bruun N. and Lorcher K. (eds.) *Effective enforcement of EU labour law*, Hart Publishing.
- Risi E. and Pronzato R. (2021) Smart working is not so smart: Always-on lives and the dark side of platformisation, *Work Organisation, Labour & Globalisation*, 15 (1), 107-125.
- Schechter A. (2021) The profit paradox: 'What's good for firms is not necessarily good for the workers', *Promarket*, 25 May 2021. <https://promarket.org/2021/05/25/profit-paradox-eeckhout-market-power-workers-wages/>
- Schor J. (2022) Working on overdrive: The future of platforms and working time, *Green European Journal*, 30 November 2020. <https://www.greeneuropeanjournal.eu/working-on-overdrive-the-future-of-platforms-and-working-time/>
- Stănculescu A. (2018) The concept of undertaking in the European Union competition law, *Challenges of the Knowledge Society. Public Law*, 668-674.
- Steinbaum M. (2019) Monopsony and the business model of gig economy platforms, Note (Roundtable on Competition Issues in Labour Markets), OECD Publishing. [https://one.oecd.org/document/DAF/COMP/WD\(2019\)66/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)66/en/pdf)
- Szpejna M. and Boudalaoui-Buresi Z. (2020) The scope of EU labour law: Who is (not) covered by key directives?, *In-Depth Analysis*, October 2020, European Parliament.
- Traina J. and Kirov I. (2022) How the rise of labor market power helps explain the fall of US manufacturing employment, *Promarket*, 18 January 2022. <https://promarket.org/2022/01/18/labor-market-power-rise-technology-manufacturing/>
- Weil D. (2019) Understanding the present and future of work in the fissured workplace context, *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 5 (5), 147-165. <https://doi.org/10.7758/RSF.2019.5.5.08>
- Zwysen W. (2023) Working apart: Polarisation driven by widening firm gaps and outsourcing, Working Paper 2023.03, ETUI. <https://www.etui.org/publications/working-apart-polarisation-driven-widening-firm-gaps-and-outsourcing>
- Zwysen W. and Piasna A. (2023) Juggling online gigs with offline jobs How local labour markets are driving the growth in internet and platform work: , Working Paper 2023.02, ETUI. <https://www.etui.org/publications/juggling-online-gigs-offline-jobs>
- Zwysen W., Fabris B.L., Gałgóczi B. and Rainone S. (2023) Labour market and social developments in the EU: Crises and recovery, in Countouris N., Piasna A. and

Theodoropoulou S. (eds.) Benchmarking Working Europe 2022 Europe in transition –
Towards sustainable resilience , ETUI and ETUC, 51-75.

All links were checked on 20.03.2023.

Chapter 10

Remote work in private international law

Uglješa Grušić

1. Introduction

Remote work is on the rise. It is estimated that, in April 2020 (that is, just after the beginning of the Covid-19 pandemic) 33.7 per cent of employees in the European Union were working exclusively at home and 14.2 per cent were hybrid workers working in a variety of places including at home, on the employer's premises and elsewhere (Eurofound 2020: 31). Remote work is likely to continue to be an important feature of the world of work in the years ahead. As the Cambridge Econometrics report commissioned by the European Trade Union Institute shows, by 2026, 18 per cent of workers in the EU are projected to be working from home while, in some scenarios, the number of workers who are working from home is projected to increase even more (Alexandri et al. 2023: 6-7).

A common feature of remote work is that the worker is detached from the employer's premises. In some cases, the worker may even be detached from the country in which his or her employer and its premises are situated. There is some uncertainty about the legal regulation of the cross-border aspects of remote work. For example, the Cambridge Econometrics report states that 'the legality and feasibility of remote, offshored work depends on the policies of the countries where employers and workers are located', before making the following key finding:

The pandemic has rapidly changed the expectations of remote work, which could lead to a rise in remote workers being located offshore from a business's headquarters. However, laws and policies may prevent this type of work arrangement from becoming feasible in the short term. (Alexandri et al. 2023: 25)

This chapter argues that the legal regulation of the cross-border aspects of remote work is primarily the task of private international law and that therefore the following questions become crucial. Which courts have jurisdiction over disputes arising out of the employment contracts of remote workers? Which laws apply to such contracts? And can the rules of private international law deal adequately with these increasingly popular working patterns?

This chapter therefore addresses these questions from the perspective of European private international law. It is divided into three substantive sections. Section 2 explains why the legal regulation of the cross-border aspects of remote work is primarily the task of private international law and describes the special jurisdictional and choice-of-law rules applying to individual employment contracts in European private international

law whose aim is to protect the employee and the labour market in which the employee participates. Section 3 takes a closer look at the concept of remote work, particularly at its features which have relevance to private international law, while Section 4 examines whether European private international law deals adequately with the challenges presented by remote work. Section 5 concludes.

2. European private international law of employment

The legality and feasibility of remote work indeed depends on the laws and policies of the countries where employers and workers are located. This is because there is not, even within the EU, a comprehensive legal regulation of remote work at supranational level: many aspects of the legal regulation of remote work remain territorial.

In order to answer the question whether a particular cross-border working pattern is legal and feasible, two prior questions need to be addressed. First, which laws apply to that cross-border working pattern? If a particular cross-border working pattern is legal and feasible under the law of country A, but illegal and infeasible under the law of country B, whether the law of country A or the law of country B is applicable becomes a decisive question. Second, which courts have jurisdiction over disputes arising out of a particular cross-border working pattern? This question is important because the outcome of a dispute may depend on where the worker sues, or is being sued, and because the location of the competent court also influences the applicable law – for example, courts can apply the overriding mandatory rules of their own legal system, regardless of the otherwise applicable law.¹ In the EU, these questions are governed by the European private international law of employment (Grušić 2015).

The European private international law of employment refers to that part of EU law that regulates cross-border employment relationships. Its rules are set out in the Brussels I Regulation,² the Lugano Convention,³ the Rome I Regulation,⁴ the Rome II Regulation,⁵

1. Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Art. 9(2).

2. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/1. This Regulation superseded Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L12/1 which, in turn, superseded the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters [1972] OJ L299/32. See also the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2005] OJ L299/62, [2013] OJ L79/4.

3. 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2007] OJ L339/3, replacing the 1988 Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters [1988] OJ L319/9.

4. (n 1), superseding the 1980 Rome Convention on the law applicable to contractual obligations [1980] OJ L266/1.

5. Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) [2007] OJ L199/40.

the Posted Workers Directive⁶ and the Posted Workers Enforcement Directive.⁷ The Brussels I Regulation deals with the jurisdiction of the courts of the Member States over disputes arising out of individual employment contracts and the recognition and enforcement of the judgments of those courts in employment matters. The Lugano Convention effectively extends, with some modifications, the Brussels I Regulation rules to Norway, Switzerland and Iceland. The Rome I and II Regulations deal with the law applicable to the contractual and non-contractual obligations arising out of or in relation to individual employment contracts. The Posted Workers Directive guarantees to workers posted by their employer from one Member State to another, under a service contract that the employer has obtained in the host Member State, the application of certain employment standards that are in force in that Member State. The Posted Workers Directive and the Posted Workers Enforcement Directive provide mechanisms for the enforcement of those standards.

A word should be said about the impact of Brexit on the European private international law of employment. The United Kingdom ceased to be bound by EU law following the expiry of the transition period; that is, on 1 January 2021. The status of the legal instruments that comprise the European private international law of employment following the expiry of the transition period is defined by the UK-EU Withdrawal Agreement.⁸ The Rome I and II Regulations continue to apply in the UK in respect of contracts concluded before the end of the transition period and in respect of events giving rise to damage, where such events occurred before the end of the transition period.⁹ The provisions regarding jurisdiction of the Brussels I Regulation and the Posted Workers Directive continue to apply in the UK and in the Member States in situations involving the UK in respect of legal proceedings instituted before the end of the transition period.¹⁰ The Brussels I Regulation continues to apply to the question of the recognition and enforcement of judgments and to the question of whether parallel proceedings are allowed between the UK and the Member States in respect of legal proceedings instituted before the end of the transition period.¹¹ In April 2020 the UK applied to join the Lugano Convention but, in June 2021, the EU decided that it was ‘not in a position to give its consent’ to the UK’s application.¹² The UK has unilaterally decided to retain some aspects of the European private international law of employment. The

6. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L18/1; Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services [2018] OJ L173/16.
7. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) [2014] OJ L159/11.
8. 2019 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C384/1.
9. *Ibid.* Art. 66.
10. *Ibid.* Art. 67(1).
11. *Ibid.* Art. 67(1) and 67(2).
12. The ‘note verbale’ presented to the Swiss Federal Council as depositary of the Lugano Convention is available at <https://www.eda.admin.ch/dam/eda/fr/documents/aussenpolitik/voelkerrecht/autres-conventions/Lugano2/20210701-LUG-ann-EU.pdf>.

Rome I and II Regulations have been incorporated into UK law as ‘retained EU law’.¹³ Protective jurisdictional rules for individual employment contracts, modelled after the equivalent rules of the Brussels I Regulation, have also been adopted.¹⁴

Remote work does not, without more, concern the posting of workers within the meaning of the Posted Workers Directive and the Posted Workers Enforcement Directive. Consequently, these directives are not examined further here. The Brussels I Regulation, the Lugano Convention and the Rome I Regulation contain special rules for ‘individual employment contracts’ whose main objective is the protection of employees as weaker contractual parties. These rules apply to determine the jurisdiction of the courts over disputes arising out of, and the law applicable to, individual employment contracts. The Rome II Regulation, which concerns the determination of the law applicable to non-contractual obligations, does not contain special rules for ‘individual employment contracts’ but it does provide mechanisms for subjecting non-contractual obligations arising in the context of a relationship based on contract (for example, obligations arising out of a breach of the duties of care imposed by general law, such as the law of negligence) to the law that governs the contract.¹⁵ It is for these reasons that the focus in this chapter is on the rules contained in the Brussels I and Rome I Regulations.

The Brussels I Regulation protects employees in two ways. First, it gives employees access to more forums for obtaining redress than it does employers. In general terms, an employee may commence proceedings in the EU in any of the following courts:

- in the courts of the Member State in which the employer is domiciled;¹⁶
- in the courts for the habitual place of work;¹⁷
- absent a habitual place of work, in the courts for the engaging place of business;¹⁸
- as regards a dispute arising out of the operations of the employer’s branch, agency or other establishment, in the courts for the place of that establishment;¹⁹

13. EU Withdrawal Act 2018; Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/83. Although UK courts continue to apply the provisions of the Rome I and II Regulations as domestic UK law, the EU Withdrawal Act 2018 has caused a number of important changes to the relationship between domestic law and EU law. The Rome I and II Regulations will continue to be interpreted in accordance with the case law and general principles of EU law as they stood at the end of the transition period: s. 6(3)(a). However, the UK Supreme Court is explicitly not bound by any such case law and can depart from it under certain conditions: s. 6(4)(a) and 6(5). UK courts are not bound by the case law of, and cannot refer cases to, the European Court of Justice after the end of the transition period: s. 6(1). However, UK courts ‘may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal’: s. 6(2).

14. Civil Jurisdiction and Judgments Act 1982, s. 15A, 15C, 15D, 15E.

15. Rome II, Art. 4(3), 10(1), 11(1), 12(1); cf. Art. 9.

16. Brussels I Regulation, Art. 21(1)(a).

17. *Ibid.* Art. 21(1)(b)(i).

18. *Ibid.* Art. 19(1)(b)(ii). The Court of Justice of the EU dealt with the relationship between the connecting factors of the habitual place of work and the engaging place of business, and with the interpretation of the latter connecting factor, in Case C-384/10 *Jan Voogsgaerd v Navimer SA* [2011] ECR I-13275. It is not entirely clear whether ‘engaging place of business’ refers to the conclusion of the employment contract by a particular place of business or at a particular place of business. Furthermore, the connecting factor of habitual place of work is interpreted so broadly that the connecting factor of engaging place of business is virtually deprived of relevance. I have therefore argued elsewhere that the connecting factor of engaging place of business should be abolished (Grušić 2013).

19. Brussels I Regulation, Art. 20(1) and 7(5).

- on a counter-claim, in the court in which the original claim is pending;²⁰
- where there is more than one defendant employer, in the courts of the Member State in which any one of them is domiciled.²¹

In contrast, an employer may only commence proceedings:

- in the courts of the Member State in which the employee is domiciled;²²
- on a counter-claim, in the court in which the original claim is pending.²³

Second, the Brussels I Regulation precludes employers from imposing unfavourable jurisdiction agreements on employees. A jurisdiction agreement entered into before a dispute has arisen is effective only if it increases the number of forums available to the employee.²⁴ For example, a German-domiciled employer who hires an employee domiciled in France to work habitually in France cannot agree with the employee in advance that German courts will have exclusive jurisdiction over any disputes arising out of the employment relationship. According to the Regulation, the employer can sue the employee only in France, whereas the employee may commence proceedings in either France or Germany. The parties can only agree in advance that the employee can commence proceedings in another country, such as Belgium. Submission to the court's jurisdiction by entering an appearance is also allowed.²⁵ For example, if an employee is sued in a Member State other than the one in which he is domiciled, the court which is seized of the dispute will have jurisdiction if the employee appears to defend the claim without first contesting the court's jurisdiction. Submission by an employee can confer jurisdiction only if the court, before assuming jurisdiction, has ensured that the employee is informed of the right to contest jurisdiction and of the consequences of entering or not entering an appearance.²⁶ If the court of a Member State violates these protective jurisdictional rules where the employee was the defendant, the resulting judgment will be refused recognition and enforcement in other Member States.²⁷

The special jurisdictional rules for individual employment contracts can be contrasted with the jurisdictional rules applicable to contracts in general. For contracts in general, the Brussels I Regulation allows the full application of party autonomy under which the parties are allowed to agree on the competent court with very few restrictions.²⁸ This is a key difference because the stronger party is able to impose unfavourable jurisdictional agreements on the weaker one where the protective jurisdictional rules do not apply. In the absence of a jurisdiction agreement, the parties to a contract for the provision of services are given equal access to the available bases of jurisdiction, the most important of which, for present purposes, is the rule that the claimant can sue the defendant in the courts of a Member State where, under the contract, the services were provided

20. Ibid. Art. 22(2).

21. Ibid. Art. 20(1) and 8(1).

22. Ibid. Art. 22(1).

23. Ibid. Art. 22(2).

24. Ibid. Art. 23.

25. Ibid. Art. 26(1).

26. Ibid. Art. 26(2).

27. Ibid. Art. 45(1)(e)(i).

28. Ibid. Art. 25.

or should have been provided.²⁹ A violation of the jurisdictional rules applicable to contracts in general is not a ground for refusing recognition or enforcement of the resulting judgment.³⁰

The law applicable to individual employment contracts is determined by the Rome I Regulation. The parties to an individual employment contract are allowed to choose the applicable law.³¹ But the choice cannot deprive employees of the protection afforded to them by the mandatory provisions of the law applicable in the absence of choice.³² In the absence of choice, the contract is governed by the law of the country of the habitual place of work³³ or, if there is no habitual place of work, by the law of the country of the engaging place of business.³⁴ However, where it appears from the circumstances as a whole that the contract is more closely connected with another country, that country's law applies.³⁵

Here, too, the special choice-of-law rules for individual employment contracts can be contrasted with the choice-of-law rules applicable to contracts in general. For contracts in general, the Rome I Regulation allows the full application of party autonomy under which the parties are allowed to agree on the applicable law with very few restrictions.³⁶ This is a key difference allowing the stronger party to impose unfavourable choice-of-law agreements on the weaker one. In the absence of a choice-of-law agreement, a contract for the provision of services is governed by the law of the country where the service provider habitually resides,³⁷ although, where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, that country's law applies.³⁸ Furthermore, there are also special choice-of-law rules for the formal and material validity of contracts,³⁹ whereas the law applicable to the legal capacity of individuals to enter a contract is determined pursuant to domestic choice-of-law rules.⁴⁰ The courts are allowed to apply the overriding mandatory provisions of the forum⁴¹ and, under certain conditions, even the overriding mandatory provisions of the country of performance.⁴²

29. Ibid. Art. 7(1)(b) second indent.

30. Ibid. Art. 45(3).

31. Rome I, Art. 8(1).

32. Ibid.

33. Ibid. Art. 8(2).

34. Ibid. Art. 8(3).

35. Ibid. Art. 8(4).

36. Ibid. Art. 3.

37. Ibid. Art. 4(1)(b).

38. Ibid. Art. 4(3).

39. Ibid. Art. 10 and 11.

40. Ibid. Art. 1(2)(a); see also Art. 13.

41. Ibid. Art. 9(2).

42. Ibid. Art. 9(3).

3. Remote work: features of relevance for private international law

Working remotely means working outside the premises of the employer. As Alan Felstead explains, there are different kinds of remote work (Felstead 2022). First, there is working at home. Historically, this kind of remote work has been done mainly by low-skilled and low-paid workers engaged in manufacturing and routine service work, for example: manufacturing toys and garments; packing boxes and envelopes; or performing routine clerical activities. Nowadays, many homeworkers are managerial, professional and administrative staff who possess higher qualifications and skills, and receive better pay. Second, there is working from home, where the home is used as a base from which work is done. Examples include some transport workers and commercial representatives who perform some of their work (usually of an administrative or preparatory nature) at home even though most of their work is done on the move. Third, there is teleworking, referring to the phenomenon of using information technology to work from anywhere and at any time. Fourth, remote work can be combined with more traditional work patterns, giving rise to hybrid working. This involves working in a variety of places, including at or from home, on the employer's premises, on the move and elsewhere.

The growth of remote work has created three trends that are of relevance for private international law.

The first is a switch from working at offices to working at home. This has enabled many employees to detach themselves from a fixed place of work and even to live and work outside the country in which their employer and its premises are situated.

The reduced importance of territorial connections has led to the second trend, which is a broadening of the labour pool. Employers now find it easier than before to hire employees based overseas. These two trends are highlighted in the Cambridge Econometrics report, which explains that 'More jobs moving to fully remote working could potentially open more jobs to the possibility of offshoring, as the work could feasibly be done from almost anywhere with a decent internet connection' (Alexandri et al. 2023: 24). But the report also explains that, in addition to 'offshoring', we are currently witnessing:

[A] new phenomenon: those who work 100% remotely moving to a different country to their place of employment. This phenomenon is difficult to understand with macro-level data because workers living abroad but working for a domestic company may still be counted as resident workers (thus, not as offshore workers). (Alexandri et al. 2023: 25)

One of the key findings of the report is that the 'pandemic has rapidly changed the expectations of remote work, which could lead to a rise in remote workers being located offshore from a business's headquarters' (Alexandri et al. 2023: 25).

These two trends are undermining the importance of a physical place of work. This presents a challenge to private international law, whose rules on individual employment

contracts are grounded in the territorial jurisdiction of the courts and the territorial application of employment laws.

The third trend is that the growth of remote work has the potential to put additional pressure on the employee/self-employed worker dichotomy. There is some indication that this is possibly already happening. The Cambridge Econometrics report states that, as a consequence of the development of working from home, 'it is possible that employers resort to temporary workers in order to carry out specific tasks, without incurring the (higher) costs associated with hiring a permanent worker' (Alexandri et al. 2023: 19). Furthermore, the report presents one possible scenario of the future of remote work, which it calls 'Acceleration of WFH [work from home] with contract changes', in which some of the workers who convert from in-person to working from home will convert from being permanent employees to self-employed contractors with the consequence that any rise in working from home will lead to a rise in the rate of self-employment workers (by 4.4 per cent in the EU) (Alexandri et al. 2023: 58). Of course, any such shift from permanent to self-employed contract positions, 'while providing benefits to firms, could undermine workers' power, pay, and benefits' (Alexandri et al. 2023: 7). Any such shift from permanent to self-employed contract positions also has the potential to undermine the protection given to employees by the Brussels I and Rome I Regulations: this is because the employee/self-employed dichotomy is also at the core of the European private international law of employment.

For example, imagine again that a German-domiciled employer hires an employee domiciled in France to work habitually in France; or that an employee of a German-domiciled employer moves from Germany to France to live and habitually work in France. In line with the Brussels I Regulation, as we have seen, if a dispute arises the employee can sue the employer in either Germany or France whereas the employer can only sue the employee in France. Furthermore, the parties cannot in advance, by means of a jurisdiction agreement, deprive the employee of the right to sue the employer in either Germany or France or allow the employer to sue the employee anywhere else other than in France. Similarly, the Rome I Regulation provides that the employment contract of an employee habitually working in France will be governed by French law and that a choice-of-law agreement cannot deprive the employee of the protection afforded by the mandatory provisions of French law.

However, if the employer succeeds in re-classifying the remote worker as self-employed, the worker will be deprived of the protection afforded by the protective rules of the Brussels I and Rome I Regulations. This will allow the employer to impose onerous jurisdiction and choice-of-law agreements on the worker and, even where is no jurisdiction agreement but the worker's services are provided, or should be provided, in the employer's country, to sue the worker in its own country or in any other Member State whose courts are given jurisdiction by the jurisdictional rules applicable to contracts in general.

4. European private international law of employment and the challenges presented by remote work

This section assesses how the European private international law of employment deals with the three challenges presented by remote work for private international law: 1) the undermining of the territoriality principle; 2) the risk of misclassification; and 3) the risk of the misuse of dispute resolution agreements.

4.1 Undermining the territoriality principle

The main connecting factor used in both the jurisdictional rules of the Brussels I Regulation and the choice-of-law rules of the Rome I Regulation is the habitual place of work. The subsidiary connecting factor, referring to the engaging place of business, becomes relevant only if there is no habitual place of work. Some of the key cases of the Court of Justice of the EU on the concept of the habitual place of work concern remote workers. Particularly important are *Mulox*⁴³ and *Rutten*.⁴⁴ These cases concerned the determination of the habitual place of work of commercial representatives working from home; that is, using their homes as the base from which their work was carried out. The habitual place of work was held to be the place where the employees' homes were located. This interpretation of the concept was later codified in the Rome I Regulation and the 2012 Brussels I Regulation Recast, which use the formula 'the law of the country in which or, failing that, *from which* the employee habitually carries out his work'.

It is therefore clear that, when an employer hires an employee based overseas, the habitual place of work is in the country in which the employee is based. The determination of the habitual place of work of an employee who habitually worked in one country, but then moved to another to live and work there remotely, is more complicated. Whether the habitual place of work changes depends primarily on the intention of the parties. The case law of the Court of Justice of the EU, in particular the *Weber* case,⁴⁵ and Recital 36 of the Rome I Regulation confirm that work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out delegated tasks abroad. Otherwise, work carried out in another country should be regarded as permanent. All the circumstances can be taken into account to determine the parties' intention, but the most important are the content of any annexes to the employment contract concluded, and any written communication exchanged, in relation to the move. The intention of the parties is not the only relevant factor, however. In particular, the duration of carrying out work abroad should be considered. Thus, if an employee has been working in a foreign country for a significant amount of time, for example 10 years, he should be regarded as habitually working in that country even though he used habitually to work in another country and the parties

43. Case C-125/92 *Mulox v Geels* [1993] ECR I-4075.

44. Case C-383/95 *Rutten v Cross Medical Ltd* [1997] ECR I-57.

45. Case C-37/00 *Weber v Universal Ogden Services Ltd* [2002] ECR I-2013.

intended the employee to return there.⁴⁶ This indicates that a temporary relocation from one country to another should not have an impact on the habitual place of work as long as the parties intend the employee to return to the former country and the duration of the relocation is not of significant length.

A special category of remote workers are teleworkers working from anywhere or nomadic workers. If such workers do not establish a habitual place of work, the subsidiary connecting factor of the engaging place of business becomes relevant. Also, the escape clause in Article 4(3) of the Rome I Regulation, which allows the court to disregard the law of the country of the habitual place of work/engaging place of business, and apply the law of the country with which the contract is more closely connected, is more likely to be used to determine the law applicable to the employment contracts of teleworkers or nomadic workers.

The hiring of employees based overseas can have two important consequences. The first is the fragmentation of the internal labour market within the firm and the subjection of the internal labour market to different jurisdictions and laws, with the concomitant creation of obstacles to collective bargaining. The second is the expansion of the labour pool to workers based in foreign, including non-EU, countries which carries the risk of undermining employment standards and creating unfair competition.

The question arises whether the jurisdictional rules of the Brussels I Regulation and the choice-of-law rules of the Rome I Regulation can be interpreted in a way that avoids, or at least mitigates, these consequences. Proposals have been made to adopt solutions that require ‘the coordination of the multiple regulatory sources that interact in a cross-border employment context, in order to take into account the dematerialized dimension of telework and the international mobility of teleworkers’ (Barreda 2022). While it is correct that the territorial solutions of European private international law struggle to accommodate the phenomenon of cross-border remote work that defies national borders, it appears unlikely that the special jurisdictional and choice-of-law rules for individual employment contracts in European private international law can be interpreted in a way that does not put the habitual place of work at the centre of the legal regulation of the cross-border aspects of remote work. Nor is it likely that the European private international law of employment can be changed in the near future by introducing tailor-made jurisdictional and choice-of-law solutions. Without persuasive evidence, which is currently lacking, that the special jurisdictional and choice-of-law rules for individual employment contracts in European private international law are causing significant problems in practice, there is unlikely to be any political appetite to change these rules.

However, the risk created by the expansion of the labour pool to workers based in other countries can be dealt with in two ways. First, if necessary, by the adoption of the substantive rules of EU employment law that would require EU-based employers of overseas employees to ensure that certain minimum standards apply to employment

46. Opinion of Advocate General Wahl in Case C-64/12 *Anton Schlecker v Melitta Josefa Boedeker* ECLI:EU:C:2013:241 [10].

relationships with such employees. Second, the risk created by the expansion of the labour pool to workers based in non-EU countries can be dealt with by the overriding application of EU employment standards to situations sufficiently closely connected with the EU.⁴⁷

Also relevant is that an employer may normally commence proceedings only in the courts of the Member State in which the employee is domiciled. Allowing employees to live and work in another country, and hiring employees based in another country, can lead to a change of the forum that is competent to hear claims brought by employers against employees. Since the rule that employers may normally commence proceedings only in the courts of the Member State in which the employee is domiciled is protective of employees, there is no need to change this rule. This rule, however, does not apply where the employee moves from a Member State to live and work in a non-EU state or where employees based in a non-EU state are hired. The jurisdiction of the Member State courts over such employees depends on the application of the traditional rules – that is, those not derived from EU law – found in the domestic laws of Member States, not all of which espouse the goal of employee protection.

Whether the protection of the Brussels I Regulation should be extended to such employees is open for debate. The Brussels I Regulation – with few exceptions – does not regulate the jurisdiction of Member State courts over persons not domiciled within the EU. This militates against extending the protection of the Brussels I Regulation to non-EU domiciled defendant employees. But, given that the Brussels I Regulation does allow employees to commence proceedings in the EU against non-domiciled EU employers who hire employees to work habitually within the EU,⁴⁸ an argument can be made that the protection of the Brussels I Regulation should further extend to encompass non-EU domiciled defendant employees by precluding employment litigation against such employees in the EU. However, given that the protection of non-EU employees who do not work in the EU is not a political priority, there is again unlikely to be any political appetite to change the Brussels I Regulation in this way.

4.2 Risk of misclassification

The protective rules of the Brussels I and Rome I Regulations apply to ‘individual employment contracts’. In *Holterman*,⁴⁹ *Bosworth*,⁵⁰ *Markt24*⁵¹ and *ROI Land Investments*,⁵² the Court of Justice of the EU confirmed the following principles concerning the interpretation of the concept of ‘individual employment contract’:

- it is autonomous; that is, not dependent on domestic law;⁵³

47. Case C-381/98 *Ingmar GB Ltd v Eaton Leonard Technologies Inc* [2000] ECR I-09305.

48. Brussels I Regulation, Art. 6(1) and 21(2).

49. Case C-47/14 *Holterman Ferho Exploitatie BV v von Büllenheim* ECLI:EU:C:2015:574.

50. Case C-603/17 *Bosworth v Arcadia Petroleum Ltd* ECLI:EU:C:2019:310.

51. Case C-804/19 *BU v Markt24 GmbH* ECLI:EU:C:2021:134.

52. Case C-604/20 *ROI Land Investments Ltd v FD* ECLI:EU:C:2022:807.

53. *Holterman* [36]-[37]; *Bosworth* [24]; *Markt24* [24]; *ROI Land Investments* [28]-[29].

- it is the same across all legal instruments that comprise the European private international law of employment;⁵⁴
- the concept of ‘individual employment contract’ in the European private international law of employment finds its inspiration in the concept of ‘worker’ used more generally in substantive EU employment law;⁵⁵
- ‘individual employment contract’ should be interpreted in light of the objective of the protection of employees;⁵⁶
- in order to determine whether a contract is an ‘individual employment contract’, the courts should take into account that individual employment contracts typically exhibit certain characteristics, such as creating a lasting bond which brings the employee, to some extent, within the organisational framework of the employer’s business, presupposing a relationship of subordination of the employee to the employer and containing the essential feature that, for a certain period of time, one person performs services for and under the direction of another in return for which he or she receives remuneration;⁵⁷
- the form of the relationship between the parties is not determinative for the purposes of its autonomous classification.⁵⁸
- it is not relevant whether the work that is the subject of an employment contract has been performed or not.⁵⁹

The autonomous and broad interpretation of the concept of ‘individual employment contract’ indicates that the Brussels I and Rome I Regulations minimise the risk of misclassification by giving the courts an adequate tool to deal with the potential of remote work to put additional pressure on the employee/self-employed worker dichotomy. Moreover, that the concept of ‘individual employment contract’ finds its inspiration in the concept of ‘worker’ used more generally in substantive EU employment law means that, where remote work is carried out through digital labour platforms, remote workers should be able to rely on the rebuttable presumption of an employment relationship, including the reversal of the burden of proof, in the proposed directive on improving working conditions in platform work,⁶⁰ once this instrument enters into force, for the purposes of invoking the application of the protective rules of the Brussels I and Rome I Regulations.

4.3 Risk of the misuse of dispute resolution agreements

That the growth of remote work has the potential to put additional pressure on the employee/self-employed worker dichotomy risks incentivising employers to try to escape

54. *Holterman* [38]; *Bosworth* [22]; *ROI Land Investments* [29], [50].

55. *Holterman* [36], [41], [46]; *Bosworth* [25], [26].

56. *Holterman* [43]; *ROI Land Investments* [25].

57. *Holterman* [39]-[41], [46]; *Bosworth* [25], [26], [28]; *Markt24* [25]; *ROI Land Investments* [31]-[32].

58. *Bosworth* [27].

59. *Markt24* [26].

60. European Commission Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM(2021) 762 final.

the jurisdiction of courts and employment laws by using dispute resolution agreements. There are different kinds of dispute resolution agreements, most importantly choice-of-court and choice-of-law agreements and arbitration agreements. By a choice-of-court agreement, the parties agree to give jurisdiction to a particular court and, if the agreement is exclusive, to exclude the jurisdiction of all other courts. By a choice-of-law agreement, the parties agree that a particular law will govern their relationship. And by an arbitration agreement, the parties agree to give jurisdiction to an arbitral tribunal to resolve their dispute.

Choice-of-court and choice-of-law agreements are regulated by the Brussels I and Rome I Regulations whose rules limit the effectiveness of dispute resolution agreements with respect to individual employment contracts. That the concept of ‘individual employment contract’ is interpreted autonomously and broadly indicates that the risk of choice-of-court and choice-of-law agreements being effectively used to escape the jurisdiction of courts and employment laws is low.

With respect to arbitration agreements, however, it is unclear whether they can effectively be used to escape the jurisdiction of courts and employment laws. There are two reasons for this. The first is that arbitration is expressly excluded from the subject matter scope of European private international law instruments.⁶¹ The second is that it is unclear to what extent the principle of the effectiveness of EU law can be used to uphold the protective rules of the Brussels I and Rome I Regulations when confronted with an arbitration agreement, and to what extent the effect of arbitration agreements on the jurisdiction of courts and employment laws is exclusively a matter for domestic law. There are authorities suggesting that an arbitration agreement cannot undermine the operation of the overriding mandatory rules of EU law where the situation is closely connected with the EU.⁶² But EU employment law is not comprehensive and it is unclear whether the rules of the Brussels I and Rome I Regulations will preclude giving effect to arbitration agreements where the overriding mandatory rules of EU law are not in play. There are, however, decisions of English courts, decided while the UK was still bound by EU law, which suggest that the special jurisdictional rules for individual employment contracts of the Brussels I Regulation provide a statutory privilege that should be protected from choice-of-court agreements that do not meet the requirements of Article 23 by means of an anti-suit injunction if necessary.⁶³ If this reasoning can be transposed to the field of arbitration, it would indicate that the special jurisdictional rules for individual employment contracts of the Brussels I Regulation should be protected from arbitration agreements.

61. Brussels I, Art. 1(2)(d); Rome I, Art. 1(2)(e).

62. Case C-126/97 *Eco Swiss China Time Ltd v Benetton International NV* [1999] ECR I-3055; *Accentuate Ltd v Asigra Inc* [2009] EWHC 2655 (QB); see also *Ingmar* (n 47).

63. *Samengo-Turner v J & H March & McLennan (Services) Ltd* [2007] EWCA Civ 723; *Petter v EMC Europe Ltd* [2015] EWCA Civ 828; *Gray v Hurley* [2019] EWCA Civ 2222. See also a case involving a consumer contract and proceedings in a non-EU state: *Khalifeh v Blom Bank SAL* [2021] EWHC 1502 (QB).

5. Conclusion

That the growth of remote work has enabled employees to live and work outside the country in which their employer and its premises are situated has led to a change of domicile of many employees and thus affected the jurisdiction of the courts. Moreover, the growth of remote work has enabled employers to expand their labour pool to workers based in foreign, including non-EU, countries and this has a much bigger potential impact. Employers can more easily hire overseas employees who are subject to foreign jurisdictions and laws, increasing the risk of fragmentation of the internal labour market within the firm, the obstruction of collective bargaining, the undermining of employment standards and the creation of unfair competition.

The autonomous and broad interpretation of the concept of ‘individual employment contract’ indicates that the Brussels I and Rome I Regulations minimise the risk of misclassification by giving the courts an adequate tool to deal with the potential of remote work to put additional pressure on the employee/self-employed worker dichotomy. In other words, the protective rules of the Brussels I and Rome I Regulations are capable of covering all employees who are in genuine need of protection, regardless of how those employees are classified by domestic employment laws.

The Brussels I and Rome I Regulations preclude the use of choice-of-court and choice-of-law agreements to escape the jurisdiction of courts and employment laws. There are authorities suggesting that employers may not be able effectively to use arbitration agreements to escape jurisdiction, at least where the effect of an arbitration agreement would be to escape the application of the overriding mandatory rules of EU law.

Ultimately, this chapter shows that the rules of the European private international law of employment respond differently to the challenges presented by remote work. If one focuses exclusively on their impact on bilateral employer-employee relationships, these rules appear satisfactory. This is because they are capable of covering all employees who are in genuine need of protection, the key concepts which they use (especially the habitual place of work) are flexible enough to enable the courts to determine the competent court, as well as the applicable law in different factual scenarios created by remote working patterns, and they offer adequate protection to employees against adverse dispute resolution agreements. However, if one shifts the focus to the systemic effects created by the rules of the European private international law of employment, the picture looks different. These facilitate offshoring, which undermines the collective power of labour and employment standards and creates unfair competition.

This indicates in summary that the European private international law of employment is a source of both solutions and problems in relation to remote work.

References

- Alexandri E., Barbieri L., Seymour D., Suta C.-M. and Thoung C. (2023) Short and medium-term sectoral employment: forecasting the future development of remote work, Report, ETUI. [Forthcoming]
- Barreda N.C. (2022) The habitual place of work as a connecting factor in cross-border teleworking: challenging the traditional conflict-of-law approach, paper presented at Society of Legal Scholars Conference, King's College London, 6-9 September 2022.
- Eurofound (2020) Living, working and COVID-19, Publications Office of the European Union. <https://doi.org/10.2806/467608>
- Felstead A. (2022) Remote working: A research overview, Routledge.
- Grušić U. (2013) Should the connecting factor of the 'engaging place of business' be abolished in European private international law?', *International and Comparative Law Quarterly*, 62 (1), 173-192. <https://doi.org/10.1017/S0020589312000577>
- Grušić U. (2015) *The European private international law of employment*, Cambridge University Press. <https://doi.org/10.1017/CBO9781316014684>

All links were checked on 01.03.2023.

Chapter 11

Enforcing the rights of remote workers: the case of digital nomads

Zane Rasnača

1. Introduction

The Covid-19 pandemic and the often mandatory experience of ‘working from home’ has meant that remote work has reached new heights of relevance and popularity. It affords a certain flexibility and autonomy as well as a shortened commute, and promises improved work-life balance (Annesley 2007), in exchange for giving up office space and a collective way of working at an employer’s premises. Before the pandemic, the debate on this type of work was somewhat lagging in Europe in comparison to other parts of the world where the promotion of teleworking has been present in government and employers’ strategies, and embraced by workers, for much longer (Messenger 2019). Now, however, the debate on telework has been firmly set at the top of the agenda also in Europe (Council of the European Union 2021).

At the same time, at least in labour law, the discussion has focused mainly on the substantive rights of remote workers (Eurofound 2022) rather than on their enforcement. Enforcement often comes as an afterthought: while, with a certain political will, rights ‘on paper’ can be created with comparative ease, whether they actually function in practice is disclosed only over a significant period of time and requires more in-depth analysis (Rasnača et al. 2022). Nevertheless, laws are senseless if they are not enforced (Jacobs 2022), so enforcement in the context of remote work is of utmost relevance and, even if there is little to no data revealing whether and how remote workers actually enforce their rights, the topic as such requires closer analysis.

Indeed, the conclusions of the Council of the European Union in 2021 on telework already require Member States to consider amending their policies regulating telework on the issues of the monitoring of health and safety, the monitoring and organisation of working time and effective checks by labour inspectorates; thus recognising the utmost importance of enforcement practices in the context. So far, however, no comprehensive EU legal measures have been adopted specifically with telework in mind and even less attention has been paid to the challenges in enforcing the rights of workers who work remotely.

The reliance on Member State procedural autonomy often still permeates the debate on the enforcement of labour law at European level (see for exceptions Malmberg 2003; Koukiadaki 2022; Rasnača et al. 2022) and the rights of remote workers do not constitute an exception. This chapter aims to identify some of the issues that make any structuring of an effective enforcement system for remote workers both very challenging

but also desirable in order to make sure that such workers do not fall through the cracks of EU and national enforcement systems.

Enforcement in this chapter is understood in a broad sense comprising both private and public enforcement mechanisms characteristic of the wider area of labour law. Hence, enforcement is considered as the whole set of tools including the administrative, criminal and civil law mechanisms available to actors at both individual (workers) and collective (trade unions, worker representatives, etc.) level, and going beyond mere judicial enforcement. At the same time, the exploration of the rules surrounding the choice of law and forum in intra-EU cross-border situations is left largely outside of this chapter since that is covered in another contribution to this volume (see Grušić).

In order better to illustrate the key challenges in the enforcement of remote workers' rights, this chapter uses the example of digital nomads as a comparatively extreme case of 'remote work', as opposed to the more mundane kinds of remote working (for example, teleworking once per week from home in the same country where the office is located). Due to the cross-border nature and spatial flexibility that characterises digital nomads, they potentially face one of the widest arrays of enforcement issues that can be experienced by remote workers and therefore present a potentially promising case study from this perspective.

At the same time, as I also argue in this chapter, many of the enforcement issues that digital nomads face are not unique to this group and can be experienced by other 'atypical', 'precarious' or 'dispersed' workers (e.g. workers in agriculture, domestic workers and transport workers). As such, the enforcement of remote workers' rights might present a rather special conundrum: while remote workers often constitute a relatively privileged, well-paid group of workers, when it comes to enforcement their situation might have significant parallels with (other) underprivileged categories of workers.¹ This poses an additional definitional challenge to the question of remote work. It may be that, for the purpose of other matters, the 'working from home' definition used in the majority of chapters in this book and by major data sources such as Eurostat might be tempting but, as shown below, it might not be suitable for addressing the enforcement challenges since it does not account for the plenitude of situations that remote workers, such as digital nomads, encounter; and its widespread use might create a privileged sub-group while keeping other groups of workers facing similar enforcement challenges in the shadows.

The chapter unfolds as follows. In Section 2, I locate digital nomads in the context of remote work definitions and discuss the key characteristics of this kind of work. This section tries to place the matter of the enforcement of digital nomads' rights against the broader background of remote work and exposes the many uncertainties surrounding this type of work, especially from a definitional perspective. It seems necessary in the light of the very sparse literature on the topic to take some time to locate where digital nomads stand in the discussion on remote work as such. In Section 3 the focus is on the

1. See, for example, the distinction between groups of remote workers provided both by Countouris and De Stefano and by Rainone (in this volume).

enforcement challenges and gaps they face in Europe that, together with the very sparse regulatory framework dedicated to them, might specifically leave them largely under the radar of most enforcement mechanisms. The chapter's conclusions are contained in Section 4.

2. Defining digital nomads in the context of remote work

2.1 Lack of clear-cut definitions

It is difficult to define who is a digital nomad, especially since the term is often closely connected with notions of other 'types' of work such as 'remote work', 'telework', 'telecommuting' and others that also often severely lack clarity. The general understanding is that digital nomads are people who use the internet and technology to do their work while travelling around from place-to-place. Journalistic and scholarly sources often define them as young, work-oriented professionals who reject the outwardly imposed structures of traditional office work – such as the 9 to 5 – and place value on autonomy, flexibility and the ability to travel and work where they please (Cook 2019). A distinction noted in the literature is that, whereas business travellers travel for limited periods of time because of their work, digital nomads try to gain their freedom by moving around whilst retaining work (Müller 2016: 346; Reichenberger 2018: 15). However 'digital nomad' is not the only term for this emerging and subjective category of worker; whilst the term may have both hopeful and derogatory connotations, terms such as 'location-independent' and 'remote worker' are sometimes used as more neutral alternatives (Holleran 2022).

At the same time, digital nomad laws and visas have been on the rise in Europe in recent years and this potentially aids us in understanding who and what they are in more practical legal terms. Several EU countries such as Portugal, Croatia, the Czech Republic, Estonia, Germany, Hungary, Greece, Italy, Malta, Romania, Spain and Latvia offer some form of specific visa allowing digital nomads to stay legally in their country and work from there. There is, however, great variety in their approaches to definitions and these are far from unified. For example, Portugal enables the non-EU and non-EEA remote workers employed by foreign companies based abroad to relocate and work remotely from Portugal if they are earning four times the national minimum wage (Global Citizen Solutions 2023). Estonia grants remote workers residency rights for up to one year on condition that they have monthly gross income of at least 3504 euros and they are either self-employed or have an active employment contract with an establishment registered outside Estonia. Latvia gives all OECD country residents the opportunity to become digital nomads by giving one-year residence rights to all who can prove that they can work remotely for their employer, and who have income of at least 2857 euros per month and health insurance, without the need to shift their tax residence (Immigration Law of the Republic of Latvia, Article 11). In Germany only the self-employed and freelancers in healthcare, law, tax and some other professions have the possibility to stay based on a sort of digital nomad visa while working entirely for establishments abroad; their initial residency rights are only for three months (but these can be converted into a residence permit of up to three years during that period of time).

At the same time, Germany requires them to be registered with their tax office which is an extra requirement that does not exist under many other digital nomad regimes.

These few examples already reveal a wide variety of legal approaches to who can be a digital nomad within European understanding. What all these approaches have in common is that a digital nomad will be someone working typically entirely for clients or employers based abroad (having no permanent establishment in the country where s/he is currently working), having a right to stay in the host country for a certain (limited) period of time and working remotely via digital means.

As such, digital nomadism is thus a form of remote work and presents a somewhat extreme (or exaggerated) case of this phenomenon. A unified, recognised definition of either remote work or telework does not exist (Montreuil and Lippel 2003). However, remote workers, similarly to teleworkers, can be characterised according to four variables: 1) premises (home or other); 2) status (worker or self-employed); 3) time spent working remotely (partial or full-time remote work); and 4) computer connection (work online or not) (Montreuil and Lippel 2003: 340). It seems useful to think about digital nomadism and also remote work alongside these four variables in order to avoid having too narrow a definition, such as that adopted by Eurostat's Labour Force Survey (LFS) which defines remote work exclusively as 'working from home'. While cross-border teleworkers such as digital nomads might indeed be working from home some of the time, they might travel and work elsewhere or frequently change their 'home', residence or even their habitual place of residence. Such a broader and more inclusive understanding with regard to telework has been adopted by both the International Labour Organization and Eurofound (ILO 2017; Eurofound 2022).

While precisely defining remote work and who is a digital nomad is not the objective of this chapter, there are four characteristics that seem the most relevant to our understanding in the specific context of enforcement. First, work should be carried out away from an employer's premises. Second, work is done via digital means. Third, there is a cross-border element in which the employer is not based in the same country where the work is being done. Finally, while digital nomads can be both workers and self-employed, in this chapter I primarily focus on those who are working under an employment contract and thus subject to labour law enforcement mechanisms.² In addition to this, the cross-border nature means that such workers would typically be working remotely their entire or almost their entire working time; hence, occasional remote work is not covered by our understanding of digital nomadism.

Three scenarios guide our understanding. The first is to be an intra-EU digital nomad (working remotely for an employer in a country other than the current country of residence and where both countries are EU Member States). The second is working for an employer based in another country (outside the EU) while living in an EU country. The third is working remotely for an EU-based employer from another (non-EU)

2. Self-employed digital nomads potentially also pose an excellent challenge from the perspective of enforcement since many employers might be tempted to reclassify workers as self-employed to avoid liability for payroll taxes, employee benefits, overtime pay and workers' compensation insurance (Mills et al. 2001: 57).

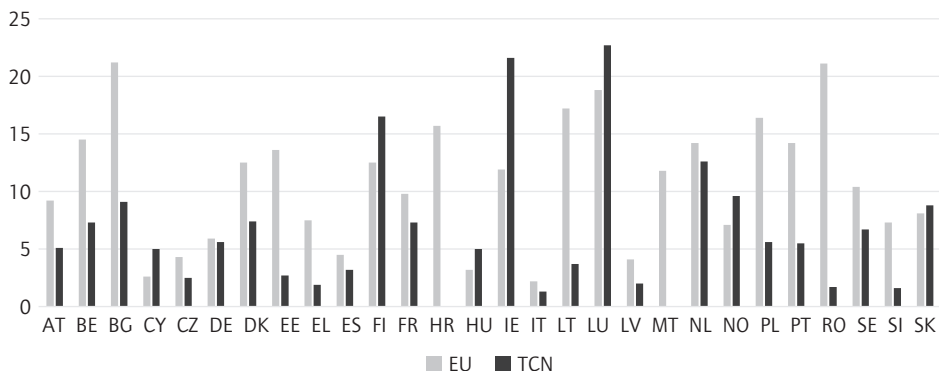
country. This latter approach (but also intra-EU telework from the west or north to the south or east) is often associated with geoarbitrage – the maximisation of salary by moving from one region or country (with higher costs) to another (with lower costs) (Holleran 2022).

2.2 How prevalent is digital nomadism?

Even more difficult than definitions, however, is the establishment of somewhat reliable data as to how many digital nomads are in the European Union (EU) (and individual Member States). About two million people in the European Union live in a country other than the one in which they work and there are sizeable regional differences with such regions as Benelux having thousands of workers in incoming and outgoing labour flows (Maastricht University 2022) while others are less affected. For all of those who work in a country other than where they live, telework might be a tempting option.

Currently there is no European-level data available as to how many workers work remotely for an employer based abroad. LFS data reveal that the rate of workers working (almost) exclusively from home varies among EU countries with Luxembourg, Finland, the Netherlands and Ireland having comparatively more such workers than other EU countries (see also Zwysen, this volume). Among non-native EU citizens working in the country, Bulgaria, Romania, Luxembourg, Croatia and Lithuania have the biggest share of those working from home. Among workers from outside the EU (third country nationals), Ireland, Luxembourg, Finland and the Netherlands have a relatively large share of workers working from home. However, there is no comparative data revealing how many of these workers work for an employer without a permanent establishment in the country in which they currently reside. We can assume that some do, but it is not clear precisely how many and exactly how widespread is the phenomenon of digital nomadism.

Figure 1 The share of employees with EU (+ EFTA) or third country nationality (TCN) working from home (almost) all the time in the EU



Source: Own calculations based on LFS, 2018-2021.

While there is no country specific data on cross-border teleworking as such, the EU average shows that the share of cross-border workers that usually work from home increased from 2 per cent before Covid to 12 per cent in 2021 (Maastricht University 2022). Moreover, there is likely to be a significant number of cross-border teleworkers who are carrying out such work but who are in the country based either on a tourist visa or on various types of residency rights based on EU law (for intra-EU digital nomads): for example, as a family member of a local worker, for less than three months of stay or as a tourist, or someone having sufficient means to establish residence in the country. Hence, there is a good chance that many such workers remain largely under the radar of the authorities.

According to the Council of the European Union, roughly one-quarter of workers in telework and ICT-based mobile work arrangements, including intermediate level and high skilled workers, report a combination of low wages, job insecurity, a lack of access to training and limited career prospects. This puts them in a precarious employment situation (Council of the European Union 2021: para 26). It is also clear that, currently, cross-border teleworking significantly challenges existing taxation systems and that both company profits and workers' wages might be subject to the threat of double taxation, as recognised by the European Economic and Social Committee (EESC) and the European Commission (European Economic and Social Committee 2022; European Commission 2021a).

Consequently, while the overall numbers of digital nomads might be relatively small if measured against the entire EU workforce, there are clearly recognised instances of the abuse of their rights and the question of the enforcement of these is therefore an extremely pertinent one.

3. The perils of enforcing digital nomads' rights

As already illustrated, digital nomads present a rather extreme form of telework in line with the four variables characterising such work mentioned above (premises, status, time and form). The work they do thus illustrates the other end of the spectrum to the perhaps more traditional and more easily accepted type of telework – work done remotely from one's home maybe once or twice per week with the rest of the time being spent in a traditional office and where both the employer and the worker are based in the same country. While the latter form of telework might not require significant adjustments to the enforcement structure, the former has certain characteristics that considerably complicate the assertion of one's rights.

In general terms, enforcement activity could be considered effective (Rasnača et al. 2022) where the law is able to reach those to whom it is addressed in cases where it has been initially ignored and where it has led to the effective realisation of the rights it has conferred. Enforcement thus takes place after the (substantive) law has not been complied with and could be considered effective where it brings about the situation that should have prevailed if there had been compliance in the first place, or at least where the victim of that non-compliance has been duly compensated. However, enforcement

can have other objectives beyond reinstatement and compensation. First, the criminal justice system seeks a sort of retributive justice where infringement is not only rectified but punished (Rasnača et al. 2022: 1-10; 521-530). Second, one can distinguish between enforcement approaches based on the idea of deterrence or persuasion (Becker 1968; Stigler 1971; Gunningham 1987). Enforcement thus has a number of roles to fill: compensation; retributive justice; prevention or deterrence; and persuasion.

Within the area of labour and social policy law, effective enforcement is difficult to achieve even in the most 'traditional' forms of work and for most 'typical' kinds of workers (Rasnača et al. 2022). The principles of equivalence³ and effectiveness,⁴ together with procedural autonomy⁵ and other general principles, are what direct the institutional framework for the enforcement of EU law. The most central principle in this regard, the principle of effectiveness, although often explored and written about (Mendez-Pinedo 2021; Kokott and Kaspar 2012; Lenaerts 2013; Nebbia 2008), still remains ambiguous and somewhat obscure, especially when the idea of construing an 'effective enforcement' system is discussed in specific rather than general terms and beyond judicial recourse. It generally requires that remedies are construed in a way that leads to effective legal protection in the fields covered by EU law, but what this actually entails is largely left to the interpretation of the Court of Justice of the European Union (CJEU) in singular cases. There is currently no clear yardstick against which to measure whether certain workers' rights are being enforced efficiently and what kind of enforcement mechanisms should be in place for what kinds of workers. As soon as there are any aspects that complicate the situation (for example, a cross-border element, multiple employers, work carried out in an atypical manner or from an 'atypical' location), the situation becomes difficult. Digital nomads find themselves in exactly such a perilous position.

There are three key challenges that potentially create significant vulnerability when it comes to the enforcement of digital nomads' rights: 1) an ambivalent legal status; 2) spatial challenges; and 3) the individual character pertaining to digital nomadism. Let us look at these three challenges in turn.

-
3. The principle of equivalence means that the enforcement of EU law takes place by requiring that the rule at issue is applied without distinction, whether the infringement alleged is of EU law or national law, where the purpose and cause of action are similar (CJEU *Levez*, para. 41).
 4. The principle of effectiveness is regulated mainly by Article 19(1) of the Treaty on European Union requiring that Member States provide sufficient remedies to ensure 'effective legal protection' in the fields covered by EU law; and is protected by Article 47 of the Charter of Fundamental Rights of the European Union, as interpreted in the light of Article 6(1) of the European Convention on Human Rights and further developed by the Court of Justice of the European Union.
 5. This means that EU Member States are free to establish their own national procedural rules to govern the exercise of EU law. However, those rules must respect the effectiveness and equivalence of EU law.

3.1 Ambivalent legal status

Even though digital nomad laws and visas are on the rise in Europe,⁶ their legal status and the array of rights they enjoy still remains rather ambivalent and undefined.

First, digital nomads as a category technically do not exist in EU law. The European Commission has started to work on the matter of cross-border telework, and issues such as the challenges and opportunities facing taxation systems in an increasingly mobile working environment have been discussed (European Commission 2021a). No long term solutions have yet been adopted at European level even though the EESC, for example, has suggested that solutions should be sought at global, or at least intra-EU, level (European Economic and Social Committee 2022: para. 1.7). While there are posted workers, frontier workers, intra-EU migrant workers, migrant workers from third countries and workers working for multiple companies in multiple countries (in line with Article 14 of the Social Security Regulation⁷), digital nomads might at some point coincide with one or even more of these categories – but not necessarily and not always. For example, one could ask whether an intra-EU digital nomad could be considered a posted worker under the Posted Workers Directive (96/71/EC⁸) if the employer has agreed to the worker working from another EU country. There is an ongoing discussion regarding whether a business trip amounts (always) to the posting of workers (digital nomadism might be considered as such where there is agreement with the employer and the idea of a business trip is understood rather broadly). Even though the definitions in the Directive seem to require some sort of service provided within the host country, one could wonder whether intra-EU digital nomads could potentially sometimes fall under the posting definition.

Overall, since there is no recognised and clear legal status that works at EU level, and while any guidance from the EU is currently missing, digital nomads might fulfil the requirements of some statuses but might also easily fall through the cracks of protection when they are not considered to fulfil the criteria for certain categories. This obviously has consequences not only for tax and social security liabilities for both workers and their employers but also for the enforcement of the former's rights.

Even where digital nomads, alongside everyone working in the EU, can profit from certain labour rights, such as the protection of working time, some Member States have taken steps to exclude those working remotely from the scope of this protection. There is some empirical evidence suggesting that teleworkers work longer than the average employee (Gschwind and Vargas 2019: 48) and thus working time requires special attention from the perspective of enforcement.

6. For a good general overview please see <https://www.globalcitizensolutions.com/digital-nomad-visa-europe/> (accessed 8 Feb 2023).

7. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

8. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Article 2 of the Working Time Directive provides a definition of working time within which the time performed by a teleworker might easily fall: 'any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice'. Yet, the Directive also foresees the possibility to derogate from (some of) the provisions in the Directive. Article 17(1) states that this is permitted 'on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves'. Some countries, including Belgium (Bright Plus 2020), use this provision to exclude all teleworkers from the scope of application of the working time rules, regardless of teleworkers' (in)capacity to determine their working hours themselves (Huybrechts 2022). In the light of the tendency of the CJEU and the European Commission to interpret exclusions in a narrow way, and with the diverse spectrum of telework situations in mind, it might be argued that Belgium is violating the Directive on this point (Huybrechts 2022).

Hence not only is their legal status often unclear, telework might also potentially trigger exemptions from and exceptions to sets of applicable rights.

Finally, digital nomads who have entered the EU not by using the specific visa that exists in some Member States but rather as a tourist or on another type of visa are extremely vulnerable in terms of both their access to labour rights and their right to residence. Namely, a tourist visa does not allow the holder to work and hence a digital nomad who has entered the EU on the basis of this type of visa and who is carrying out work on EU territory is in breach of his or her visa requirements. There is some research showing that workers with unclear residency status are less likely to exercise and assert their labour oriented rights and digital nomads would probably find themselves within this group (European Commission 2021b). Even family members who have a right to join their EU-based partner might be in an obscure situation from the perspective of tax liability and the question of the applicable labour law if their employer has no establishment in the country in which they are working.

This means that digital nomads potentially constitute an extremely vulnerable group of workers from the perspective of enforcement due to the legal uncertainty surrounding their status; the likely resistance to asserting their rights which might follow; and the very real possibility that they might be considered undocumented migrants and lose the right to stay in the country were they to proceed.

3.2 Spatial issues

Digital nomadism poses certain challenges to enforcement that can be seen as 'spatial' in nature. On the one hand, nomadism potentially facilitates spatial and social mobility offering a channel to reverse the depopulation and cultural impoverishment of many territories in Europe (Aloisi and Corazza 2022). Indeed, personal computers and telephones first permitted the relocation of traditional office work away from the employer's premises, while the dispersion of mobile devices (laptops and mobile phones) allowed work to be carried out on trains and in cafés. Omnipresent internet

access has now virtualised the workplace and made work accessible on smaller and smaller devices. Messenger distinguishes between three generations – home office; mobile office; and virtual office (Messenger 2019: 3) – in this regard.

However, this *prima facie* very appealing aspect of digital nomadism – the flexibility to be able to travel as often as the mood strikes and regularly change country of residence (Nash et al. 2020) – is of potential relevance for enforcement purposes since it has consequences for the shifting of liability for taxes, social security and labour law from one country to another and, accordingly, it creates spatial barriers to the enforcement of one's rights. A digital nomad might move country every few months, or s/he might live in one country for many years while always working for an employer abroad, and this variation might have different consequences from the perspective both of the substantive law and its enforcement.

First of all, the current EU rules in place on the applicable social security system, as well as the choice of law and forum, are ambivalent at best and potentially crucial for cross-border workers, including digital nomads, who telework. The basic principle of these conflict rules is the state of employment principle (*lex loci laboris*): an employee is subject to the social security legislation of the Member State from where the employee is working. However, Article 14(8) Regulation (EC) No 987/2009⁹ specifies that a share of less than 25 per cent of working time indicates that a substantial part of the worker's activities is not being pursued in the relevant Member State. This therefore means that the responsibility for social contributions would shift to the country of residence as soon as the worker worked from there for at least 25 per cent of working time. Consequently, working from home for 1.25 days per week might be sufficient to shift the place of social security coverage to the country of residence (Verschuere 2022: 81-82) for any worker who is carrying out cross-border telework. Temporary exceptions were put in place to avoid the shifting of social security responsibility during the Covid-19 pandemic, but these have now largely come to an end (European Commission 2020: point 8; Verschuere 2022: 82).

Accordingly, the possibility of shifting social security residence in the case of remote work, together with the threat that frontier workers¹⁰ might not be able to benefit from telework in the same manner as workers residing in the country where they work, has become very real. There is a potential regulatory gap for digital nomads in this context since it is far from clear how these rules apply to them and whether they can be, or are, enforced at all. Verschuere has argued that the conflict rules laid down in the social security regulations are no longer suited to hybrid and very flexible forms of work (Verschuere 2022: 93) and one only can agree that they are certainly not suited to the situation of cross-border telework and digital nomadism as such.¹¹

9. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
10. A frontier worker is a worker who is employed in the frontier zone of an EU Member State but who returns each day, or at least once a week, to the frontier zone of a neighbouring country in which they reside and of which they are nationals (Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment).
11. The transitional period regarding social security was extended until 30 June 2023 by the European Administrative Commission; however, no long term legal certainty has been achieved as yet.

An Opinion by the EESC from 2022 recognised that a cross-border teleworking employee could be faced with double taxation on their income, resulting in lengthy and costly disputes between an employee and Member States' tax authorities. Dependent on a country's tax treatment of foreign income, an employee could also be obliged to comply with two separate tax declarations, possibly at different times due to differences in the tax filing deadlines between Member States (European Economic and Social Committee 2022: para. 1.2). During the pandemic, Member States took a series of temporary tax measures allowing cross-border teleworkers not to have to shift their tax liabilities across the border. But these were only temporary (e.g. the one agreed by Belgium with its neighbouring countries came to an end on 30 June 2022).

This means that digital nomads potentially face extreme legal uncertainty when it comes to their tax liability and that of their employer. The European Commission is searching for long term solutions concerning tax and social security liabilities in cross-border telework, but nothing concrete has yet been proposed and it is not clear whether and how far non-EU digital nomads will benefit from any regulatory framework since the plans at the moment seem to concern only intra-EU cross-border teleworkers (Orbitax 2022).

The spatial flexibility of digital nomadism potentially also creates significant other challenges for enforcement purposes. An obvious one is that work is not done on the employer's premises. This means that any enforcement becomes more challenging. Even individual judicial enforcement, which might not be much harder to achieve for other types of remote workers in comparison to typical office workers, might be potentially more difficult for digital nomads. The forum of the 'habitual place of work' can be used under the Brussels I Regulation, while the 'habitual place of work' is also the key variable determining the applicable law in line with Article 8 of the Rome I Regulation. This means that, for most remote workers (working remotely from the same Member State where their employer is located), their *locus standi* is the same as for typical office workers; namely, they will bring a claim in the country in which they work (see also Grušić, this volume). However, digital nomads potentially reside in a country that is not their country of origin and always in a country that is not the country in which their employer is based. This means that, in practice, they might have very little connection either with the place they 'habitually work in' or the country where their employer is located. Subsequently, when bringing a case before a court, they might experience many more hurdles than other types of workers.

The same legal and practical uncertainty is also faced by an employer who might inadvertently become tax liable in the current host country of the digital nomad. Hence the cross-border element necessarily creates a sort of spatial detachment with their employer that goes beyond 'typical' telework and poses a challenge for enforcement purposes.

Another issue present not only in digital nomadism but also in other forms of remote work (even beyond work done via digital means) is that not only is the work not being done on an employer's premises but it is also being performed in a private home or a private property owned by a third party (e.g. a café, a hotel or a co-working space).

In the context of administrative enforcement, labour inspectors must be able to enter remote work premises, usually a private home. This implies significant potential clashes with the right to private life and the protection of one's home, with specific warrants and other barriers dependent on the applicable procedural law.

The conclusions of the Council of the European Union on telework recognise the significant challenges for the effective enforcement of labour law by labour inspectorates whose instruments and inspection procedures may need to be reviewed in order to adapt to these new working patterns while continuing to respect the privacy of workers (Council of the European Union 2021: para 25). This again is a serious spatial challenge present in the context of remote work and potentially even more challenging in the case of digital nomads: not only does enforcement go beyond the employer's premises but also cooperation with administrative or criminal enforcement authorities across borders might become necessary. Moreover, it might be close to impossible to organise cooperation among multiple enforcement authorities where third countries are involved and either the digital nomad is working for a company based outside the EU or s/he works in a third country for a company based in the EU.

Given this rather 'detached' form of monitoring, occupational health represents a specific concern. Typically, in order to verify that health and safety rules are correctly applied, employers, trade union or worker representatives, and other relevant authorities, have access to the workplace within the limits specified in national laws and collective bargaining agreements. In line with the European Framework Agreement on Telework (2002), teleworkers are entitled to ask for an inspection visit regarding their health and safety, with access to their home subject to prior notification and requiring their agreement (para. 8). However, there are currently no rules and guidance on how this can be organised in the case of cross-border telework and regarding digital nomads.

A further spatial challenge is the enforcement or compliance with digital nomads' collective rights in the cross-border setting in which they find themselves. It might be extremely difficult to exercise the right to strike, freedom of association and the rights to information and consultation in cases of remote work with a cross-border element (Dedden et al., this volume). Hence, special rules should be adopted since it seems that, so far, self-regulation via collective agreements across borders and standard setting through collective representative bodies has not really taken place. While the Framework Agreement on Telework has been agreed between the European social partners, it does not contain any special rules dedicated to enforcement via collective rights across borders. For digital nomads, the only way in which the exercise of these rights could be ensured might be via digital means. And actually, building a digital space and practice for exercising one's information and consultation rights might also yield some benefits. First, such approaches might improve the accessibility of such rights; and, second, due to the digital nature and trail that would remain, there might be better possibilities for enforcement authorities to check whether these rights had duly been complied with (see also Piasna and Vandaele, this volume).

Even individual judicial enforcement can be burdened within the context of remote work. While it is clear that the employer is responsible for what happens in the

workplace, breaches of health and safety law and other employment-related rights in respect of remote workers might be more difficult to prove before the courts. Directive 89/391¹² (the OSH Framework Directive) does not differentiate between work locations while the European Framework Agreement on Telework specifies that 'The employer is responsible for the protection of the occupational health and safety of the teleworker in accordance with Directive 89/391 and relevant daughter directives, national legislation and collective agreements' (Gschwind and Vargas 2019: 60).

It is not clear when and how far liability reaches and which situations within the home are covered and which are not. In fact, teleworkers may be especially susceptible to injury because there is no control over the safety of working conditions in a home office as there would be at a regular worksite. Most accidental injuries, after all, occur in the home (Mills et al. 2001: 57). Data from the United States suggest that the courts there are substantially more likely to find that violations did occur in the course and scope of employment, or with the employer's knowledge or consent, given employee access to the company network and resources around the clock in situations in which s/he is regularly working at home (Mills et al. 2001: 54). Casual teleworkers might not receive compensation in the same situation. This means that there might be a potential relationship between the frequency of telework and assessments by the courts of employer liability; however, this is just an assumption since there is currently no comprehensive data concerning Europe.

3.3 Individualistic character of digital nomad work

Industrial relations systems in the EU tend to be somewhat isolated from one another. Both trade unionism and worker representation is still largely national in its level of activity (Lafuente Hernandez and Rasnača 2019) and developed with the needs of local workers in mind. Giving digital nomads a voice necessarily requires a cross-border and transnational approach which is very difficult for organisations such as trade unions to achieve.

It is interesting to compare the situation of migrant workers with that of digital nomads. A migrant worker who is an EU national enjoys equality of treatment regarding trade union membership.¹³ There is, however, no further facilitation of collective organising for EU workers and migrant workers specifically. For now, as Greer et al. put it, 'while workers in the EU have new civil rights to live and work in different countries, in accessing these rights they [often] give up the rights of industrial democracy' (Greer et al. 2013: 17). This rings potentially true also for digital nomads who are, by the very nature of their work, detached from traditional forms of collective organisation and worker participation in the country in which they work. In their case the only way forward

12. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

13. Article 8, Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

seems the embracing of digital collective organisation and digital exercise of their voice. However, there are currently no uniform rules in this regard at the European level.

Collective voice does not only mean representation by trade unions, however, especially when it comes to enforcement: other mechanisms could be used to strengthen the collective enforcement of rights. The introduction of pan-European collective redress opportunities at either EU or national level (Rasnača 2021) might also be a step in the right direction, while online redress for labour law disputes in some form might also go some way towards bridging the isolation of such workers. The EU recently adopted a Directive on Representative Action in Consumer Protection.¹⁴ Similar mechanisms should also be put in place for some groups of workers including cross-border workers such as intra-EU digital nomads. This might facilitate both the enforcement of their rights in a collective manner as well as their collective organisation.

For the area of labour law collective rights are key to effective enforcement (Orlandini 2022; Rainone 2022). Hence, the scope of application of the principle of effectiveness has to be unambiguously extended to cover, in addition, collective labour rights and not only to rely on individual judicial enforcement. In this context, one has to understand the principle lying behind requiring ‘effective compliance’ with EU social and labour law in its entirety, including all types of rules related to enforcement and not only individual judicial enforcement. The conceptualisation by Nebbia of the principle of effectiveness as expressing the idea of ‘effective compliance’, encapsulating the concepts of obedience, sanction and enforcement, comes probably closest to being useful for the purposes of labour law (Nebbia 2008).

More specifically, remote workers have the right to the effective enforcement of their rights not only in terms of their own rights before the courts but also in an extended manner covering their collective rights. These are protected, amongst others, by the Charter of Fundamental Rights of the European Union: namely, freedom of assembly and association (Article 12); rights to information and consultation (Article 27); and the right of collective bargaining and action (Article 28). As yet, this is something that has not been explicitly recognised by the CJEU. Independently of the inherently individualistic nature of digital nomadism, there is therefore a certain potential embedded in the principle of effectiveness, which is as yet unfulfilled, to accommodate not only the individual but also the collective needs of workers.

4. Conclusion

Several countries in Europe have been confronted with the reality of cross-border and remote working. Perhaps in the attempt to challenge and benefit from the potential geographical flexibility enjoyed by digital nomads and wishing to attract them to their territories, or simply faced with the need to create (some) legal certainty for this

14. Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1-27.

group, they have recently adopted special laws and visa regimes for digital nomads. These national rules, however, do not seem to contain any special rules in terms of the enforcement of digital nomads' rights, thus potentially leaving them vulnerable from this perspective. This chapter therefore tackles the question of the enforcement of the rights of such workers by positioning them in the theory and debate on remote work and telework on the one side; and by analysing the key challenges potentially making the enforcement of their rights more strenuous on the other.

It seems that digital nomads potentially face a wide array of enforcement challenges that could be viewed in line with the typology offered by Grimshaw et al. (2016) who, in their work on the enforcement of the rights of precarious workers, distinguish between four 'types' of enforcement gaps: a) mechanisms; b) awareness; c) power; and d) coverage. This seems useful in creating a more inclusive understanding of enforcement guidance for remote workers because, as is shown here, one could argue that digital nomads potentially face all four types of gaps.

The first challenge is access to the mechanisms of enforcement. Since there is no legal status in EU law afforded to intra-EU digital nomads, it is not particularly clear whether they have adequate access to the relevant enforcement mechanisms, such as the courts in the country where they currently find themselves. Access to enforcement mechanisms other than courts is also potentially difficult since any inspections, as well as criminal investigations, have to be directed at the worker's home while cross-border investigation and cooperation between labour inspectorates or the police might also be required. A further question is whether such mechanisms as complaints to equality bodies, ombuds offices, labour inspectorates or whistleblowing can be effectively accessed by digital nomads. The situation is even more complex where a digital nomad works for an employer based outside the EU since there is no uniform rules at global level to enforce their rights and bilateral treaties provide only an ad hoc and patchwork set of rules.

Legal obscurity when it comes to the status and protection due to digital nomads also potentially creates significant awareness gaps when it comes to the enforcement of their rights. In this sense the situation of digital nomads might be akin to groups of precarious or vulnerable workers such as seasonal workers who severely lack access to information concerning their employment situation and related rights, as well as information on how to assert these (European Commission 2021; Council 2021). Reviewing the relatively new digital nomad regime laws adopted in Estonia, Latvia, Croatia, Greece, Hungary, Malta and Spain, there seem to be no special rules oriented towards enforcement embedded in those mechanisms. It has also already been reported that the uncertainty surrounding the legal status of cross-border teleworkers might have led to unequal treatment. Employers are reluctant to hire employees across borders because of the administrative obstacles or because the potential costs to the employer are not predictable. This makes Europe as such into a less attractive labour market for remote workers (Maastricht University 2022).

Third, the power gaps in the context of enforcement are, for example, fear of the loss of a job or of residency, fear of exclusion from unemployment support and lack of access to

the employer. While autonomy and the flexibility enjoyed by digital nomads are some of the aspects mentioned most often as being among the driving factors in taking up such work, it comes with a certain lack of access to, or even detachment from, an employer that can only be breached via digital means (see spatial challenge identified above). While on a day-to-day basis such interaction and access might be sufficient, when problems with enforcement arise, the cross-border nature of digital nomadism creates an extra challenge to enforcement and drives the already inherent power imbalance in the employment relationship to an extreme.

Fourth, aside of those EU Member States that have regulated the work carried out by digital nomads, their legal status is often at best ambiguous, potentially creating coverage gaps. The stringent EU immigration rules that typically do not allow work on a tourist visa mean that a digital nomad from a third country has to obtain a visa allowing not only work but to work for an employer based outside the EU. Digital nomads who have entered a country under a tourist visa or who have joined their spouse as a partner, for example, are potentially not covered by employment protection rules and, even where they are covered, they might be reluctant to claim any rights fearing liability for tax and social security that might entail significant fines and expense for both the employer and the employee or the loss of residency rights altogether. The rules for intra-EU digital nomads are also complex.

As discussed in Section 3, digital nomads illustrate an extreme case of enforcement mechanism deficiencies due to certain elements inherent in the nature of their work that go beyond and cut across the four enforcement gaps identified by Grimshaw et al. (2016) in the context of precarious work. The lack of collective voice, spatial challenges and the detachment between the employer and the worker, and the extreme level of legal obscurity, poses significant further challenges to the enforcement of their rights.

The enforcement of the rights of digital nomads potentially raises a number of challenges akin to those faced by precarious workers when enforcing their rights. A key aspect for remote work is whether we understand it to cover all such forms of work or only those where work is being carried out via digital technology. While digital nomads fall under both these definitions, from an enforcement perspective it might be important to be inclusive since, for example, domestic workers, artisan workers, people working in agriculture and other workers who do not carry out their work at a desk in an office in front of a computer might actually face similar enforcement issues. Similarly, rights to information and consultation might have to be exercised in a different manner from traditional office workers for the simple reason that reaching their representatives, becoming one and benefiting from information and consultation rights might be a more complex matter than in an office setting. There might also be extra confidentiality issues to be faced, too (Rasnača and Jagodziński, forthcoming).

The isolation and individuality that characterises the working life of digital nomads requires a rethinking of how collective rights should be shaped and enforced; otherwise, they will remain entirely meaningless for these workers. However, it also requires remembering that the enforcement issues they face are not always unique to them and

that more inclusive enforcement frameworks spanning beyond narrowly understood remote work might be more successful.

References

- Aloisi A. and Corazza L. (2022) 'South working': The future of remote work, *Social Europe*, 2 May 2022. <https://www.socialeurope.eu/south-working-the-future-of-remote-work>
- Annesley C. (2007) Lisbon and social Europe: Towards a European 'adult worker model' welfare system, *Journal of European Social Policy*, 17 (3), 195-205. <https://doi.org/10.1177/0958928707078363>
- Becker G.S. (1968) Crime and punishment: An economic approach, *Journal of Political Economy*, 76 (2), 169-217. <https://www.jstor.org/stable/1830482>
- Bright Plus (2020) Teleworking: The legal and practical dos and don'ts. <https://www.employers.brightplus.be/blog/teleworking-the-legal-and-practical-dos-and-donts>
- Cook D. (2019) The freedom trap: Digital nomads and the use of disciplining practices to manage work/leisure boundaries, *Information Technology & Tourism*, 22: 355-390. <https://doi.org/10.1007/s40558-020-00172-4>
- Council of the European Union (2021) Council conclusions on telework, 9131/21, 3 June 2021.
- Eurofound (2022) Telework in the EU: Regulatory frameworks and recent updates, Publications Office of the European Union. <https://doi.org/10.2806/42974>
- European Commission (2021a) Tax in an increasingly mobile working environment: Challenges and opportunities, European Commission.
- European Commission (2021b) Intra-EU mobility of seasonal workers: Trends and challenges, final report March 2021, European Commission. <https://data.europa.eu/doi/10.2767/173568>
- European Economic and Social Committee (2022) Taxation of cross-border teleworkers and their employers, Opinion, ECO/585-EESC-2022-00408.
- Global Citizen Solutions (2023) Digital nomad visa Europe – Everything you need to know. <https://www.globalcitizensolutions.com/digital-nomad-visa-europe>
- Greer I., Ciupijus Z. and Lillie N. (2013) The European migrant workers union and the barriers to transnational industrial citizenship, *European Journal of Industrial Relations*, 19 (1), 5-22. <https://doi.org/10.1177/0959680112474748>
- Grimshaw D., Johnson M., Rubery J. and Keizer A. (2016) Reducing precarious work: Protective gaps and the role of social dialogue in Europe. <https://documents.manchester.ac.uk/display.aspx?DocID=48958>
- Gschwind L. and Vargas O. (2019) Telework and its effects in Europe, in Messenger J.C. (ed.) *Telework in the 21st Century: An evolutionary perspective*, Edward Elgar, 36-75.
- Gunningham N. (1987) Negotiated non-compliance: A case study of regulatory failure, *Law & Policy*, 9 (1), 69-95. <https://doi.org/10.1111/j.1467-9930.1987.tb00398.x>
- Holleran M. (2022) Pandemics and geoarbitrage: Digital nomadism before and after COVID-19, *City*, 26 (5-6), 831-847. <https://doi.org/10.1080/13604813.2022.2124713>
- Huybrechts S. (2022) 20 years Framework Agreement on Telework: Looking back to move forward, *Global Workplace Law and Policy*, 18 July 2022. <https://global-workplace-law-and-policy.kluwerlawonline.com/2022/07/18/20-years-framework-agreement-on-telework-looking-back-to-move-forward/>
- ILO (2017) General survey concerning working-time instruments: Ensuring decent working time for the future. https://www.ilo.org/global/standards/WCMS_618560/lang--en/index.htm

- Jacobs A. (2022) The enforcement structure for EU labour law, in Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K (eds.) *Effective enforcement of EU labour law*, Hart Publishing, 13-33.
- Kokott J. and Kaspar M. (2012), 'Ensuring Constitutional Efficacy', in Rosenfeld, Michel and Sajó András (eds.), *The Oxford Handbook of Comparative Constitutional law*, Oxford University Press, 2012), 795–815.
- Koukiadaki A. (2022) Remedies and sanctions in EU labour law, in Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K (eds.) *Effective enforcement of EU labour law*, Hart Publishing, 35-56.
- Lafuente Hernandez S. and Rasnača Z. (2019) Can workers' rights ever catch up? The Erzberger case and EU cross-border reality, *Industrial Law Journal*, 48 (1), 98-116. <https://doi.org/10.1093/indlaw/dwy025>
- Latvijas imigrācijas likums (Immigration Law of the Republic of Latvia) (2022) Imigrācijas likums: I nodaļa, Vispārīgie noteikumi. <https://likumi.lv/ta/id/68522-immigracijas-likums>
- Lenaerts K. (2013) Effective judicial protection in the EU, Lecture at the Assises de la Justice – what role for Justice in the European Union? Brussels, 21-22 November 2013.
- Maastricht University (2022) The urgency of facilitating working from home by cross-border workers, News, 8 November 2022. <https://www.maastrichtuniversity.nl/news/urgency-facilitating-working-home-cross-border-workers>
- Malmberg J. (2003) *Effective enforcement of EC labour law*, Kluwer Law International.
- Mendez-Pinedo E. (2021) The principle of effectiveness of EU law: a difficult concept in legal scholarship, *Juridical Tribune*, 11 (1), 5-29.
- Messenger J.C. (2019) Conclusions and recommendations for policy and practice, in Messenger J.C. (ed.) *Telework in the 21st Century: An evolutionary perspective*, Edward Elgar, 286-316.
- Mills J.E., Wong-Ellison C., Werner W. and Clay J.M. (2001) Employer liability for telecommuting employees, *The Cornell Hotel and Restaurant Administration Quarterly*, 42 (5), 48-59.
- Müller A. (2016) The digital nomad: Buzzword or research category?, *Transnational Social Review*, 6 (3), 344-348. <https://doi.org/10.1080/21931674.2016.1229930>
- Montreuil S. and Lippel K. (2003) Telework and occupational health: A Quebec empirical study and regulatory implications, *Safety Science*, 41 (4), 339-358.
- Nash C., Jarrahi M.H. and Sutherland W. (2020) Nomadic work and location independence: The role of space in shaping the work of digital nomads, *Human Behaviour and Emerging Technologies*, 3 (2), 271-282.
- Nebbia P. (2008) The double life of effectiveness, *Cambridge Yearbook of European Legal Studies*, 10, 287-302. <https://doi.org/10.1017/S1528887000001348>
- Orbitax (2022) European Commission working on tax and social security arrangements for cross-border workers in connection with telework, *Orbitax Tax News & Alerts*, 18 August 2022. <https://www.orbitax.com/news/archive.php/European-Commission-Working-on-50636>
- Orlandini G. (2022) Enforcing EU Law via collective action, in Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K. (eds.) *Effective enforcement of EU labour law*, Hart Publishing, 341-362.
- Rainone S. (2022) Enforcing EU information and consultation rights, in Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K. (eds.) *Effective enforcement of EU labour law*, Hart Publishing, 243-264.
- Rasnača Z. (2021) Collective redress in labour and social law disputes: An (attractive) option for the EU?, *European Labour Law Journal*, 12 (4), 415-435. <https://doi.org/10.1177/20319525211056604>

- Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K. (2022) Introduction, in Rasnača Z., Koukiadaki A., Bruun N. and Lörcher K. (eds.) *Effective enforcement of EU labour law*, Hart Publishing, 1-10.
- Rasnača Z. and Jagodziński R. (Forthcoming) Confidentiality and workers' information and consultation rights: A jigsaw puzzle.
- Reichenberger I. (2018) Digital nomads – a quest for holistic freedom in work and leisure, *Annals of Leisure Research*, 21 (3), 364-380. <https://doi.org/10.1080/11745398.2017.1358098>
- Stigler G. (1971) The Theory of economic regulation, *The Bell Journal of Economics and Management Science*, 2 (1), 3-21.
- Verschueren H. (2022) The application of the conflict rules of the European social security coordination to telework during and after the COVID-19 pandemic, *European Journal of Social Security*, 24 (2), 79-94

All links were checked on 02.03.2023.

Chapter 12

Parallel universes: the future of remote work and the remoteness of future work

Hamid R. Ekbia

1. Introduction

The disruptions of Covid-19 have unsettled many of our assumptions about modern societies – about science, authority, regulation, economy, governance, community and, of course, about work. It has been a moment of awakening, with great potential for change. Standard notions of work have been questioned by millions of people who found themselves choosing between income and family, job and health, and life and death. But many of these concerns have been driven to the sidelines by the dominant players who found in Covid-19 an opportunity for intensified exploitation, surveillance and wealth accumulation. For these players, Covid-19 has created the best of both worlds – more wealth and less accountability – while for the majority of people it has been business as usual or worse. In short, Covid-19 has intensified the preexisting fissures in our societies, creating parallel universes.

These differences in our encounters with Covid-19 have deep roots in capitalism which, as Karl Marx pointed out 150 years ago, has constantly reconfigured the relationship between space and time in the interest of profit. Telework is the latest example of such a reconfiguration, which is mediated by digital technology in at least two ways. First, and most obviously, technology enables telework through the introduction of various mechanisms for the remote performance, delivery, monitoring, assessment and compensation of work. Second, and less visibly, the same technology provides the medium for faux automation – or heteromation (Ekbia and Nardi 2014, 2017) – enabling the attribution of credit to machines for feats that are, in fact, accomplished by human labour. Understood in this way, telework is yet another example of difference that builds on, and subsumes, all the earlier kinds of difference – spatial, temporal, technological and social – adding new layers to those fissures and differences. Telework, in that sense, is a universe of its own, with its attendant psychology, economics and sociology. At the same time, current working environments do not leave anyone, including hot-skilled employees¹, immune from the shifting whims of corporate capitalists. This is indeed a whimsical capitalism that can ruin lives and livelihoods at the same speed that it creates them.

To capture these trends, this chapter examines the shifting notion of ‘work’ in modern societies as driven by the profit motive and the criterion of efficiency. To reverse them, the chapter proposes an alternative scenario in which dignity, solidarity and mutual

1. A term preferable to ‘high skilled’ in that the demand for different types of skills at any given moment depends on what major corporations and other economic players choose to reward.

support governs the social order and where technology can provide the means of attaining it.

2. Parallel universes: the mall and the warehouse

The first image that comes to mind when thinking about the future of work is the contrast between two scenes. The first contains a modern and vibrant shopping mall, generously lit, colourfully decorated, impeccably clean and shiny, and moderately crowded with human beings – shoppers dashing by, salespeople haggling, children riding a carousel, those at leisure licking ice cream cones into shape and the elderly watching all of this from the comfort of the chairs and benches set in the middle. The second contains an even more modern Amazon warehouse with industrial lighting, heavily packed with shelves brimming with objects, robots scurrying around and human employees struggling to catch up with the pace. Spatially, the world in the first image is organised horizontally, while that in the second is arranged vertically. Temporally, the first world runs with the linear rhythm of human motion while the second operates with the electronic clock of digital circuits, demanding ferocious focus and curbed multitasking. They both feature parallel structures, but they also represent two parallel universes – a human universe with a horizontal structure and a machine universe with a vertical structure – configured spatially and temporally according to different logics.

At a deeper level, these spatiotemporal logics speak to different social orders. The first provides a modicum of job security with a human face, often protected by union membership, while the second leaves employees at the mercy of computerised monitoring and surveillance systems, with little recourse to human judgment or collective rights. It is hard, in this respect, not to be reminded of the value placed on coal mining jobs among working class communities because of the agreeable terms of employment and the high union density which shaped the power and social dynamics in the interests of workers. The issue with places such as Amazon warehouses is the appalling terms and conditions, largely enabled by union busting practices – thus far, at least.

These contrasting social orders are well captured in the job titles and job descriptions of the two universes. The standard titles in a retail store are sales associate, inventory associate, customer service representative, cashier and floor manager; while in an Amazon warehouse they are water spiders, pickers, packers, amnesty teams, etc. This last job, which sounds like the most appealing on the list, was described by one employee as follows:

Watching an amnesty worker walk among the robots can feel a bit like watching a zookeeper mingle with lions. You know this is a trained professional who will probably walk in and out of the cage without incident. Yet you can't help wondering: what are the chances that this person gets mauled? (Scheiber 2019)

Another employee described their job at Amazon as a ‘hot miserable job’ where people are not allowed to go to the toilet and have to pee in a coffee cup instead (Vincent 2021) – a fact that Amazon initially denied but then apologised for in the face of the mounting evidence.

Lest we idealise the situation in the first world, let us remind ourselves of another crucial difference between the two universes. If I were to choose between these two as a place of work, I have no doubt which one I would choose. I say all of this with a strong sense of guilt, however, because I have to admit that I have never been a big fan of shopping malls, finding them epitomes of consumer capitalism. Neither have I ever been a salesperson. But when I put myself in the shoes of the thousands of people who used to work in shopping malls and who now find themselves pitted against robots in warehouses, I wish I had not been so critical of shopping malls. As the saying goes, we must be careful what we wish for. If the mall epitomises consumer capitalism, what type of capitalism does the warehouse represent?

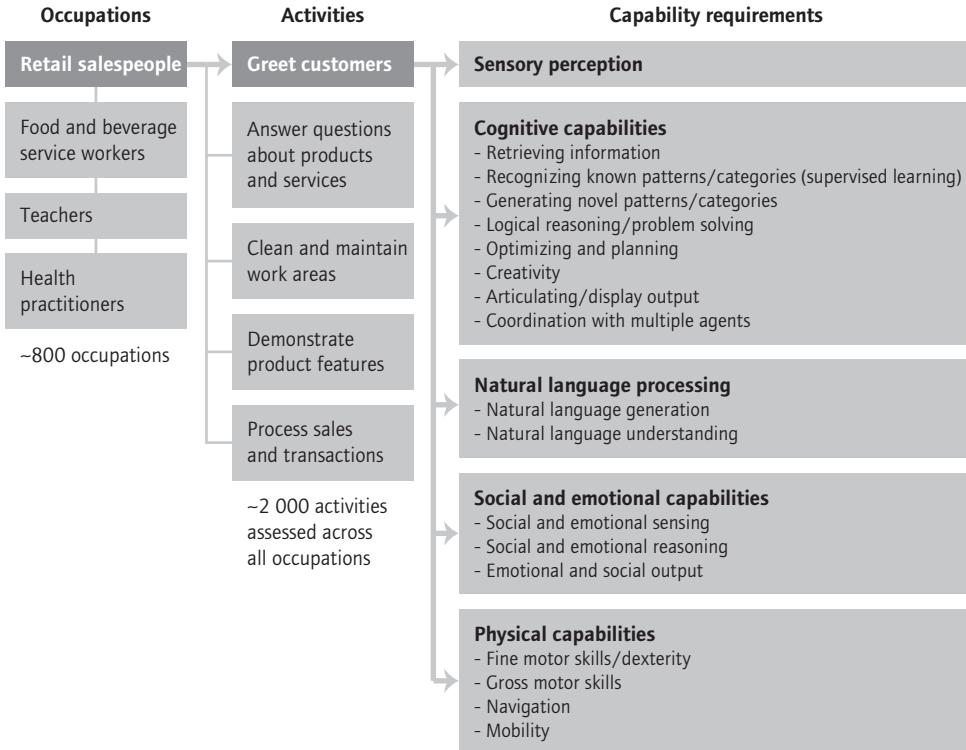
A whole slew of terms has been suggested to describe current capitalism – late, new, digital, networked, logistic, cognitive, platform, rentier, crypto, even post-capitalism – each with its own denotational logic and, hence, connotation; and there is some degree of truth to all of these. Rather than adding a new technical label, though, I prefer ‘whimsical capitalism’, not only because it continues to set our planet ablaze through the proliferation of server farms, electric cars and crypto currencies, and because it is enabling oppressive, racist and fascist politics around the globe, but also because it literally runs on the desires and impulses of a few billionaires who, with support from their political allies, can change their mind on a whim, creating a life of insecurity, indignity and precarity for the majority of global denizens.

3. Jobs: productive and unproductive

To put this in perspective, let me step back and ask some basic questions. For a few years now, I have been teaching a course on the future of work from the perspective of AI and automation. The main purpose is for students to assess for themselves the risk of different jobs being lost to automation on the basis of standard analysis. Students are asked to identify a specific job or profession and try their best to learn precisely what the job consists of; that is, ‘what does it take to be a good X’ – a good plumber, a good teacher, a good chef, a good coach, etc. The process of answering the question is iterative, consisting of three stages: (i) building a ‘seed model’ according to standard task-based job analysis, commonly used in the current literature (McKinsey Global Institute 2017; see Figure 1); (ii) revising this model to include the intersectional issues of class, gender, ethnicity and so forth; and, finally, (iii) constructing a comprehensive model by accounting for the social, global and historical parameters of work.

Figure 1 Task-based analysis of jobs

To assess the technical potential of automation, we structure our analysis around 2 000 distinct work activities



Source: Adapted from McKinsey Global institute 2017.

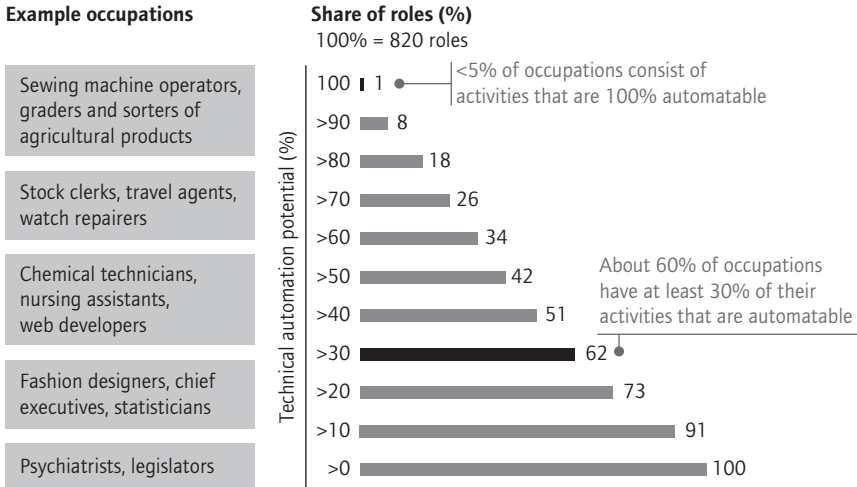
The purpose of this is to help students obtain a much better grasp of the complexities involved in jobs beyond simple task analysis so they can critically evaluate predictions of the type made by the US Bureau of Labor Statistics (see Figure 2).

For students coming from a technical background, it is better to explain these jobs in non-technical terms – for instance, groups A and B as, respectively, productive and non-productive work. To avoid prejudice and normative bias, I explain that they should not understand these terms in moral or evaluative terms; rather in practical terms of what each job contributes to our society. Of course, not all students have the same assessment of different jobs in terms of their productive or non-productive nature. Some consider jobs such as financial analyst, telemarketers, lobbyists and the like productive; others disagree and find them non-productive. In the opposite direction, some students put refuse collectors, dockworkers and janitors on the productive side while others consider them low-skilled and marginal.

Figure 2 Automation risk

While few occupations are fully automatable, 60 percent of all occupations have at least 30 percent technically automatable activities

Automation potential based on demonstrated technology of occupation titles in the United States (cumulative)*



* We define automation potential according to the work activities that can be automated by adapting currently demonstrated technology.

Source: US Bureau of labour statistics; McKinsey Global Institute analysis.

David Graeber (2018) divides those same jobs that I mentioned into pointless jobs and beneficial ones, respectively. He describes the first category as jobs that are believed to be useless even by those who perform them; while the second is, of course, the opposite. As a general rule, he shows that, in modern societies ‘the more obviously one’s work benefits other people, the less one is likely to be paid for it’. Not everyone agrees with Graeber; some argue for example that it is ‘alienation’ at work that is the problem, not uselessness (Soffia et al. 2022). But Graeber’s main point is that ‘the phenomenon of [pointless] employment can provide us with a window on much deeper social problems’. He suggests that we need to ask ourselves not just how such a large proportion of our workforce find themselves labouring at tasks that they themselves consider pointless, but also why so many people believe this state of affairs to be normal or inevitable – even desirable.

4. Essential work: a window into the future

When the Covid-19 pandemic hit, we faced a whole new category of workers that were referred to as ‘essential’ or ‘frontline’ workers – nurses, firefighters, garbage collectors, grocery workers, etc. These were the people whose work was so important to the survival of society and to the smooth operation of daily life that they absolutely could not stay at home. Many of the people who fall into this category also belong to the ‘productive’ group and to Graeber’s beneficial professions.

The phenomenon of ‘essential worker’ introduces many important questions about work, technology, income, fairness and even the survival of modern societies: what is the scope of ‘essential work’ in modern societies? How should we think about the status of work in human life? Can humanity survive without work, relegating it to machines in a fully automated economy? If yes, what would it take for us to get there? If not, how should work be divided among the members of society? Who should get what share of the income? What is a fair distribution of jobs, resources and incomes in a technologically advanced society? Each of these questions deserves a separate treatment and the answers that we provide can open a window on the future of humanity. In fact, similar questions have been asked by futurists, social theorists, social entrepreneurs, revolutionaries, philosophers and other commentators for many centuries, so we have at our disposal a broad range of ideas and alternatives. Here, we should step back and ask a very basic question about the core notion of ‘work’ and its place in human history. What is ‘work’, anyway?

5. Work: its past and our future

Work is historically and geographically specific. Its character and its meaning vary across cultures and regions, and these have changed throughout human history. The current understanding of work as ‘non-domestic, paid, legally codified, institutionalized and socially safeguarded employment’ is rather new, going back only to the 19th and 20th centuries, and it is also specific to the industrialised world (Komlosy 2017). The meaning of work has also changed drastically. While the ancient Greeks harboured a disdain for work, and the Romans divided it into necessary labour and noble art, the Judeo-Christian tradition has maintained an ambivalent view of work as joy or as a burden, as a blessing from God or as a punishment for expulsion from Eden. Medieval philosophy sought to resolve that ambivalence through the distinction of action and contemplation, *vita activa* and *vita contemplativa*, while protestantism finally elevated it to the level of prayer, as vividly captured in Thomas Jefferson’s rosy image of the yeoman farmer (1782):

Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue.

This image held a different meaning for another Virginia native, Thomas Roderick Dew, who saw in slavery the only means to ‘guarantee republican liberties for the propertied,

security for the propertyless and stability for the state and society’ (quoted in Mokyr et al. 2015: 38), and for reactionaries such as John Calhoun who praised chattel slavery for enabling the upper classes to live a life ‘elevated above the dirty, nasty nature of work’ (Calhoun 1837). In short, no coherent and persistent view of work is evident even from this narrow field of view, let alone from a more inclusive global perspective.

One aspect of work that has stayed constant in the face of this historic and geographic variability is the division of labour between different social groups: among men, women and children; among old and young; among the propertied and the propertyless; among natives and newcomers; among refugees and guests; and so forth (Komlosy 2017). A key question facing us is whether or not the same pattern will continue into the future. What division of labour is likely to prevail in the future? There is as much variation in answers to this question as there has been views of work in the past.

We first need some conceptual clarification because ‘work’ is part of a cluster of concepts that are often used interchangeably in writings and daily conversations. These include notions such as ‘activity’, ‘labour’, ‘task’, ‘skill’, ‘job’, ‘employment’ and others. To avoid confusion, Table 1 offers a basic understanding of these terms, using the notion of ‘activity’ as the base. My aim is to characterise these concepts as a cluster and not to define them in terms of a set of necessary and sufficient conditions (Connolly 1974).

Table 1 The conceptual cluster of modern ‘work’

Activity	any form of physical or mental effort that requires the expenditure of time, energy and attention
Labour	the physical and mental capacity to perform an activity
Skill	labour that requires training and practice to be effectively performed
Work	labour performed in return for some kind of tangible reward to the provider (financial, in kind, social benefit, etc.)
Task	a discrete unit of work with a pre-specified product or deliverable
Tool	the extra-human apparatuses needed to carry out a task
Employment	work that is carried out within a legally codified institutional arrangement that provides task-related or work-related tools
Job	employment that is compensated by a wage
Gig	task-driven work compensated according to task completion

Source: Authors' own elaboration.

In the above language, the recent trend has been away from work as employment in the form of waged jobs to work in the form of task-based gigs and alternative work arrangements. What has remained constant is the significance and prevalence of work in human life, while what has changed is the form that it takes. In other words, work has remained central but its form and meaning is shifting. With that in the background, two points should be kept in mind in thinking about the future of work.

First, no matter how different our social arrangements might become and how sophisticated technology might turn out to be, there are always going to be activities which need to be performed for human individuals to be able to conduct meaningful

lives and for human societies to operate effectively as collectives. We may not be able to survive a world in which the ‘time for our own instruction’ controls our days; and neither can we survive an insular life separated from others. We are social animals with a basic need for activity and collective life demands a social division of labour, whether it is taking care of children or the elderly, rubbish collection and recycling, or coordinating all of the above – in short, the necessary labour that has to be provided in order that all other things may become possible. Many ideas about the future of work (e.g. post-workerism) seem either to neglect these principles or to confuse notions such as ‘work’, ‘job’ and ‘employment’. We don’t have to have jobs or be employed in a post-scarcity society, but there is always going to be work to be carried out (Connolly 1974).

Second, one way to understand the current shift in the form and content of ‘work’ is to examine the cluster of concepts attached to it. As Connolly argued, cluster concepts are driven by values and evaluation criteria which give rise to conceptual disputes. To address such disputes, a good starting point is to be clear about the criteria behind the emergence of a cluster as well as one’s own vantage point. The key criterion behind the cluster in Table 1 and the shifting meaning of work in our times is ‘efficiency’, largely emanating from a capitalist logic that takes profit as the bottom line. It is because of this perspective and its criteria that terms such as ‘task’ and ‘gig’ have found their way into the conceptual cluster of ‘work’ in recent times.

Thinking about the future of work, however, does not have to be guided by such a perspective or by the efficiency criterion attached to it. In a post-scarcity society driven by a different set of criteria – for example dignity, solidarity, mutual support – a different cluster would emerge around ‘work’. What that cluster might look like would be a matter of social debate and collective struggle but, instead of ‘task’, ‘gig’ or ‘alternative work arrangement’, and even ‘job’ and ‘employment’, it might include terms such as ‘meaning’, ‘creativity’, ‘ACA’ (alternative communal arrangement), ‘service’ and ‘engagement’, for instance.

6. Technology: our past and its future

Current debates about the role of technology in the future of work are largely focused on automation. There is a deep irony built into the notion of automation, however, that is often ignored in such debates. ‘The automatic control system has been put in because it can do the job better than the operator’, Lianne Bainbridge observed many years ago, ‘but yet the operator is being asked to monitor that it is working effectively’ (1983: 776). In current debates, too, the human provides the ‘template’ for how most systems (for instance, so-called ‘self-driving cars’) are designed but it is also ‘what must be erased, improved on, or displaced for the machine to be transformed’ (Ganesh 2020: 4). The irony of automation, in other words, has been deepened with the rise of artificial intelligence (AI) and related technologies in recent years. But human beings are also being erased in an economic sense, as I have argued elsewhere, or, otherwise, ‘put on the margins of machines and algorithms, providing labor in unrewarded or minimally rewarded ways’ (Ekbia and Nardi 2017: 365).

These observations point to the broader question of ‘who benefits from modern technology’ and the possibilities that it has created. In the context of Covid-19, this question can be re-phrased in the following form: ‘If automation and technology is as great as enthusiasts suggest, why do we have to put people’s lives at risk in order to get very basic things done?’

The answer to this question has multiple aspects — technical, socio-cultural and economic. The technical aspect has to do with the serious limitations of current technology for performing mundane tasks that are straightforward for humans – for example, flipping hamburgers or cleaning a bed in the hospital. As I seek to show elsewhere (Ekbia 2023), these limitations are partly to do with the current state of the art in technology and partly with the embedding socio-economic system.

The social aspect has to do with a technophile culture that puts a higher premium on machines than on human beings. It is in this culture that companies and corporations almost always showcase their technologies as opposed to their people as indicators of knowledge, power and competence. Some aspects of the Enron debacle in 2001 provide a prominent example of this (Ekbia and Kling 2005), but that same culture still has a strong grip on our society. A recent example comes from the case of a company that claims to use artificial intelligence to monitor and catch shoplifters in its European stores. The real AI behind the system, however, turns out to be a group of low-paid employees in Madagascar whose job is to watch remotely streamed video feeds from security cameras in order to report suspicious activities to a central desk that then alerts the business owners (Casilli 2022). This arrangement is at work in many other industries, including social media, where the dirty and gruesome job of content moderation is outsourced to educated but low-paid employees in Pakistan, the Philippines and elsewhere (Robert 2019).

7. Economics: no past; perhaps a future

These examples speak directly to the economic aspect of automation, which is connected with the availability of a cheap army of reserve labour around the globe that makes it still profitable for corporations to hire human labour rather than invest in technology. The dominant discourse on this topic is often misleading, putting the technological cart before the economic horse. A key assumption behind it is that machines are taking jobs away from human beings – an assumption that is shared by commentators on different points of the political spectrum. As Benanav (2022), following economic historian Robert Brenner (2006), has shown, however, the main driver behind the decreasing demand for labour is not automation; rather, it is economic stagnation brought about by industrial overcapacity and underinvestment. A detailed treatment of this argument is beyond our scope here, but the brief argument is straightforward: technical improvements (for instance the use of robots in manufacturing) notwithstanding, the rate of productivity growth has been slowing since the mid-twentieth century in almost all advanced economies in Europe, Japan and North America. At the same time, output as a measure of the volume of production in a given sector has also been growing at a slower rate during the same period. Consequently, the rate of change in employment,

as the difference between the previous two rates (output minus productivity), has been negative in manufacturing (see Table 2). Benanav (2022: 23) sums up this trend as follows:

Again, it is the incredible degree of slowdown in the rate at which manufacturing production expands, visible on the world scale, that explains why manufacturing-productivity growth appears to have advanced at a rapid clip, even though it was actually much slower than in previous eras. More and more is produced with fewer workers..., but not because technological change has given rise to high rates of productivity growth. Far from it – productivity growth in manufacturing has appeared rapid only because the yardstick of output growth, against which it is measured, has been shrinking.

The overall outcome of this trend has been a lessening in the demand for labour. But to attribute this to automation is misleading for at least three reasons. First, it puts the blame in the wrong place, on technology rather than the capitalist economy. Second, it mischaracterises the current situation as unemployment, whereas in fact it is more underemployment in the form of, for example, precarious gig work. What we are witnessing is more of a displacement of jobs than the replacement of human labour by machines. Lastly, it misses on another major source of economic growth in current capitalism in the form of heteromated labour (Ekbia and Nardi 2014, 2017), creating a misplaced anxiety about the superfluousness of human beings vis-à-vis machines (Ekbia and Nardi 2019). Remote work has accelerated the trend toward heteromation, offloading many of the resources of job performance to employees, contractors, freelancers and others.

Table 2 Manufacturing growth rates: 1950-2017 (from Benanav 2022)

		Output	Productivity	Employment
USA	1950-1973	4.4%	3.1%	1.2%
	1974-2000	3.1%	3.3%	-0.2%
	2001-2017	1.2%	3.2%	-1.8%
Germany	1950-1973	7.6%	5.7%	1.8%
	1974-2000	1.3%	2.5%	-1.1%
	2001-2017	2.0%	2.2%	-0.2%
Japan	1950-1973	14.9%	10.1%	4.3%
	1974-2000	2.8%	3.4%	-0.6%
	2001-2017	1.7%	2.7%	-1.1%

Source: Conference Board, International Comparisons of Productivity and Unit Labour Costs, July 2018 edition.

The net effect of these developments is captured in a report by the conservative RAND corporation examining the trends in income in the US in the last 40 years. This compares real wages against a counterfactual situation in which the upward trends of earlier decades were to have continued; that is, someone earning 18-21 dollars an hour, or 40 000 dollars a year, should actually – in 2018 – have been earning 32-42 dollars an hour, or 92 000 dollars a year (Price and Edwards 2020). According to the report,

this difference between current reality and that counterfactual scenario amounts to 2.5 trillion dollars (see Table 3). The fact that this analysis comes from a conservative think tank such as RAND, considered by many as the bastion of American capitalism, says something about the current dire economic situation in the US and, by implication, around the globe. The RAND report describes this as a ‘transfer of wealth’, but a more accurate term might simply be stealing.

Table 3 Counterfactual distribution of income. Income distribution for full-year, full-time, prime-aged workers in the US in 2018 dollars

	1975	1979	1989	2000	2007	2018	Counterfactual	ω
25 th %	28 000	28 000	28 000	31 000	30 000	33 000	61 000	15.2%
Median	42 000	42 000	43 000	47 000	46 000	50 000	92 000	16.0%
75 th %	58 000	60 000	62 000	72 000	72 000	81 000	126 000	33.8%
90 th %	77 000	82 000	88 000	109 000	115 000	133 000	168 000	61.5%
95 th %	91 000	101 000	109 000	145 000	160 000	191 000	198 000	93.5%
99 th %	257 000	226 000	349 000	830 000	1 058 000	761 000	560 000	166.3%
Top 1% Mean	289 000	292 000	467 000	1 121 000	1 311 000	1 384 000	630 000	321.1%

Source: Adapted from Price and Edwards 2020.

8. Social differentiation: telework, hot skills and whimsical capitalism

The counterfactual analysis conducted by RAND is emblematic of a deeper phenomenon. Capitalism is a socio-economic system that thrives on difference, producing and reproducing social difference whenever possible.² Whatever we call this – ‘social differentiation’, for instance – it is a much deeper and much more persistent aspect of capitalism than any other. Social differentiation can come about in different forms – spatial, temporal, technological and, of course, economic. The rise of telework is yet another example of this difference and, while certainly there are some benefits for particular jobs and particular groups of people, we have to connect these to the deeper underlying issues in our socio-economic system and warn against the possibility of telework largely working against the most vulnerable workers. Mounting evidence points to the practical realisation of such concerns (Piasna et al. 2022).

At the time of writing, news has started to emerge about the large-scale and simultaneous lay-offs of employees in Silicon Valley – 11 000 by Meta, 20 per cent by Intel and Snap, 13 per cent by Lyft, etc. – not to mention the hiring freeze by Apple and Amazon and the corporate takeover of Twitter by Elon Musk and the subsequent firing of half the employees along with the collective resignation of some 1200 others in response to demands for more intense work and a rise in ‘productivity’. Whatever the motivations

2. Notice that I say ‘difference’, and not discrimination, because I think that discrimination is the tip of a much bigger iceberg.

behind these lay-offs, they point to a basic fact about capitalism – namely that nobody, including hot-skilled employees, is immune to the shifting whims of corporate capitalists.

9. Looking ahead

What is to be done in the face of all this differentiation, layering and uncertainty? As I mentioned earlier, there is no shortage of ideas and solutions out there for creating a social order that would provide people with the means for a dignified, meaningful and fulfilling life. From early social utopians (Bellamy 1888) to more recent visionaries of a sustainable and equitable life (Bookchin 1982; Gorz 1985; Wright 2010), and including proposals such as a universal basic income (UBI) as a mechanism of social insurance, we have a trove of ideas to draw upon. The question is which one of these is going to reverse and correct the downward course of history in the last few decades and benefit the majority of humanity as opposed to a select few billionaires who cannot think of any better way to spend their vast fortunes than racing into space on private rocket ships. Let me end with some thoughts on the future division of labour between humans, with an eye on technology.

Current technologies have an ambivalent character. They are liberating, empowering and revelatory; yet, at the same time, constraining, oppressive and opaque. The ambivalence is not inherent to these technologies; rather, they largely derive from the embedding capitalist system within which they are designed and developed, a system that constantly coopts any positive potential and innovation while pushing to the core its more oppressive and anti-social aspects – in short, a depressive moral economy that promotes surveillance, rivalry, tribalism, greed and even fatalism. One way out of this situation is to reverse the prevailing tendency and to develop and promote technology's liberating and empowering aspects. How this happens should be a matter for collective deliberation by citizens, civic society organisations, labour and trade unions and elected officials.

Technology by itself cannot bring about liberation or welfare, but it can be part of a different future that would work for the majority of human beings instead of a select few. It is difficult, under these circumstances, to make solid predictions about the future of work, but we can imagine different scenarios of how things might unfold. As other contributors to this volume show, workers face numerous challenges in organising, mobilising, unionisation and contractual distancing, as well as issues of psychological health, work-life balance, micromanagement, surveillance and digital presenteeism, outsourcing, geographic variance, jurisdiction, employee misclassification and the oversupply of labour. As we take stock of these issues and challenges, we have to keep in mind that moments of great change in human history typically follow periods of extreme disparity. We are living through such a period. An intensification of the remoteness of work might actually be the first step toward establishing a different future for work, as distant a possibility as it might seem. This might be not just a moment of awakening, but also one of reckoning.

References

- Bainbridge L. (1983) Ironies of automation, *Automatica*, 19 (6), 775–779.
[https://doi.org/10.1016/0005-1098\(83\)90046-8](https://doi.org/10.1016/0005-1098(83)90046-8)
- Bellamy E. (1888 [2007]) *Looking backward, 2000-1887*, Oxford University Press.
- Benanav A. (2022) *Automation and the future of work*, Verso Books.
- Bookchin M. (1982) *The ecology of freedom: The emergence and dissolution of hierarchy*, Ak Press.
- Brenner R. (2006) *The economics of global turbulence*, Verso Books.
- Calhoun J.C. (1837) The ‘positive good’ of slavery in 1837, *Speech in the US Senate*, 6 February 1837.
- Casilli A. (2022) What is a "really ethical" AI? The role of human labour and natural resources in automation, AI Talk at ETUI, 14 October 2022.
<https://www.etui.org/events/ai-talks-etui-what-really-ethical-ai>
- Connolly W.E. (1974) *The terms of political discourse*, Princeton University Press.
- Ekbja H.R. and Kling R. (2005) Network organizations: Symmetric cooperation or multivalent negotiation, *The Information Society*, 21 (3), 155–168.
<https://doi.org/10.1080/01972240490951881>
- Ekbja H.R. and Nardi B. (2014) Heteromation and its (dis)contents: The division of labor between humans and machines, *First Monday*, 19 (6). <https://doi.org/10.5210/fm.v19i6.5331>
- Ekbja H.R. and Nardi B. (2017) *Heteromation and other stories of computing and capitalism*, The MIT Press.
- Ekbja H.R. and Nardi B. (2019) Keynes’ grandchildren and Marx’s gig workers: Why human labour still matters, *International Labor Review*, 158 (4), 653–676.
<https://doi.org/10.1111/ilr.12146>
- Ekbja H.R. (2023) Commodities or collectives? The fight over the future of technology, in Arabadjieva, Countouris, Fabris and Zwysen (eds.) *Transformative ideas: ensuring a just share of progress to all*, ETUI.
- Ganesh M.I. (2020) The ironies of autonomy, *Humanities and social sciences communication*, 7 (157). <https://doi.org/10.1057/s41599-020-00646-0>
- Gorz A. (1985) *Path to paradise: On the liberation from work*, Routledge.
- Graeber D. (2018) *Bullshit jobs: A theory*, Simon and Schuster.
- Jefferson T. (1782) Notes on the State of Virginia, Ch. 19. <https://tjrs.monticello.org/letter/2355>
- Komlosy A. (2017) *Work: The last 1,000 Years*, Verso Books.
- McKinsey Global Institute (2021) *The future of work after COVID-19*, McKinsey & Company.
<https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19>
- Mokyr J., Vickers C. and Ziebarth N.L. (2015) The history of technological anxiety and the future of economic growth: Is this time different?, *Journal of Economic Perspectives*, 29 (3), 31–50.
<https://doi.org/10.1257/jep.29.3.31>
- Piasna A., Zwysen W. and Drahekoupil J. (2022) *The platform economy in Europe: Results from the second ETUI Internet and Platform Work Survey (IPWS)*, Working Paper 2022.05, ETUI.
<https://www.etui.org/publications/platform-economy-europe>
- Price C.C. and Edwards K.A. (2020) Trends in income from 1975 to 2018, Working Paper WR-A516-1, RAND Education and Labor. <https://doi.org/10.7249/WRA516-1>
- Roberts S.T. (2019) *Behind the screen: Content moderation in the shadow of social media*, Yale University Press.

- Scheiber N. (2019) Inside an Amazon warehouse, robots' ways rub off on humans, The New York Times, 3 July 2019.
- Soffia M., Wood A.J. and Burchell B. (2022) Alienation is not 'bullshit': An empirical critique of Graeber's theory of BS Jobs, *Work, Employment and Society*, 36 (5), 816-840. <https://doi.org/10.1177/09500170211015067>
- Vincent J. (2021) Amazon denies stories of workers peeing in bottles, receives a flood of evidence in return, The Verge, 25 March 2021. <https://www.theverge.com/2021/3/25/22350337/amazon-peeing-in-bottles-workers-exploitation-twitter-response-evidence>
- Wright E.O. (2010) *Envisioning real utopias*, Verso Books.

All links were checked on 21.03.2023.

List of contributors

Mehtap Akgüç is Senior Researcher in the Economic, Employment and Social Policies Unit of the European Trade Union Institute and Research Fellow at the Institute of Labor Economics (IZA). Her main research interests include the implications of the green transition for labour markets; migration and mobility; industrial relations and social dialogue; return to work and work reintegration; platform work; inequalities in labour markets; and gender and economic development. She has a PhD in empirical labour economics from the Toulouse School of Economics.

Kalina Arabadjieva is Researcher in the Economic, Employment and Social Policies Unit of the European Trade Union Institute, with a PhD in labour law and collective labour rights. She works on gender equality in the workplace, including the relevant EU legal frameworks on equal pay and work-life balance, as well as on the EU's just transition policies and the relationship between labour law and environmental law.

Nicola Countouris is Director of Research at the European Trade Union Institute and Professor of Labour Law and European Law at the Faculty of Laws of University College London. His research focuses mainly on labour law at national, comparative and European/international levels.

Stan De Spiegelaere is Director of Policy and Research at UNI Europa and a guest professor at the University of Ghent. Previously he worked as Senior Researcher at the European Trade Union Institute and the Research Institute for Work and Society of KU Leuven (HIVA). His work centres on labour issues, social dialogue, workers' participation, industrial relations and collective bargaining.

Valerio De Stefano is the Canada Research Chair in Innovation, Law and Society at Osgoode Hall Law School, York University, Toronto. Before joining Osgoode in 2022, he had been Professor of Labour Law at the Faculty of Law of KU Leuven since 2017 while, between 2014 and 2017, he was an officer of the International Labour Office. He holds a PhD in law from Bocconi University, Milan (2011).

Birte Dedden is Director of the ICTS sector at UNI Europa where she is responsible for digital skills, social dialogue and European Works Councils. Currently, she leads UNI Europa's work on AI and remote work, focusing on the impact of new technologies on workers. Before UNI Europa, she was a parliamentary assistant in the European Parliament. She holds a French and German master's degree in comparative literature, French and philosophy and is a Master of Arts in international politics.

Hamid R. Ekbia is University Professor and Director of Autonomous Systems Policy Institute at Syracuse University, where he is affiliated with the Maxwell School of Citizenship and Public Affairs and the School of Information Studies.

Paula Franklin is Senior Researcher in the Health and Safety and Working Conditions Unit of the European Trade Union Institute. Her research topics include psychosocial risks and health equity.

Béla Galgóczi has been Senior Researcher in the Economic, Employment and Social Policies Unit of the European Trade Union Institute since 2003, working on capital and labour mobility in the EU. His current research focus is the just transition towards a carbon neutral economy, in particular the issue of fair labour market transitions in carbon intensive sectors and regions.

Uglješa Grušić is Associate Professor at the Faculty of Laws, University College London, where he specialises in private international law. His research focuses on the European private international law of employment and on the interplay between private international law and human rights. He is the author of *The European Private International Law of Employment* (CUP 2015).

Maureen Hick is Director of UNI Europa Finance where she is responsible for the Sector Social Dialogue and European Works Councils, remote work and global framework agreements. She is an expert in EU policy, having led European advocacy and research for the British trade union GMB and previously as a senior parliamentary assistant to a Labour MEP. She has a degree in European Studies and Modern Languages (French, Italian, Spanish) from the University of Bath and an International Diploma in Political Science from Sciences Po Paris.

Pamela Meil is a sociologist of work. Until 2021, she was on the management board of the Institute for Social Science Research (ISF München), where she was Senior Research Fellow, and is currently a co-director of MeRe research. Her research interests include: the digitalisation of work, including the impact on industrial relations; global value chain restructuring and consequences for the quality of work life, labour and employment relations; and the interaction between globalisation and national adaptation processes in comparative perspective.

Jon C. Messenger is an internationally-recognised expert on working time and work organisation. He worked at the International Labour Office in Geneva from 2000 to 2022, first as Senior Research Officer and then as Team Leader of the Working Conditions Group. He is the author and/or editor of numerous publications on working time, work-life balance, telework, work sharing and related issues. Prior to joining the ILO, Jon worked at the US Department of Labor in Washington DC between 1985 and 2000.

Agnieszka Piasna is Senior Researcher in the Economic, Employment and Social Policies Unit of the European Trade Union Institute. She is a labour sociologist with an interest in job quality, labour market policies and regulation, digitalisation and gender equality. She coordinates research activities within the framework of the ETUI's Internet and Platform Work Survey, develops the European Job Quality Index and carries out research on working time reduction. She has a PhD in Sociology from the University of Cambridge.

Silvia Rainone is Researcher in the Europeanisation of Industrial Relations Unit of the European Trade Union Institute covering developments in EU labour and social policy with a predominant focus on the future of work, platform work and European socio-economic governance. She is an affiliated member of the Institute for Labour Law (KU Leuven) and part of the coordinating committee of the European Lawyers for Workers Network. She has a joint PhD in EU Labour Law from Tilburg University and KU Leuven.

Uma Rani is Senior Economist in the Research Department of the International Labour Office. She is a development economist with research interests including the informal economy, minimum wages and social policy with a focus on gender. Since 2016, she has explored digital transformation in the world of work, in particular working conditions and economic and social inequality. She coordinated the ILO flagship report *World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world*.

Zane Rasnača is Senior Researcher in the Europeanisation of Industrial Relations Unit of the European Trade Union Institute, a visiting lecturer at the University of Lille and an affiliated member of the Institute for European Law (KU Leuven). She holds a PhD in European Law from the European University Institute (Florence, Italy).

Kurt Vandaele is a political scientist and Senior Researcher in the Europeanisation of Industrial Relations Unit of the European Trade Union Institute. His research interests include the history and sociology of the labour union movement in Europe; the collective action repertoire of workers; the platform economy and labour; and the political economy of Belgium and the Netherlands. He holds a PhD in Political and Social Sciences from Ghent University.

Wouter Zwysen is Senior Researcher in the Economic, Employment and Social Policies Unit of the European Trade Union Institute, working on labour market trends and inequalities, the future of work, and migration and mobility. He obtained his PhD in 2016 in applied social and economic research at the University of Essex and is affiliated with the Research Institute for Work and Society (HIVA) of KU Leuven and the sociology department of the University of Essex.

The future of remote work

Edited by Nicola Countouris, Valerio De Stefano, Agnieszka Piasna and Silvia Rainone

Debates on the future of work have taken a more fundamental turn in the wake of the Covid-19 pandemic. Early in 2020, when large sections of the workforce were prevented from coming to their usual places of work, remote work became the only way for many to continue to perform their professions. What had been a piecemeal, at times truly sluggish, evolution towards a multilocation approach to work suddenly turned into an abrupt, radical and universal shift. It quickly became clear that the consequences of this shift were far more significant and far-reaching than simply changing the workplace's address. They involved a series of rapid, blockbuster transformations that were going to outlast the 'mandatory lockdown' phase of the pandemic.

The 12 chapters collected in this volume provide a multidisciplinary perspective on the impact and the future trajectories of remote work. They raise, discuss and explore fundamental questions emerging around remote work: from the nexus between the location from where work is performed and how it is performed to how remote locations may affect the way work is managed and organised, as well as the applicability of existing legislation. Additional questions concern remote work's environmental and social impact and the rapidly changing nature of the relationship between work and life.

The contributions in this edited volume develop along several complementary axes, ranging from the discussion of global and societal dynamics to the implications for the contractual relationship between employers and workers. The transformation of the spatial component of work is considered both as a potential paradigm shift for the world of work and as a challenge for the implementation of specific regulatory regimes. An important insight that emerges from the multidimensional approach of this volume is that the establishment of a worker centred future of (remote) work requires the exploration and development of constructive pathways at different levels and in different directions involving the role of regulators, courts, trade unions, researchers, businesses and workers themselves.

D/2023/10.574/15
ISBN 978-2-87452-671-8



9 782874 526718