

## **Smart working, Covid-19 and industrial relations: the regulatory perspective in France**

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# 1. The adoption of out-of-office work pre Covid-19 and analysis of the related regulative framework

## 1.1 Definitions, regulations and related legal issues of out-of-office work

Out-of-office work does not refer as such to a legal definition in France. The notion of out-of-office work indeed covers different forms of remote work, outside of an employer premises. In those situations, this is the notion of telework that has been chosen for long as the right one to take into account the possibility provided to employees by new technologies to work remotely, from home or elsewhere but the employer premises. As soon as 2004, the *Forum des droits sur l'internet*<sup>1</sup> in its recommendation "[telework in France](#)" made a distinction between "e-work" or "mobile work" and "telework". In its view, mobile work is a too extensive notion that could entail all the changes brought in companies by internet technologies whereas "telework" allows focusing specifically to remote work arrangements.

France first legally defined telework in 2005. On 19<sup>th</sup> July of 2005, French social partners concluded a [cross-sectoral collective agreement](#) dedicated to telework in order to transpose in France the European autonomous framework agreement of 16<sup>th</sup> July 2002. The Minister of Labour extended this text on 30<sup>th</sup> May 2006, making it compulsory for all companies and employees in the private sector<sup>2</sup>. This was the first time telework was introduced in the French regulation. Following this collective agreement, a new law, came into force in 2012, introduced telework in the Labour code<sup>3</sup> by transposing into law the 2005 agreement. The law thus created a new section in the Labour Code dedicated to telework.

At this time, according to the article L. 1222-9 of the Labour Code, telework was defined as "*any form of work organisation in which work which could also have been carried out on the employer's premises is carried out by an employee away from the employer's premises on a regular and voluntary basis using information and communication technologies in the context of an employment contract or an amendment to it*".

This definition is general and does not include all the elements of the definition of telework adopted in the 2005 agreement. In particular, the 2005 agreement explicitly defined "mobile workers" as "teleworkers" even if "*the fact of working outside the company's premises is not sufficient to confer on an employee the status of teleworker*"<sup>4</sup>. Oppositely, the legal definition of 2012 did not explicitly mentioned mobile workers. Anyway, the general definition of telework introduced in 2012 in the Labour Code could cover all kind of employees working alternately in and out of the employer premises. This only excludes from the legal regulation of telework, employees whose tasks cannot, by nature, be carried out at the employer premises such as sales representatives, surveyors or

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<sup>1</sup> Internet rights Forum was an association, financially supported by the State and bringing together economic actors of the internet, representatives of internet users and other qualified people in order to contribute to a co regulation of the internet. It issued several recommendations in respect to this mission, including one about telework in 2004; The association was dissolved in 2011;

<sup>2</sup> This text does not cover self-employed workers and civil servants

<sup>3</sup> Law n°2012-387 of 22 March 2012

<sup>4</sup> See article 1 of the ANI 19th July 2005

medical visitors. Those workers are therefore not teleworkers as defined by the Labour Code and legal provisions related to telework do not apply to them. They are “simply” mobile, nomadic, workers which is not as such a legal category subject to a specific legal regulation<sup>5</sup>.

In the French context, telework regulation therefore constitutes the main regulation covering out-of-office work in France considering the possibilities to carry out work alternately in and out of the employer premises. As telework might often be carried out from home, it is important to distinguish the legal framework related to telework from another specific legal status related to homeworkers. The latter is a specific status, covering people working **exclusively at home** and meeting specific requirements<sup>6</sup>. If these conditions are met, these persons are assimilated to employees even if there is no subordination link between them and their client.

Teleworkers as defined by the Labour code are employees and thus benefit from all the provisions of the Labour code whatever the various forms of their work organisation. Regarding the latter, one often distinguished, well before the COVID crisis, different ways to telework, especially<sup>7</sup>:

- home-based telework that concerns the employee who works most of the time at home and occasionally goes to the employer's premises;
- the nomadic teleworker who keeps a physical workstation in the company but uses ICTs when travelling, at home or at the customer's premises to connect to the company's information system
- telework in telecentres - whether public or reserved for a single company – that allows a clear distinction between private and professional life, and maintains contacts between employees;
- the networked teleworker who can be located in a site - the company's, in a telecentre or at the client's premises - and work under the control of a remote manager, possibly within a "virtual team".

The legal definition of telework was amended in 2017 by the ordinance n°2017-1387 of 22<sup>nd</sup> September 2017. This change in legislation followed [a joint report](#) from national social partners issued on 23<sup>rd</sup> May 2017. Article 57 of the law n° 2016-1088 of 8<sup>th</sup> August 2016 indeed planned that *“A consultation on the development of telework and remote work shall be initiated, before 1 October 2016, with the professional employers' organisations and the representative employee trade unions at national and cross-industry level, which, if they so wish, shall open negotiations on this subject”*. This provision aimed at taking stock of the evolution of the issue, taking into account its possible benefits and shortcomings in the view of both companies and employees, and at highlighting good practices to inform collective bargaining. Beyond pointing out some of the difficulties associated to telework despite the application of labour law provisions to teleworkers<sup>8</sup>, the report insisted on the issue of *“informal telework”*. According to the regulation put in place in 2012, telework could only

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<sup>5</sup> However, one might find some company collective agreements covering mobile workers who are not teleworkers such as the [“collective agreement about nomadism”](#) concluded in BNP PARIBAS personal finance (the first time in 2010) and planning measures to improve working conditions of nomadic workers (salespersons in this case)

<sup>6</sup> See [article L. 7412-1 of the Labour Code](#)

<sup>7</sup> This typology about the various illustrations of telework in practice was proposed by the Internet rights Forum in 2004 and reproduced in a 2009 report from the “Centre d’Analyse Stratégique” (a service of the Prime Minister today known as France Stratégie) : [Le développement du télétravail dans la société numérique de demain](#), November 2009

<sup>8</sup> For instance, how to make sure that OHS provisions are effectively applied in practice when work is carried out from the employee’s home

(legally) exists if it was carried out on a regular basis<sup>9</sup>. In this case, a direct agreement between the employer and the employee had to be formalised by amending the employment contract<sup>10</sup>. Problems linked to this was that, in many cases, some employees could telework on a casual basis without any formalisation of their situation. This could raise some possible risks for the employee<sup>11</sup> and finally have a detrimental impact on the development of telework. For this reason, the latest reform in this respect (2017 ordinance above-mentioned) amended and enlarged the definition of telework to include also teleworking on a casual basis. According to article L. 1222-9 of the labour code **currently in force**, “*Telework refers to any form of work organisation in which work that could also have been performed on the employer's premises is performed by an employee away from these premises on a voluntary basis using information and communication technologies*”. Requirement related to telework on a “regular basis” no longer exists for the employee to be legally considered as a teleworker. In addition and therefore, the 2017 reform also amended the ways telework should be implemented at company level. As a result, telework can now be organised through a collective agreement or a unilateral employer charter (after a consultation of the works council) <sup>12</sup> or, in lack of collective agreements or charter, it can be freely decided by the employer and the employee and be formalised by any mean<sup>13</sup>.

To sum up, in the private sector, telework was introduced in French regulation following the impetus given by the European framework agreement of 2002. Social partners played a key role in this respect as a cross-sectoral binding agreement (2005) first regulated telework, before being partly transcribed into the Labour Code (2012 law). The reform of the Labour Code passed on 2017 amended the legal regulation in force in order to make the use of telework more flexible while securing it. The regulation in force also gives to social dialogue at local level a key role in defining the concrete implementation of telework in each company. The general orientation of this legal evolution is thus to support the development of telework.

In the **public sector**<sup>14</sup>, the regulation of telework dates back to 2016. A [decree n° 2016-151 of 11th february 2016](#) plans a specific regulation. This decree was adopted in application of law n°2012-347 of 12<sup>th</sup> March 2012 and was amended on 5<sup>th</sup> May 2020<sup>15</sup>, so after the raise of the COVID crisis. Until this amendment, and so prior to the COVID crisis, telework in the civil service was defined in the same way than it was the case in the private sector **before** the 2017 reform. This meant that, under this former definition in force until 2020, telework could only cover activities carried out of the office on a **regular** basis by civil servants. Unlike it was the case in the private sector from 2017, casual telework was not covered by this regulation. Casual remote work was therefore out of the scope of this regulation and could not legally be considered as telework.

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<sup>9</sup> See former article L.1222-9 above-mentioned

<sup>10</sup> No prior collective agreement planning the possibility to telework was required

<sup>11</sup> For instance, the difficulty to recognise as a work-related accident, an accident that occurs while the employee teleworks informally.

<sup>12</sup> The collective agreement, or the unilateral charter, is to plan the conditions for switching to telework, the terms of acceptance by the employee of the conditions of implementation of telework, the arrangements for monitoring working time or regulating the workload, the time slots during which the employer can usually contact the teleworking employee, etc. See art. L. 1222-9 of the labour code

<sup>13</sup> Email, sms, amendment to the employment contract is no longer required.

<sup>14</sup> The public sector refers here to all civil servants working under one of the three different legal status which form the civil service (State, local authorities and hospitals)

<sup>15</sup> Based on a law of 6th August 2019

## 1.2 Pre Covid-19 diffusion of out-of-office work, related opportunities and threats and regional differences

Firstly, it is significant to point out that out-of-office work is part of a long history, translated in various reflections, analysis and reports, but also public initiatives over the years. This shows that the first challenge has been to identify clearly what is out-of-office work, ie. to highlight how it has been approached and recognised before any introduction of telework in the legal frame. The interest in the development of out-of-office work is present in the French context from the end of the 70s<sup>16</sup> but refers to various “political” orientations. On the one hand, one might observe a “merger” between out-of-office work and the “old” work from home situation<sup>17</sup> considering the development of information technology. In 1980, the French government intended to increase the number of workers working from home. It ordered a report from a member of the Senate to analyse the possible development of work from home<sup>18</sup>. The political orientation was to analyse the potential benefits resulting from the development of telematics to support an efficient work organisation mixing more organisational flexibility and greater worker autonomy. Information technology should thus foster a kind of come back to the pre industrialisation age based on work from home. On the other hand, from a different but parallel perspective, public authorities also saw in out-of-office work associated to information technology an opportunity for country planning. A clear illustration of this are the initiatives taken by the DATAR<sup>19</sup> from 1990 to 1993 ; this administration indeed issued, in 1990, 1992 and 1993, three calls for tenders open to public authorities, private and public companies and associations. Those tenders aimed to support the development of teleworking but here the focus was not home based work as the aim was to relocate work from congested urban centres to the regions and even to rural areas<sup>20</sup>.

This long history shows an early interest in the development of out-of-office work for various reasons but it did not lead to a large diffusion of out-of-office work before the COVID-crisis in France.

Data about the diffusion of telework are not easy to interpret. Over the time, many reports have underlined the fact that data that may differ according to the definitions adopted (for instance regarding the number of hours actually worked out of the office to be considered as a teleworker). This makes it difficult to get an accurate view. For instance, in its 2009 report<sup>21</sup>, the Centre d’analyse stratégique pointed out that *“there is no harmonised definition of telework at the International Labour Office (ILO) level, unlike unemployment and activity. In particular, the European Framework Agreement (2005) does not have a statistical monitoring mechanism for its implementation. Consequently, the available data, whether from international surveys or national sources, are*

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<sup>16</sup> For a snapshot about the history of the development of out-of-office work in France, see [Le développement du télétravail dans la société numérique de demain](#), Centre d’analyse stratégique, November 2009, p. 13

<sup>17</sup> See the specific status above-mentioned dating back from 1957

<sup>18</sup> G. Braun, le travail à domicile, report to the Prime Minister, 1980

<sup>19</sup> The DATAR was a service placed under the authority of the Prime Minister responsible for preparing and implementing the national policy for local development and country planning. This administration disappeared in 2014.

<sup>20</sup> For more details about those initiatives, see S. Craipeau, “Télétravail : le travail fluide”, Quaderni, January 2010

<sup>21</sup> See footnote 15

*difficult to interpret. In addition, the scope of the studies differs, with some targeting employees and others covering all employed persons*". In October 2021, an information report from the Senate<sup>22</sup> mentioned some recommendations in this respect: *"The statistical apparatus still follows telework too imprecisely. Regular and reliable surveys are therefore needed to find out the number of teleworkers, the precise methods of deployment of telework in companies and administrations and to measure its effects on the various categories of workers. An annual report on telework would be useful for the Parliament, which could, if necessary, legislate on this new right and the related duties"*.

In light of this, figures may vary according to the definitions used and provide a blurring picture about the reality of telework. It is sure however, that out-office work remained limited over the years. In 2004, the DARES<sup>23</sup>, using results from a survey conducted by the national statistics institute (INSEE) from 1999 to 2003<sup>24</sup>, distinguished home-based telework and "nomadic"<sup>25</sup> telework. The first category represented 2% of the total of employees and the second category 5%<sup>26</sup>.

From 2017, two national surveys carried out regularly by the DARES alone or with other institutions have included specific questions about the use of telework in practice by employees, including the public sector (civil service)<sup>27</sup>. This allowed measuring directly the use of telework without limiting the definition of telework to the legal definition of this notion.

Results of those surveys, published in 2019<sup>28</sup>, show similar figures of a steady and low diffusion of telework in France: **3% of employees** declared that they teleworked **at least one day a week**, i.e. on a regular basis, while **occasional telework**<sup>29</sup> represented **4,2 % of employees**. Regular and occasional telework therefore represented a total of **7,2 % of individuals**, i.e. around 1,8 million of employees. Of the regular teleworkers, 45% teleworked one day a week, 26% two days a week and 29% three or more days a week. Women and men used regular telework in equal proportions, especially among managers.

In this context of low telework penetration, socio-professional and territorial disparities were visible. In 2017, it was observed that:

- Regular telework mainly concerns qualified employees: **61%** of them are managers, whereas the latter represent only **17%** of employees. Thus, 11.1% of managers and 3.2% of intermediate professions declare that they telework at least one day a week, whereas this practice was rare among employees (1,4%) and marginal among blue-collar workers(0,2%);
- Casual telework presented similar features, mainly concerning managers (15,1%) and marginally employees and blue-collar workers

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<sup>22</sup> [C. Boulay-Espéronnier, C. Cuckierman and S. Sautarel, 8 questions sur l'avenir du télétravail, vers une révolution du travail à distance ?](#), rapport d'information, n°89, octobre 2021

<sup>23</sup> Dares is the direction in charge of research and statistics at the ministry of Labour.

<sup>24</sup> This survey, named « Enquête Permanente sur les conditions de vie des ménages » was carried out from 1996 to 2006

<sup>25</sup> Meaning work in different locations with only little home based work

<sup>26</sup> See [T. Coutrot, le Télétravail en France, DARES, December 2004](#)

<sup>27</sup> The « SUMER » survey, related to health monitoring of workers exposed to occupational risks, and the "REPONSE" survey dedicated to industrial relations in companies.

<sup>28</sup> [S. Hallépée, A.Mauroux, Quels sont les salariés concernés par le télétravail, DARES analyses](#), n° 051, November 2019

<sup>29</sup> Defined as teleworking few days or half days per month

- The possibility of teleworking is determined at the level of the occupation, rather than the sector of activity. In addition to unequal ICT equipment, this mode of work organisation is not adaptable to all work configurations. In 2017, teleworking was relatively common among sales and technical sales executives (16.2%), IT engineers (13.9%), communication and information professionals (9%)<sup>30</sup>. On the contrary, it was rare in certain occupations, such as hotels, restaurants, foodstuffs or services to individuals and communities.
- Telework was more developed in Île-de-France region (5.5% of employees living in this region) according to the Sumer survey 2017. According to the Reponse survey 2017, almost one in ten employees residing in Paris and almost one in twenty employees residing in the suburbs of the Paris urban area teleworked. Telework was also more developed among residents of the central cities of urban areas with more than 500,000 inhabitants (3.9% of teleworkers) than in the suburbs and outskirts of these large urban areas (2.7% of teleworkers). This showed that telework tends to develop more in the most densely populated areas.
- Telework was more widespread among employees aged 30 to 49 than among their elders (50 years or older) or those under 30 (among whom the proportion of managers is lower);

Data that are more recent confirm those general aspects, in spite of a small increase in the proportion of teleworkers. The DARES “Working conditions” survey<sup>31</sup> 2019 shows that telework was still not widespread just before the pandemic. 4% of employees teleworked on a regular basis, ie. at least one day per week, and 9,3 % including occasional teleworkers, teleworking at least few days or half days each month. It was mainly managers who teleworked: 14% regularly, up to 28% if occasional practices are taken into account. Conversely, because of the nature of their activity, and even when they use computers, manual workers and commercial and service employees hardly ever telework. Telework, both regular and occasional, remained largely undifferentiated by gender, even within occupations<sup>32</sup>.

**As for workers in the civil service**, it is possible, using the data collected through the Working Conditions surveys<sup>33</sup>, to identify a moderate increase in the use of telework over time. However some disparities exist between the different components of the civil service. In 2013, globally, 0,4% of civil servants teleworked but they were 1,6% in 2016. Telework related more to civil servants in the State civil service (3,6 % of workers whereas it was only 1,1% in the territorial civil service in 2016). Telework also related more to managers<sup>34</sup> : in 2016, 2.6% of category A staff used telework compared to 0.2% in category B and C staff. The Working conditions survey 2019 provides an updated overview of the situation in the civil service just before the pandemic, taking into account both regular and occasional teleworkers, confirming those general trends : In 2019, 6.2% of civil

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<sup>30</sup> Those distinctions between different groups of occupations is based on the typology put in place by the DARES (named “**nomenclature des familles professionnelles – FAP**”). This typology allows to present occupations in an adequate way to meet statistical needs. For further details see [here](#)

<sup>31</sup> The Working Conditions survey (*enquête Conditions de travail*) has been conducted for 40 years, every 7 years from 1978 to 2013, and then every 3 years. It now alternates between a focus on working conditions (TC 2013 and TC 2019) and psychosocial risks (TC-PSR 2016). It covers all employed persons.

<sup>32</sup> On those results, see DARES (2021), *Quelles étaient les conditions de travail en 2019, avant la crise sanitaire* », DARES ANALYSES, n° 44, August 2021

<sup>33</sup> Survey 2013, 2016 and 2019

<sup>34</sup> Defined as civil servants in the category A of employment according to the legal status covering civil servants

servants<sup>35</sup> declared that they teleworked, either occasionally (a few days or half days a month) or regularly (at least one day a week). Whether occasional or regular, telework was still more common in the State civil service than in the local authorities and hospitals. Excluding teachers, the share of State civil servants teleworking was 9.4%, similar to that of private sector employees (9.3%), whereas it was 3,1 % in the local authorities civil service and only 1,8% in hospitals. In terms of qualification level, in the civil service, telework was still more widespread among non-teaching staff in category A (11.9%) than in categories B (4.6%) and C (1.8%)<sup>36</sup>.

In the French context, it is clear that remote work, work from home and then telework have been the topic of numerous reports and articles since the end of the 70s. In brief, the development of technologies, from informatics in the 70s to communication and then digital technologies, fed a general discourse presenting the development of remote work, including telework, as a virtuous way to meet a set of different objectives<sup>37</sup>. According to this rhetoric, working remotely is thus a mean made possible by technologies to:

- Foster local development, including in rural areas, and a better country planning
- Fight unemployment
- Promote a better articulation of private and professional life of individuals
- Foster more flexible and efficient work organisations adapted to companies' needs.
- Cope with crisis situation impacting mobility

However, despite this positive intellectual and political context over time, the fact is that work out-of-the-office has not been widespread in practice before the pandemic as far as available statistics show it. As a result, general opportunities linked to out-of-the-office work have been promoted for a long time without being widely translated into a reality.

To explain such a gap, a report commissioned by the *Centre d'Analyse Stratégique* and published in 2009<sup>38</sup> tried to identify different categories of obstacles hindering the development of telework in France:

- **Political and legal obstacles** : unclear allocation of responsibility for work accidents at home ; blurring of the line between personal and professional use of the ICT tools provided ; counting and payment of teleworked hours; lack of tax incentives to support the development of telework
- **Social and cultural obstacles** : an under-evaluation (companies, employees, public authorities) of the opportunities provided by telework (better productivity linked to the use of technologies, improvement of working conditions, reduction in real estate costs) ; telework not yet accepted as a fully-fledged form of work by all employees ; employees' fear of being isolated; fear of additional work without real compensation

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<sup>35</sup> all civil servants working under one of the three different legal status which form the civil service (State, local authorities and hospitals)

<sup>36</sup> On those data, see [DGAFP \(2021\), Rapport annuel sur l'état de la fonction publique – Édition 2021](#).

<sup>37</sup> For details about this rhetoric and its evolution over time, see F. Letourneux (2017), *A distance. Enquête sur les figures contemporaines du travail à domicile*, phd thesis, EHESS, p. 50 onwards

<sup>38</sup> See footnote 7 above for a full reference to this publication



- **Technical / equipment obstacles** : the infrastructure deficit in some territories ; problems in securing system security and confidential data protection ; lack of basic digital skills among a significant part of the population
- **HR management** : work by objectives not enough developed ; problems in monitoring work and managers' fear of losing power;

Probably because telework before the pandemic covered a small part of employees, there is not a lot of information related to the threats of out-of-office work. However, one can indirectly identify some of them through the regulations adopted from 2005. The cross sectoral collective agreement of 2005 indeed includes several provisions to protect employees from some risks associated to telework, i.e. among others:

- affirmation of the voluntary nature of telework, which cannot be imposed on the employee, and legal classification of teleworkers as employees (article 2). This can be seen as a way to limit outsourcing the use of remote work could possibly foster.
- Reversibility of teleworking (article 3) , the employee being able to come back to the office as a matter of principle under various terms
- Protection of the employee privacy (article 6), by regulating when the employer can contact the employee and how monitoring of teleworkers can be organised (transparency requirement).
- Duty for the employer to provide necessary working tools to the employee (article 7)
- Duty of designing a work organisation allowing the employee to comply with working time regulations and not to remain isolated (article 9)

In light of this, the above-mentioned *Centre d'Analyse Stratégique* report (2009) reported possible abuses affecting teleworking but pointed out that *"abuse remains rare, although probably underestimated"* : default in providing adequate working tools to the employee ; default in ensuring protection of the employee privacy ; increase in workload and working time and related burn-out risks, etc.

In addition, as telework is especially developed for managers, the 2017 Sumer and Reponse surveys<sup>39</sup> allowed researchers to better explore the working conditions of managers from the private sector using telework<sup>40</sup>. In short, they showed a higher actual working time for teleworking managers (long working hours and/ or atypical working hours); isolation (managers teleworking 2 days a week or more could rely less on support from their colleagues and superiors); managers also reported poorer health and higher risks of depression than non-teleworkers (however, it is not possible to know from the surveys used whether this poorer health existed prior to the introduction of telework).

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<sup>39</sup> See above

<sup>40</sup> [S.Hallépée, A. Mauroux \(2019\), le télétravail permet-il d'améliorer les conditions de travail des cadres ?, in l'économie et la société à l'ère du numérique, Insee Références, p.43](#)

## 2. Diffusion of out-of-office work during Covid-19 and analysis of the industrial relations practices to regulate it

### 2.1 Out-of-the-office work diffusion during the pandemic in France

There is no doubt that the pandemic corresponds to a breakthrough in the diffusion of home-based telework and in this extent, France does not differ from many other European countries. This was clear as soon as the first national lockdown occurred (mid-march 2020) in response to the dissemination of the virus. The National institute for statistics (INSEE) indeed reports that during the second fortnight of March 2020<sup>41</sup>, many employees not placed under short-time work schemes teleworked but with significant differences between sectors.

#### Share of employees in telework – 2<sup>nd</sup> fortnight 2020 (INSEE –NAF classification)

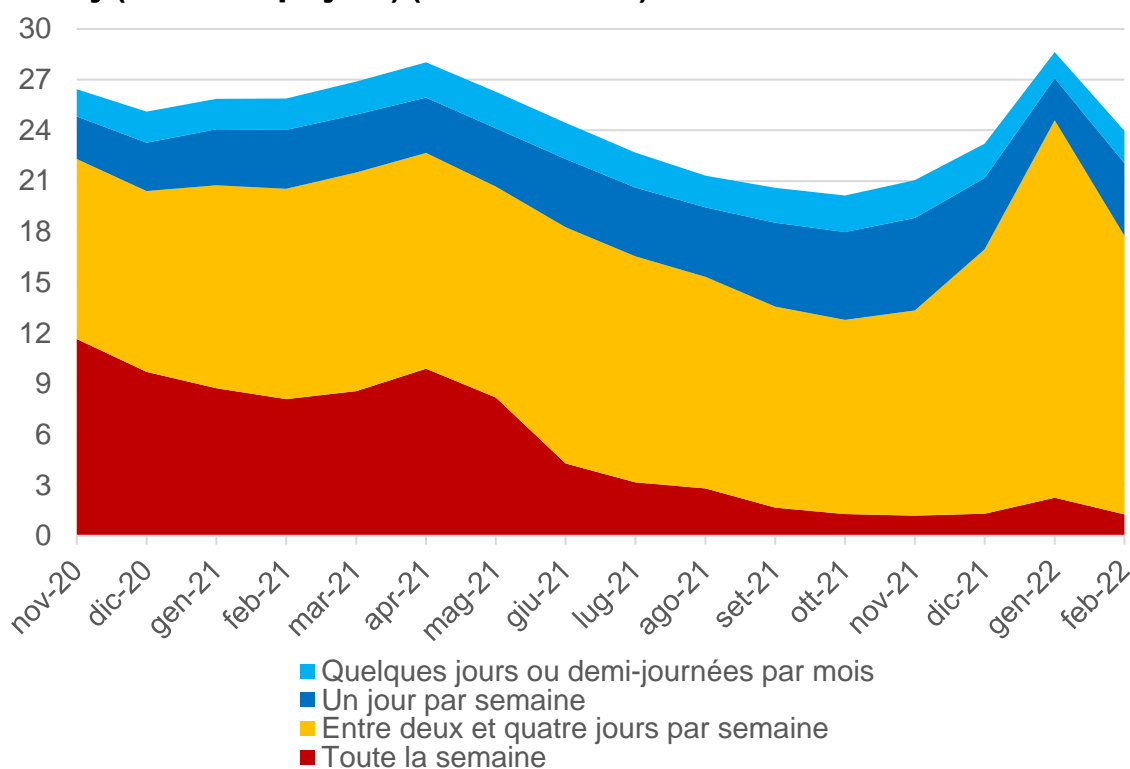
Aggregated sectors of activity	Number of companies	Share of staff working on site (%)	Share of teleworkers (%)
Mining and quarrying	436	36	11
Food, beverage and tobacco industries	8 531	55	4
Textile, clothing, leather and footwear industries	1 461	22	9
Pharmaceutical industry	209	56	28
Automotive industry	797	24	10
Other industries	21 853	31	12
Electricity, gas, steam and air conditioning production and distribution	180	40	35
Wastewater collection, treatment and distribution; waste disposal	1 595	37	11
Construction	27 916	16	7
Motor trade and repair	6 874	13	5
Wholesale	16 667	31	21
Retail trade	53 000	45	3
Land, water transport	9 695	40	3
Air transport	38	31	35
Other transports	2 565	47	18
Accommodation	4 828	9	2
Catering	14 748	5	1
Information and communication	8 704	6	64
Real estate activities	3 337	16	35
Specialised, scientific and technical activities	21 048	12	53

<sup>41</sup> Insee (2020), Enquête impact de la crise sanitaire sur l'activité et l'organisation des entreprises, covering companies with 10 employees or more (and 5 employees or more concerning companies in the retail trade)

Administrative and support service activities	13 071	37	16
Education, teaching	2 136	4	36
Human health and social work	8 903	49	4
Arts, entertainment, recreation	2 267	11	11
Other service activities	2 928	19	3

The situation then evolved according to the pandemic and the related, more or less restrictive measures taken by the government over time. During the pandemic, the direction for research of the Labour Ministry, supported by the INSEE, has carried out a monthly flash survey on “labour force activity and employment conditions during the health crisis covid-19”<sup>42</sup>, which provides information about the evolution in the use of telework.

**Evolution of telework from November 2020 to February 2022, all sectors of activity (in % of employees) (source: DARES)<sup>43</sup>**



<sup>42</sup> Named « ACEMO-COVID survey », this covers establishments in enterprises with 10 or more employees. Temporary workers and trainees are excluded from the scope of employees. All sectors are covered, with the exception of establishments with the following main activity : agriculture , household activities, extra-territorial activities and public administration and social security bodies. The survey covers 15 million employees out of the 25 million in the whole economy in metropolitan France and the overseas departments (excluding Mayotte), as at 31 December 2016.

<sup>43</sup> Light blue : telework a few days or half-days per month ; Dark Blue : telework one day per week ; Orange : telework from 2 to 4 days a week; Red : telework full week

In terms of sectors affected by the development of telework, the INSEE labour force survey 2021<sup>44</sup> shows the main differences between aggregated sectors. Globally, services to companies in particular and service activities as a whole were the most concerned by telework.

**Telework by sector of activity of employees in 2021 (source INSEE, enquête *Emploi*)<sup>45</sup>**

	In %
Agriculture	5,9
Industry	18,5
Construction	9,5
Commerce	14,9
Transport and storage	13
Accommodation – catering	6,3
Business services	45,8
Public administration	32,3
Education , teaching	22,3
Human health and social work	4,9
Arts, entertainment, recreation	17,1
Other services	21,1
TOTAL	21,7

In the public sector (civil service), data published by the DGAFP<sup>46</sup> show that the health crisis of 2020, together with the provisions of the law of 6<sup>th</sup> August 2019, has led to a much greater use of teleworking. The use of homeworking has developed considerably in the civil service (excluding teachers), particularly in the State civil service (FPE), making it possible to limit the drop in activity. During the 1st lockdown in 2020 (from 16th March to 10th May 2020), among full-time FPE employees, 42% who worked at least one hour during the reference week stated that they had worked (at least in part) at home during the last four weeks, compared with only 18% during the same period in 2019 (+24.3 points). Working from home has also developed in the local civil service (FPT): 28% of staff who have actually worked have made use of it (+18.5 compared to 2019), but probably in a less generalised manner. The situation was of course very different as for civil servants in hospitals (FPH) who predominantly worked at “the office” without home-based work. Among full-time civil servants, managers experienced the smallest decrease in working hours during the lockdown (-4.2%). On the other hand, intermediate occupations saw their working hours fall by 15.3%, employees, and blue-collar workers by 30.4%. In contrast to these socio-professional categories, professional and managerial staff, because of their activities, were able to make massive use of home working. During this period, 61% of managers and professionals who worked at least one hour during the week worked at home, compared with 31% of intermediate occupations and only 14% of employees and blue-collar workers. Between this period and the equivalent period in 2019, working at home thus jumped for managers(+31.8 points) but also, to a lesser extent, for intermediate occupations (+20.5 points) and employees and blue-collar workers (+9.1 points). Also,

<sup>44</sup> Since 2003 the LFS survey (enquête emploi) is continuous: it is carried out over all weeks of the year;

<sup>45</sup> the table shows which employees, who worked at least one hour during the week, teleworked

<sup>46</sup> Those data are taken from the INSEE labour force survey 2020, as processed by the DGAFP. They are related to home-based work and the scope is thus wider than the legal definition of telework, see [DGAFP \(2021\), Rapport annuel sur l'état de la fonction publique – Édition 2021](#)

full-time workers in occupations related to maintenance, building and public works, green spaces, landscapes and sports and leisure, entertainment, culture are those whose working hours fell the most during the lockdown period (respectively by -50.2%, -48.9%, -42.4% and -40.5%). It is difficult to work from home for these occupations. After the third national lockdown (3<sup>rd</sup> April to 3<sup>rd</sup> May 2021), the DGAFP carried out a specific survey to follow up developments in the use of teleworking in the State civil service (FPE) at local level<sup>47</sup> only. This showed a progressive decrease in the use of teleworking: the share of FPE agents teleworking at least 1 day decreased, but remained in the majority, from 10 to 16 May 2021, i.e. a few days after the lifting of the lockdown. Among the teleworking agents, the share of those teleworking 4 or 5 days also progressively decreased from week 19. Thus, between mid-May and the beginning of June (weeks 19 to 23, 2021), on average, 15.5% of the agents teleworked 4 or 5 days. Overall, it seems that the general evolution is the same in the private and in the public (civil service) sectors.

As for the diffusion of out-of-office work at regional level, data available show that telework is especially present in large cities and in the most densely populated areas.

#### **Telework by area of residence in 2021 (source INSEE, Labour Force Survey)<sup>48</sup>**

Region	Managers / professionals (%)	Other employment categories (%)	Total (%)
Paris	74,5	28,4	56,1
Ile de France region but Paris	71,4	17,3	36,2
Outside Île-de-France, densely populated municipalities	52,8	12,3	23,1
Outside Île-de-France, municipalities of intermediate density	44,2	10	16,7
Outside Île-de-France, low-density municipalities	40,5	8,7	13,2
Outside Île-de-France, very sparsely populated municipalities	23,7	8,9	10,5
Overseas departments	33,4	7,1	10
<b>Total</b>	<b>55,4</b>	<b>11,4</b>	<b>21,7</b>

Paris and the Ile de France region thus concentrate the highest number of teleworkers. The less densely populated the area of residence is, the less telework occurs. Another INSEE publication, using the data taken from a 2020 survey about the *“impact of the sanitary crisis on the organisation and activities of companies”* confirmed this general picture concerning the Auvergne-Rhône-Alpes region. In this region, the most populated in France after the Ile de France and which includes dense populated areas, 44% of companies used telework in March 2020<sup>49</sup>, more than in other regions but less than in Ile de France.

<sup>47</sup> French départements. This survey was carried out from end of September 2020 to mid-June 2021.

<sup>48</sup> Scope: France excluding Mayotte, persons living in ordinary housing, employees having worked at least one hour during the week.

<sup>49</sup> [Auvergne-Rhône-Alpes, un recours au télétravail plus fréquent qu'en province, Insee Flash Auvergne-Rhône-Alpes, n°92, septembre 2021](#)

Explanations of those differences lies in different factors:

- The structure of employment into the different regions, telework affecting more managers than other employment categories
- The structure of the economy into the different regions, telework affecting more some sectors than others
- Better digital and internet access in some territories than in others
- Mobility issues in densely populated areas also foster the use of telework which limits commuting times

Getting back to the profiles of teleworkers during the pandemic, the INSEE LFS 2021 provides interesting information. First, telework mainly relates to managers/professionals compared to other employment categories.

### Telework during 2021 (INSEE enquête Emploi 2021)

In %

	Managers	Other socioprofessional category	TOTAL
January	60,0	14,5	25,5
February	58,0	15,4	25,4
March	66,3	14,0	26,0
April	66,2	19,3	30,8
May	62,9	13,1	26,9
June	54,9	11,9	21,6
July	52,3	7,8	16,7
August	51,1	8,9	16,9
September	44,7	8,1	16,4
October	48,8	7,7	17,7
November	42,4	7,1	15,1
December	54,0	9,8	20,4

### Telework by socio-professional category in 2021 (INSEE enquête Emploi 2021)

In %

Managers	55,4
Intermediate professions	21,9
Skilled employees	16,7
Unskilled employees	0,5
Skilled blue-collar workers	0,4
Unskilled blue-collar workers	0,1
Total	21,7

Second, telework affects equally men and women, but less young workers than older ones. It also affects more employees in stable employment, working full time and in large companies (more than 250 employees).

## Telework by employee and job characteristics in 2021 (INSEE enquête Emploi 2021)

In %

<b>Gender</b>	
Women	20,4
Men	23,0
<b>Age</b>	
Less than 30 years old	16,7
30-49 years old	24,3
More than 50 years old	20,9
<b>Employment status</b>	
Permanent employees, civil servants	23,6
Fixed term contracts	12,9
Agency workers	2,8
Apprentices, trainees	19,1
<b>Working Time</b>	
Full time	23,6
Part time	12,5
<b>Company size</b>	
Less than 10 employees	9,4
10-49 employees	16,0
50-249 employees	23,6
250 employees or more	36

Overall, the pandemic has strongly supported the development of home-based telework in France. However, this development is more a (much more) large diffusion of pre-existing practices than completely new, if we consider the characteristics of teleworkers, the sectors most affected or their regional spread.

### 2.2 Key issues and problems in the out-of-office work arisen during the pandemic

Work organisation during the pandemic has raised many different issues pointed out in a number of very different publications (survey, polls, press articles, academic works, etc.). Our point here is thus to provide a short overview of the main problems identified by distinguishing organisational issues from some new ones, especially highlighted during the pandemic.

#### - Organisational issues

An information report from the Senate<sup>50</sup> dedicated to the future of telework and published in October 2021 points out that the pandemic allowed to approach “*in concreto*” the difficulties related to telework.

<sup>50</sup> Reference above-mentioned

- **Working time issues**

Telework might lead to an increase in working time and to atypical working hours. A survey named “TeleTrEpid” carried out by a Union, the UGICT CGT<sup>51</sup>, showed that the majority of respondents (47%) report an increase in their working time and workload and that work has intensified, with a decrease in the number of breaks and their duration. The “TraCov” survey carried out by the DARES and covering all people aged 20 to 62 who worked at least one week between March 2020 and January 2021, confirms that teleworkers might be more exposed to long working hours and atypical working hours than non-teleworkers. This is especially the case for so-called “full teleworkers”<sup>52</sup> : the increase in workers’ autonomy makes it easier to adapt working time<sup>53</sup>. However, the increase in working time and work intensity are also strong for “vulnerable teleworkers”, ie. workers facing material difficulties to telework. The risk thus varies according to the intensity of telework but also to material conditions of telework.

- **Work life balance issues**

According to the UGICT CGT survey, 60% of respondents reported they already experienced tensions in balancing personal and professional life. This can be partly due to difficulties in disconnecting from work activities. In this respect, the survey points out that the right to disconnect, as organised by the law since 2016, is not enough implemented in practice. A large majority of employers would have not put in place the measures provided for in the Labour Code: *“60% have not set up a system to guarantee the right to disconnect and 55 % have not defined the time slots during which teleworking employees can be reached”*. Beyond, when it is home-based, telework blurs the distinction between professional and private life and might rise difficulties especially when the employee cannot benefit from a specific place dedicated to telework. According to the TraCov survey, “vulnerable teleworkers” is a group specifically affected by difficulties in reconciling work and private life: *“they face more reproaches from family and friends and find it more difficult to reconcile personal and family commitments”*.

- **Mental health issues**

Mental health issues unveiled during the crisis might refer to a wide range of reasons. This can relate to working time and management of the latter. For instance , the TraCov survey indicates that *“exclusive teleworkers experience an increase in time pressures above the average for teleworkers, as well as an increase in inappropriate target figures”*. The UGICT CGT survey underlines that depressive symptoms are more likely to occur when the workload increase and when it is impossible to adapt one's working hours. This can also relate to an increase in emotional requirements weighting on individuals, a feeling of job insecurity, conflicts of values, difficulties in balancing private and professional life. According to the TraCov survey, such difficulties might especially affect “vulnerable teleworkers”. Isolation at work is also a potential risk factor. The UGICT survey underlines that in 2021, 2 out of 3 respondents say they already experienced isolation at work.

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<sup>51</sup> This survey was based on an extensive questionnaire, including 100 questions, accessible from the 17<sup>th</sup> of May to the 14<sup>th</sup> June 2021. The survey received 15 000 answers and is therefore a large and representative one

<sup>52</sup> Teleworking 5 days a week

<sup>53</sup> « work overflows and is absorbed in avoided travel time or at home in personal or family time” , see DARES, [Télétravail durant la crise sanitaire : Quelles pratiques en janvier 2021 ? Quels impacts sur le travail et la santé ?](#), DARES ANALYSES, n° 9, February 2022



According to the 2021 Health & Quality of Life at Work Barometer published by Malakoff Humanis, in 2020, 35% of teleworkers declared they felt isolated often or very often. But the impact of isolation on workers' well being seems to vary a lot depending on workers' situation. The TraCov survey indeed shows that teleworkers do not feel any particular weakening of the work collective: they can rely as much as before on the support of superiors or colleagues in case of work difficulties. But this is not the case, once again, for "vulnerable teleworkers".

- ***Physical health issues***

The TraCov survey shows that, from March 2020 to January 2021, teleworkers experienced more new physical pains than other workers did. This might include back pains, wrist pains or ocular pains and can be linked to a detrimental organisation of telework that affects more "vulnerable teleworkers". Globally, this also suggests the development of MSDs in link with an increase in working time and a decrease in overall physical activity.

- ***Workers' monitoring***

The risk of increasing remote workers' monitoring through available digital technologies is clearly identified in the French context. The Senate information report above-mentioned points out that such a monitoring could be too "intrusive" for workers. A leaflet<sup>54</sup> published at the start of the pandemic by the INRS<sup>55</sup> confirms this view and suggests, in order to prevent such risk, to inform workers about the use of such tools if any, in accordance with the Labour Code.

- ***Available resources to telework / compensation for the costs of teleworking***

Telework in good conditions supposes to benefit from material resources. The UGICT survey reports that, in 2021, 10% of employees benefited from ergonomic work equipment (chairs, etc.), a percentage higher than in the 2020 survey but which appears to remain low. The INRS also underlines that telework is dependent from an actual access of workers to technological tools, which means that workers should be at ease with communication technologies and softwares, should be able to access remotely to necessary data (VPN), to enjoy an IT support etc.

The coverage of all costs linked to telework is also a tricky issue. The UGICT CGT survey mentions that "*although this is an obligation associated with the status of employee, the coverage of telework equipment and costs by the employer remains in the minority and limited to the laptop*". According to this survey, only 40% of respondents had an adapted screen financed by their employer; less than 5% of employees had a printer financed by their employer etc.. The debate might also entail discussions about the coverage of electricity or housing costs by the employer, something employers' representatives generally reject, as this is not directly linked to telework. Practices in this respect may vary from one organisation to another.

- ***Management challenge***

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<sup>54</sup> [INRS, Le télétravail – quels risques ? quelles pistes de prévention ?, April 2020](#)

<sup>55</sup> INRS (National Institute Research and Security) is responsible for spreading a culture of occupational risk prevention in businesses and offers tools adapted to the diversity of occupational risks.

Many publications and experiences point out the challenge that telework is for managers. A project carried out jointly by the APEC and the ANACT during the second semester 2021 aimed to assess the impact of telework on management practices<sup>56</sup>. According to these works, it seems that telework might affect negatively teams' management: difficulties for managers to have sufficient visibility on the work of their teams (39% of respondents), difficulties to organise individual exchanges (36%), and decrease of team cohesion (38%). In addition, there are other challenges identified: managing teams that are partly in and partly out of the office, the need for managers to take into account the psychosocial risks associated to remote work for their teams and managing relations between teleworkers and non-teleworking employees<sup>57</sup>. All of this can lead to an overload of work for managers: among those included in the study, 49% say they spend more time on coordinating the activity, on individual monitoring of employees (47%), on team leadership (46%) and on administrative and HR management (including telework management itself). In the face of these challenges, the issue of developing training for managers in order to understand the changes brought about by telework on their own practices is often stressed.

- **New issues unveiled by the pandemic?**

By transforming telework into a concrete and widespread phenomenon, the pandemic lead to point out specific issues going beyond the ones previously mentioned.

• ***Selection of employees allowed to telework***

As mentioned earlier, the pandemic has led to a sudden increase in telework to an extent not previously experienced. In order to maintain economic activity in times when travel was severely restricted, many employees, who had never teleworked, were led to do so. In other words, telework has gone from being a privilege for a few executives to a reality for many workers. This has led to a debate on the eligibility of employees to telework: are there jobs where telework is not possible on principle? While the pandemic has shown that many workers essential to society must obviously perform their duties face-to-face, for many others, the picture is mixed. While not all tasks attached to a job can be performed at home, some can, even if they are not managerial. In this perspective, the determination of the activities eligible for telework becomes important because it can lead to widening access to telework to new categories of employees and thus avoid a divide between those who have the privilege of not going to the office and the others. The issue is therefore as much political as technical and undoubtedly conditions the development of telework. This issue has therefore rapidly given rise to methodological recommendations published by the National Agency for the Improvement of Working Conditions (ANACT)<sup>58</sup>, which were then taken up by the Ministry of Labour in a guide on telework. Overall, the aim is to provide companies with tools to determine which activities are eligible for telework. The approach is therefore not binding but aims to guide companies' decisions. It aims to take into account, not jobs as a whole, but the different activities associated with a given job. The proposed method includes three steps to be carried out within

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<sup>56</sup> [Télétravail des cadres : entreprises et managers à la recherche de nouveaux équilibres](#), APEC – ANACT, January 2022 ; This publication especially puts into question management in the context of development of hybrid work arrangements.

<sup>57</sup> Meaning the necessity for managers and companies to ensure an equal treatment between employees and therefore the internal cohesion within the company

<sup>58</sup> [ANACT, Covid-19 : comment repérer collectivement les activités « télétravaillables » ?, october 2020](#)

organisations: “listing the main activities for each function or job”; “assessing the possible difficulties to telework for each of these activities for the company, the customer and the teleworker”; “identifying if means and conditions can be met to remove these difficulties (work equipment, installation of secure connection, opening of videoconference rooms, definition of modalities and periods of availability for customers, colleagues and managers, remote training in the use of new digital tools, etc.)”.

- **Telework and gender equality**

The crisis unveiled that telework has negatively affected women more than men. A recent study provides a comprehensive view about this topic<sup>59</sup>. In short, the negative impacts of telework affected women more than men and reinforced a pre-existing situation of gender inequality: more women have had to work from home while taking on domestic and parental tasks alone, they have had less access than men to dedicated telework area at home, their working hours have increased more than men's, etc. Women have also been exposed to more gender-based violence or harassment facilitated by distance and the use of digital tools and, during periods of lockdown, have experienced more violence that is domestic. Furthermore, remote working generates a risk of making workers invisible within the organisation, which can be detrimental to their professional careers. While this risk concerns both men and women, it can increase gender inequalities that have long been apparent (pay inequalities, career development, etc.). Finally, access to telework itself and the benefits it can bring is more limited for women than for men. Women are indeed more present than men in certain sectors, which are not conducive to telework (health, secretarial, etc.). The challenge here is to make telework a tool to help correct gender inequalities.

## **2.3 From the problem to the solution: industrial relation practices to address the key organizational issues arisen in the out-of-office work during the pandemic**

### ➤ **General observations**

The diffusion of telework during the pandemic resulted in an increase of the number of collective agreements signed at company level. Based on the D@ccord database<sup>60</sup>, the ANACT<sup>61</sup> points out that, from 1<sup>st</sup> January 2020 to 4<sup>th</sup> November 2020, “*more than 6 000 collective agreements (including amendments to existing agreements) AND mentioning telework had been declared. This exemplifies an increase since the start of the pandemic, even though we could notice this trend since 2018 whereas “telework” is not a mandatory collective bargaining topic*”. Some of those texts exclusively focus on telework whereas others include it as a topic among others. To confirm that telework is a recent issue for collective bargaining, the ANACT underlines that out of 1 000 texts focusing only on telework, 70% were new agreements and only 20% some amendments to prior

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<sup>59</sup> [Centre Hubertine Auclert, Télétravail et égalité femmes-hommes](#), February 2022

<sup>60</sup> The d@ccord NG database is based on information provided by companies deposited in the territorial units of the Labour Authorities (DIRECCTE)

<sup>61</sup> ANACT, [Installer le télétravail dans la durée ?](#), report, November 2021

agreements. In this context, the ANACT report aimed to analyse in depth 40 collective agreements signed in 2020 to:

- Identify under which terms companies tried to organise telework in 2020
- Identify the measures taken by companies to address issues linked to telework and to organise telework.

The analysis shows that texts dedicated to telework in 2020 related more to SMEs (50 to 250 employees) than large companies. Most of the time, such texts are concluded with trade unions delegates at company level. In terms of sector, they mainly covered manufacturing industries, scientific and technical activities (16%), financial and insurance activities (11%), automotive (11%), then information and communication (8%).

The qualitative analysis of 40 agreements concluded in 2020 <sup>62</sup> highlights different general observations regarding the key issues above-mentioned. We select some of them<sup>63</sup>:

- **About the general challenges taken into account by negotiators** : *“few agreements mention issues relating to sustainable development in link with telework”*
- **About the access to telework** : *“the telework formulas indicated in the agreements studied propose an average of 2 days maximum per week” ; “the eligibility criteria are, in most cases, more oriented towards occupations/ jobs as a whole than towards teleworkable activities”.*
- **About equipment and digital tools of teleworkers**: *“questions concerning the provision of equipment are more frequently addressed than questions of use and support for use: training, sharing of practices, etc” . ; “a wide variety of cost coverage solutions is mentioned”*
- **About working time and workload**: *“many agreements provide for binding arrangements for monitoring working time and breaks, but they do not really address issues of workload regulation” ; “extensive forms of reporting are developed in some agreements with the risk of being a source of work overload” ; “awareness-raising measures on the right to disconnect are often included in the agreements, but they are rarely accompanied by reflections on the causes of over-connection”.*
- **About management practices**: *“Overall, there are few measures to support managers, their new tasks and their need for support at a time of telework” ; “The content of the support and coaching arrangements for employees is also poorly developed”.*
- **About work collectives**: *“Maintaining the social link is a relatively recurrent subject in the agreements, but few elements are provided on the learning of distance/face-to-face by work collectives”.*
- **About the prevention of occupational risks** : *“the prevention of occupational risks related to telework is generally underdeveloped” ; “one can find very few mentions on the links between telework and gender equality”*

➤ **Focus on two recent industrial relations practices**

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<sup>62</sup> Companies from different sizes, different sectors, etc.

<sup>63</sup> For details and additional information, see the full report.

In the French context, we propose to highlight two recent outputs of social dialogue at national level. One relates to the private sector: cross-sectoral collective agreement of 26<sup>th</sup> November 2020. The other to the public sector / civil service: collective agreement of 13<sup>th</sup> July 2021. Both agreements aim to take into account the large diffusion of telework in the crisis period and to regulate or facilitate the implementation of this form of work organisation, also beyond the crisis. For each agreement, we try to highlight the objectives pursued, the negotiation process, the contents of the agreement and some elements about the implementation of those texts.

- **A new cross-sectoral agreement about telework in the private sector : the ANI of 26<sup>th</sup> November 2020**

-  **Prior to the agreement**

After the 2005 agreement, telework was not really an issue for social partners and did not raise any specific claims, as the phenomenon remained limited in practice. Things changed a bit with the 2016 law, which resulted in a discussion and a joint report from all representative social partners in 2017<sup>64</sup>, which already planned a new cross-sectoral negotiation on this issue. That is really the pandemic and its impacts on work organisation, which gave a new impetus to the issue in the view of social partners and of the government. In addition, one could quickly notice the increase in a number of agreements at company level, feeding the need for social partners to act. In short, the large diffusion of telework pointed out the need to get back to this issue. However, according<sup>65</sup> to the interview carried out, *“it was not obvious at this moment to open a cross sectoral negotiation as the employer organisations, especially the MEDEF, thought that all necessary legal regulations were already in place”*. However, the situation quickly evolved as the Government, through declarations from the Prime Minister and the Ministry of Labour, expressed it could take some initiatives in the field whether social partners remained passive. There was therefore an indirect public pressure put on the main employer organisation. Soon after, on unions’ side, three of them<sup>66</sup> issued in May 2020, ten recommendations to approach telework after the crisis<sup>67</sup>. For the CFDT confederation, negotiating again on the topic was important as:

- Strategically, it was a way to put again on the social dialogue agenda (at all levels) the issues of changes in work and work organisation, some topics the confederation has been addressing for long through different initiatives and negotiations. Telework indeed raise questions that have to be approached in this respect *“ if telework is to find its rightful place in a changing period”*
- Practically, telework questions the attractiveness of companies and professions, especially for young people, so it’s also a challenge for employers.
- Logically, as work organisations evolved and many negotiations occurred at workplace level, it was necessary to provide reference points to companies and employee reps to clarify unclear aspects of the 2005 agreement.

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<sup>64</sup> See above p. 3.

<sup>65</sup> Interview with the CDFT national secretary in charge of the negotiation, carried out on 26<sup>th</sup> April 2022

<sup>66</sup> CDFT, UNSA and CFTC

<sup>67</sup> [CFDT, CFTC, UNSA, Télétravail : préconisations en vue de la reprise d’activité et perspectives à venir, May 2020](#)

In this context, the MEDEF accepted to engage a negotiation and first proposed to unions to carry out a joint diagnosis. All unions accepted this proposal. This opened a joint and fruitful work period according to the CFDT : *“each organisation brought in its own studies and views, we organised some hearings, exchanges were fruitful and all of this resulted in a joint diagnosis”*. All representative unions took part in this process implemented from June to September 2020. However, *“thinking the process was too long”*, the CFTC left the process before the end. The diagnosis was published in September 2020<sup>68</sup> and was finally not endorsed by the CFTC and the CGT. The document points out five different and broad challenges related to telework: economic, social and environmental challenges; organisational challenges at company level ; management challenges ; challenges linked to attractiveness of companies ; challenges related to working environment. Considered to be a comprehensive document by the CFDT, it constituted the basis for the negotiation of the agreement and provided many of its contents.

### **The Agreement “for a successful implementation of telework”**

The negotiation process was quick, probably in part due to the preparatory work conducted by social partners since 2017, especially the 2017 and 2020 diagnoses. The negotiation started at the beginning of November, involved all the representative unions and ended up on 26th November 2020. The three employer organisations and all the unions but the CGT signed the agreement. The refusal from the CGT results from the nature of the agreement. Whereas the CGT required a legally binding and detailed agreement, the MEDEF did not wish to increase the load on the companies. As a result, the text is legally a binding collective agreement but its provisions appears to be guidelines /reference points to support social dialogue at company level and thus complement or clarify the pre-existing provisions from the 2005 agreement and the Labour Code.

The agreement:

- States the main issues associated with the implementation of telework, echoing the joint diagnosis, and calls for the establishment of a social dialogue in companies in this respect, including monitoring the implementation of telework, experiments, etc.
- Recalls and specifies the framework for the implementation of telework in the company. In this respect, it recalls the existing legal provisions. However, it also invites, which is new, to specify the activities eligible for telework by means of an analysis prior to the employer's decision involving the employees and their representatives. With regard to the latter, it "insists" on the importance of making the introduction of telework a subject for social dialogue.
- Defines the conditions of access to telework and modifies articles 2 and 3 of the 2005 agreement: principle of voluntary participation by the employer and the employee, form of the agreement and information to be provided to the employee, modalities of refusal by the employer, reversibility of regular telework
- Recalls the application of the Labour Code to the teleworking employee (working hours, maintenance of employee status, control of working time, respect of the right to disconnect, etc.)

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<sup>68</sup> [https://www.cadrescdfd.fr/sites/default/files/inline-files-two/Diagnostic%20paritaire%20relatif%20au%20t%C3%A9l%C3%A9travail%20du%2022%20septembre%202020\\_1.pdf](https://www.cadrescdfd.fr/sites/default/files/inline-files-two/Diagnostic%20paritaire%20relatif%20au%20t%C3%A9l%C3%A9travail%20du%2022%20septembre%202020_1.pdf)

- Defines the principle of the employer's coverage of professional expenses and its modalities
- Provide for a right to training for employees and their managers on the technical tools to be used and on the management of this form of work organisation
- Suggests the organisation of hybrid working arrangements, balancing on-site and remote work, and provides general indications in this respect without, however, fixing a precise frequency
- Recalls the application of occupational health and safety legislation to teleworkers but insists on the need to include telework in the assessment of occupational risks. It also specifies that "the employer cannot have complete control over the place where telework is carried out and the environment, which falls within the private sphere".
- Specifies the importance of adapting managerial practices to telework and provides indications for this: definition of clear objectives discussed with the employee, training of managers in telework, etc.
- Organises in a general way the taking into account of particular situations (new employees, apprentices, disabled employees etc.)
- Recalls the need for telework not to prejudice equality between men and women (access to telework) or the career development of employees.
- Encourages the prevention of risks of isolation of the employee
- Affirms the need to maintain social dialogue, if necessary at a distance, and the link between staff representatives and employees.
- Specifies the modalities of recourse to telework (telework imposed by the employer) and its organisation in case of exceptional circumstances in the light of the recent pandemic.

The agreement also includes a follow up system, which is interesting considering the continuous evolution of work organisation: a follow-up joint committee is to meet two years after the entry into force of the agreement to assess the evolution of companies' practices, the impact of telework on companies' social and economic performance and the implementation of the agreement.

The agreement has been extended by public authorities and thus became compulsory for all private companies from 13th April 2021. However, according to the legal rules regulating collective bargaining, it's possible for a company to deviate from the agreement by concluding a company collective agreement on the topic.

### **Implementation ?**

A recent report, published by the ORSE and Réalités du Dialogue Social<sup>69</sup>, intended to assess the impacts of the recent cross-sectoral agreement<sup>70</sup>; It is based on a quantitative analysis of more than 2 000 collective agreements concluded at company level from December 2020 to December 2021 as well as on a qualitative analysis of 110 agreements. References to the 2020 agreement in

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<sup>69</sup> These organisations are French think tanks specialised in social dialogue and CSR issues

<sup>70</sup> ORSE and Réalités du Dialogue Social, [Benchmark Accords de télétravail – quels développements depuis l'Accord National Interprofessionnel 2020 ?](#), March 2022

company agreements concluded has been increasing from end of 2020 to end of 2021. However, compared to the provisions of the 2020 agreement, the report highlights some gaps, ie. :

- Most companies analysed do not consider full time telework but rather favour hybrid arrangements, with a predominance of work at the office (3 days per week on average). Few companies enlarged the scope of eligible teleworkers by using the approach mentioned in the 2020 agreement. 77% of the agreements exclude telework for some categories of workers (apprentices, trainees, agency workers, workers on fixed term contracts or part time)
- The company agreements reviewed do not often detail the support measures for preventive health issues (isolation, right to disconnect), nor the modes of remote management of the work collective despite the provisions of the 2020 agreement.
- References to potential environmental benefits associated with telework are marginal in the agreements whereas they are mentioned in the preamble of the 2020 agreement.
- 49% of the agreements limit or forbid telework in co-working spaces
- 9 out of 10 agreements mention work at the office as a way to safeguard the work collective

Our interview with a CFDT representative confirms that the road is still long in really addressing changes in work organisation raised by telework with respect to other issues:

- Telework is often associated with changes in companies' real estate policies, in particular through the shift to flex office arrangements. This apparently growing phenomenon in some sectors is not addressed in the 2020 agreement whereas this have a direct impact on the actual freedom of employees to opt for telework and the reversibility of teleworking, two significant points in the agreement.
  - Impacts of telework on local /territorial development are a significant but only emergent issue.
- **The Agreement of 13<sup>th</sup> July 2021 on the implementation of telework in the civil service**<sup>71</sup>

### **Background and negotiation process**

As mentioned above, telework in the civil service is regulated since 2016<sup>72</sup>. As already detailed, diffusion of out of office work in the civil service was limited before the pandemic, despite the 2016 regulation, which allowed civil servants to ask for telework considering the activities they achieve and not the whole job they have. In this respect, the issue of the selection of employees allowed to telework was already addressed in the 2016 regulation in an open way. However, according to the union official interviewed *“public employers had not taken this provision into account and this resulted in telework practices limited to civil servants obviously eligible to it”*. The pandemic suddenly

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<sup>71</sup> This section has strongly benefited from an interview with the national deputy secretary of the UFFA CFDT in charge of occupational health and working conditions. The interview was held on 26<sup>th</sup> April 2022. UFFA is the union of CFDT federations covering all the civil service employees. The person interviewed led the negotiation of the national agreement at stake on behalf of her organisation.

<sup>72</sup> In 2016, the regulation strictly defined telework as regular, excluding casual telework.



impacted the situation and is thus the first driver of the negotiation process. The shift to telework of all civil servants able to make it quickly unveiled some difficulties : difficulties to maintain links with the colleagues and managers while teleworking, lack of adequate equipment to telework. According to the union interviewed, it also showed that *“telework is not only an individual matter but questions the whole work organisation, something that the 2016 decree, a good regulation, did not consider enough”*.

Concretely, since the start of the pandemic, all representative unions took part in weekly meetings with the Minister for the civil service to follow up the sanitary situation and its impacts. Those multilateral meetings allowed everybody to get information about the difficulties faced. As a result, as soon as April 2020, the UFFA CFDT asked for a negotiation to the Ministry. The decision to open a negotiation to reach an agreement was taken in September 2020, in parallel with the negotiation engaged in the private sector. The latter is also a driver of the process. However, the negotiation actually started later and lasted about three month up to July 2021. The negotiation was entirely conducted remotely, which *“concretely prevented informal exchanges between the different unions”*. During each round of negotiation (four meetings), the parties exchanged, and after each round, each union sent to the Minister (DGAFP) its own contribution / position, a synthesis was then made by the DGAFP. All unions immediately agreed that the issue of telework costs coverage should be included in the negotiation. The CFDT was in favour of negotiating an agreement covering the three components of the civil service in France<sup>73</sup>, a point not shared by all at the beginning. Finally, one opted for a framework agreement common to all civil servants. As a result, the negotiation brought together, on “employer side”, the Minister for the civil service but also several organisations representing the local communities at different levels<sup>74</sup> as well as the *“Fédération Hospitalière de France” (representing public hospitals)*.

During the negotiation, one can identify two points of contention between the parties:

- About the selection of employees allowed to telework (eligibility issue, how to proceed...)
- About compensation for telework costs<sup>75</sup>

However, it was possible to reach compromises and the negotiation resulted in an agreement quickly signed by all representative unions<sup>76</sup>.

## The Agreement

The [agreement](#) has applied from 1<sup>st</sup> September 2021. His legal basis is the ordinance of 17<sup>th</sup> February 2021, enacted to implement the article 14 of Law n°2019-828 of 6<sup>th</sup> august 2019 related to the

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<sup>73</sup> The ordinance n°2021-174 of 17th February 2021 regulates collective bargaining in the civil service. It provides for the conclusion of framework agreements which may be common to the State civil service, the territorial civil service and the hospital civil service but , as this regulation is recent, not all unions were necessary well aware of it when the telework negotiation started.

<sup>74</sup> Association des Maires de France (municipalities), Assemblée des Départements de France (French departments), Régions de France (Regions) and France Urbaine (large cities and local communities)

<sup>75</sup> Unions especially asked for a compensation accessible as soon as a civil servant teleworks and not considering only a certain amount of days in telework

<sup>76</sup> UFFA CFDT, CGT Fonction Publique, UIAFP-FO, UNSA fonction publique, FSU, Solidaires-Fontion Publique, Fédération Autonome de la Fonction Publique, Fédération des services publics CFE-CGC, CFTC

“transformation of the civil service”. This regulation is a major one, as it completely reformed social dialogue in the civil service in order to foster the latter. The agreement is legally binding and covers all civil servants. It aims to set up a common base for all components of the civil service. It is however also a framework agreement, meaning it has to be implemented by agreements at “local” levels and by State legal measures (ministerial orders) on some aspects.

In terms of contents, the agreement plans some fundamental principles:

- Telework must be voluntary and authorised by the employer, but in case of exceptional circumstances
- Civil servants have to alternate between at and out of the office activities : The teleworker must maintain a minimum presence at the office, which aims to ensure that links with the work collective are maintained. The maximum amount of telework in the civil service is set at 3 days per week for a full-time employee, except in specific situations detailed in the agreement (pregnant women, etc.)
- Reversibility of telework under the terms defined by the agreement
- Responsibility of the public employer to provide teleworkers under its authority with access to the necessary digital tools (office equipment, access to professional servers, messaging and business software) to be able to carry out their activity and to communicate with their hierarchical superior as well as with their colleagues and users, if necessary. This aspect was not addressed in the 2016 decree.

Beyond, it plans the terms under which telework has to be implemented in practice:

- Eligibility for telework is determined by the activities performed, not by the job occupied
- Any new work organisation including telework must be implemented within the framework of a local social dialogue, including an in-depth reflection on the organisation of time, the organisation of the work collective and the rights and obligations of each (employer and employees)
- The teleworker is subject to the same general obligations and enjoys the same rights as the staff member who performs his or her work at the office: rest periods, access to training, same evaluation measures, recognition of career development and equal treatment for promotion.
- Creation of a right to disconnect in the civil service, which did not exist previously: The modalities of the right to disconnect should be negotiated within the framework of local social dialogue. The agreement details possible actions to be planned at local level in order to make this right effective
- Right to training for managers and civil servants: *“Training on the impact of telework for managers, teleworkers and non-teleworkers must be guaranteed.”*
- Compensation for telework costs: For the State and hospital civil services, the agreement provides for a flat-rate compensation for telework expenses of €2.5 per day of telework, up to an annual maximum of €220. For local civil service, it is up to each local authority to define the compensation provided.
- Need to take into account equality between men and women in the implementation of telework.

The agreement includes other various and interesting provisions as guidelines:

- about possibilities to carry out telework in another places than home (working in other administrations premises close to the workers ' home, development of co-working spaces)
- about changes in management practices and management issues raised by telework

Finally yet importantly, the agreement plans a duty, for all public employers at local level (whatever the branch of the civil service considered), *“to enter into negotiations before 31 December 2021 with a view to concluding an agreement on telework which will include the framework agreement. The parties may retain existing agreements that are consistent with the framework agreement, supplement them if necessary by amendment or renegotiate them on this basis”*.

### Follow-up

The agreement set up a follow-up committee that is to meet once a year. A first meeting held in March 2022 showed that:

- The required legal measures, especially the ones related to compensation of telework costs in the state and hospitals civil service, were passed.
- The negotiations of “local” agreements related to telework was open in all Ministries (State civil service), already resulting in agreements in four ministries. 60 % of public hospitals had reached a collective agreement. No precise data about collective agreements in the local civil service was available yet.

In this context, some unions expressed difficulties related to the implementation of the agreement, especially a trend at local level to exclude telework according to the positions or jobs performed by the agents (and not according to activities performed).

## 3. Conclusions and general remarks

Out-of-office work does not refer to a legal definition in France. The notion of out-of-office work indeed covers different forms of remote work, outside of an employer premises. In those situations, this is the notion of telework that has been chosen for long as the right one to take into account the possibility provided to employees by new technologies to work remotely, from home or elsewhere but the employer premises. Telework was introduced in French regulation following the impetus given by the European framework agreement of 2002. Social partners played a key role in this respect as a cross-sectoral binding agreement (2005) first regulated telework, before being partly transcribed into the Labour Code (2012 law). The reform of the Labour Code passed on 2017 amended the legal regulation in force in order to make the use of telework more flexible while securing it. The regulation in force also gives to social dialogue at local level a key role in defining the concrete implementation of telework in each company. In the civil service, first telework regulation occurred in 2016.

Despite an old political and intellectual context supporting the development of telework, the diffusion of this form of work organisation remained low until the COVID crisis for different reasons. The pandemic led to a sudden and large diffusion of telework, especially under the form of home-

based work, never experienced before. However, this development is more a large diffusion of pre-existing practices than completely new, if we consider the characteristics of teleworkers, the sectors most affected or their regional spread. In light of this large diffusion, it has been quickly possible to inform a range of potential difficulties and risks associated to telework, especially to home-based telework. The crisis also raised the issue of equal access to telework opportunities for all workers.

This resulted in an increase in social dialogue processes at company level to better regulate this form of work. The will to take into account a larger diffusion of telework out of crisis times and to consider a “new normal” motivated the negotiation of two national and cross-sectoral collective agreements in both the private and public (civil service) sectors. This allowed to complement the pre-existing regulations and to provide reference points for actors of social dialogue at decentralised levels to organise telework in a responsible way. Today, it seems that legal regulation of telework is complete but the evolution in work organisations is still uncertain. While the spread of teleworking is likely to remain higher than it was before the pandemic, office-based work is likely to continue and hybrid work organisations are now being established.



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