

REMOTE WORK

Pontignano XXXVII:

"LABOUR RELATIONS IN THE DIGITAL ERA"

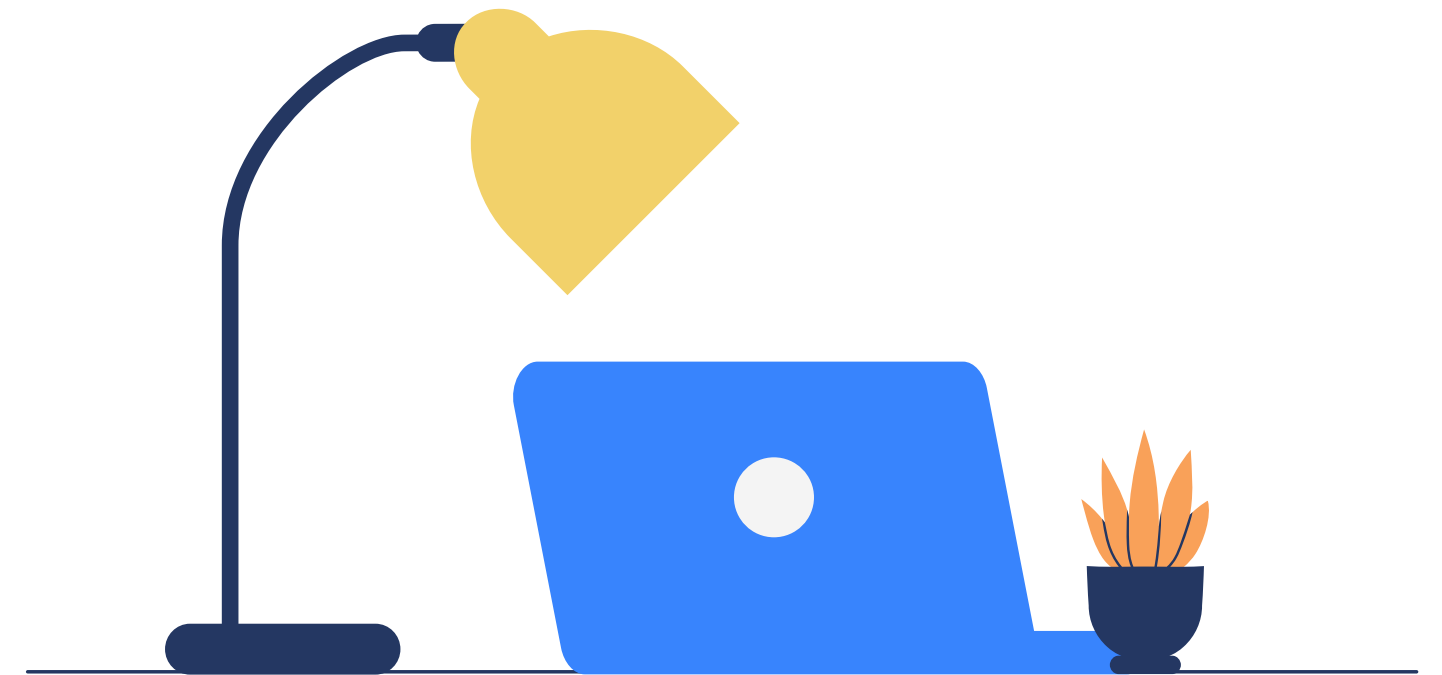
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PROGRAMME

- 1 - Definition of remote work
- 2 - Where?
- 3 - When?
- 4 - Privacy and Data Protection



DEFINING REMOTE WORK: COMPARATIVE PERSPECTIVE

European framework agreement on telework, 2002

Art. 1 par. 3

Telework covers a wide and fast evolving spectrum of circumstances and practices. For that reason, social partners have chosen a definition of telework that permits to cover various forms of regular telework

Art. 2 par. 1

Telework is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis

Consequences

- Some members States have different types of remote work: from home office, to agile work, passing through mobile work. While, others, don't have any distinction
- Risk of overlapping

The main distinction between different types of remote work is related to flexibility granted to the employee

European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect

par. 14

Calls on the Commission to present a legislative framework with a view to establishing minimum requirements for remote work across the Union ensuring that teleworking does not affect the employment conditions of teleworkers; stresses that such framework should clarify working conditions, including the provision, use and liability of equipment, such as of existing and new digital tools, and should ensure that such work is carried out on a voluntary basis and that the rights, workload and performance standards of teleworkers are equivalent to comparable workers



How to accede

- Individual agreement between the employer and employee
- Right to request and the duty to motivate the refusal
- Right to work remotely



What's next?

- Reasonable accommodation duty, unless such measures would impose a disproportionate burden on the employer (Directive 2000/78/Ce) - PwD
- Work life balance (Directive (Ue) 2019/1158) - Caregivers



WHERE?

Who's liable for safety and security?

- General principle: employer's liability for safety and health
- The impact on collective and individual agreement on S&H (IT, FR)
- Right of access to remote work places for employers and employees' representatives and labour inspectors (FR, BE)
- The application of the occupational accident insurance



What's next?

What about psychological risks related to remote work?

- Work-life blending
- Mental and physical problems (Technostress)
- Isolation

Lack of specific provisions....



Costs of equipment

General principle -> Employer's duty to cover:

- the costs of remote work equipment or supply it;
- the costs directly caused by the the work, in particular those relating to communication and connection.

But...

1 - National particularities: derogation from general principle by collective agreement (FR, HU) or individual agreement (HU).

2 -The need to distinguish between different types of remote work (IT, GE, BE)

WHEN?

Working time regulation under pressure

- different national reactions
- differentiation between working time and workload

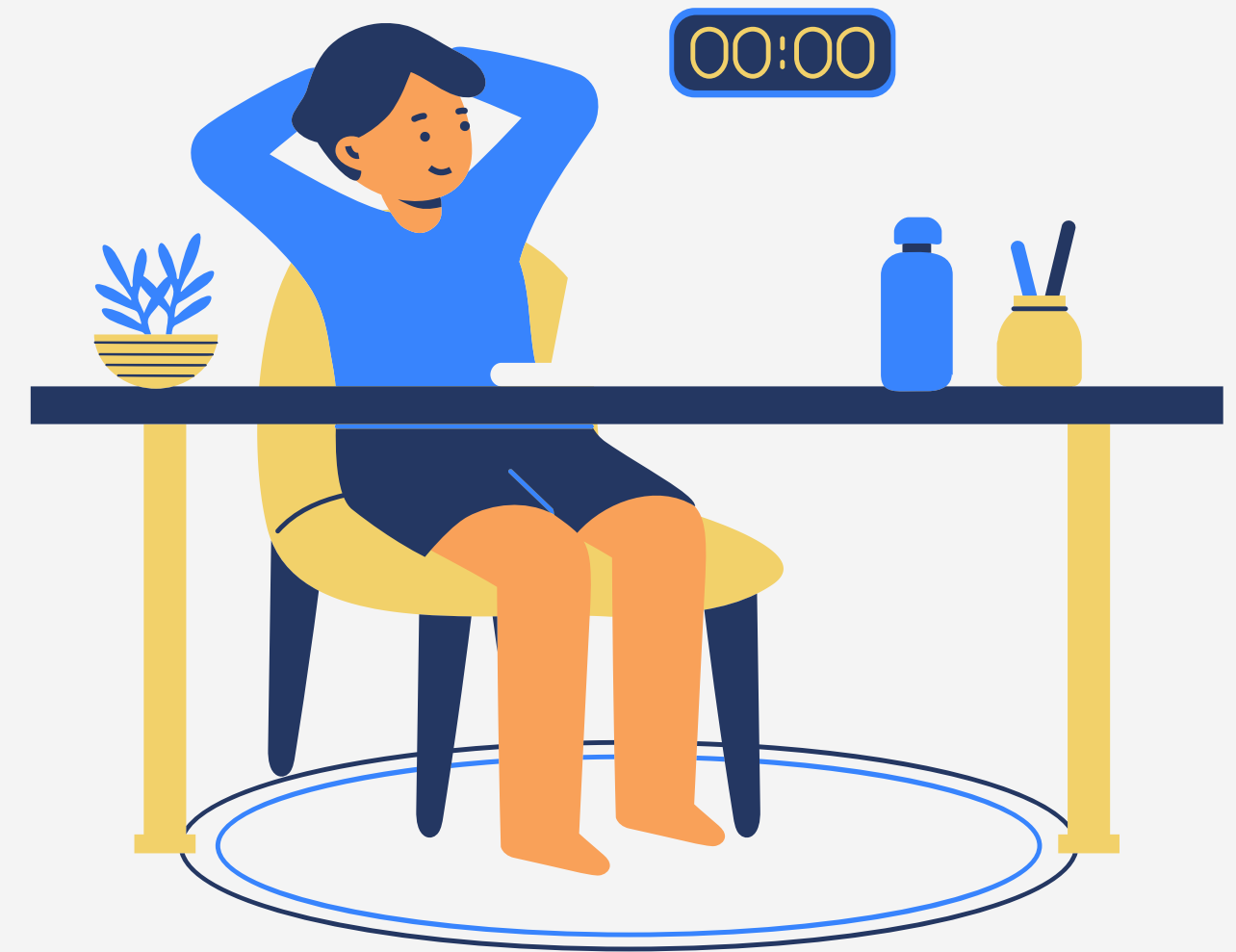


Time flexibility: when and how much?

1 - ordinary working time regulation do apply? (NL, FR, HU, GE)

2 - telework (IT): it depends /agile work
(IT): time flexibility with upper working
time limits

3 - working time limits out of
order (BE)



Right to disconnect?

No effective right to disconnect

- HU, NL, GE: no legal provision
- FR, IT, BE: duty to negotiate (individual or collective agreement) \neq right to disconnect



What's next?

- Uneasiness in regulating working time for remote workers
- R2D possible solution, but under invested
- EFA on Digitalisation (Modalities of connecting and disconnecting);
EU parliament Resolution with recommendations to the Commission on the right to disconnect



DATA PROTECTION AND PRIVACY

Employer

- General duty of care and specific duties to monitor working time) and ensure health and safety in the (remote) workplace
- Duty to protect (e.g. client) data as a data controller
- Interest to monitor employees ("performance")

Employee

- Fundamental rights to privacy, private life, privacy in the home
- Interest that health and safety as well as working time regulation is complied with

General data protection regulation

- No-remote-working specific provisions regarding employee surveillance in the countries we discussed
- Same issues because of EU law background of the GDPR



Employee representation

- GE + NL = strong co-determination rights. Also in the area of monitoring employees new additional rights of co-determination in Germany specifically for mobile work
- BE + FR = consultation right on the introduction of mobile/telework
- BE + GE = ongoing monitoring by works council
- IT = no involvement of works council but permission of trade union
- HU = no involvement of trade union or works council, need to inform individual employee before monitoring

What's next?

EFA on DIGITALISATION

- Modalities of connecting and disconnecting: *"Being clear about the policies and/or the agreed rules on the use of digital tools for private purposes during working time"*
- Artificial Intelligence (AI) and guaranteeing the human in control principle: *"AI systems should be designed and operated to comply with existing law, including the General Data Protection Regulation (GDPR), guarantee privacy and dignity of the worker"*.
- Respect of human dignity and surveillance :
 - *"Enabling workers^[?]' representatives to address issues related to data, consent, privacy protection and surveillance."*
 - *"Always linking the collection of data to a concrete and transparent purpose. Data should not be collected or stored simply because it is possible or for an eventual future undefined purpose"*.

Short bibliography

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