



TWING PROJECT

Poland: Fieldwork Report

MACIEJ PAŃKÓW
INSTITUTE OF PUBLIC AFFAIRS

INSTITUTE OF
PUBLIC AFFAIRS



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Table of contents

1. Introduction.....	3
2. Views and discourses on telework.....	4
2.1.1 Main risks and benefits identified by employers.....	6
2.1.2 Main risks and benefits identified by trade unions	9
3. Regulation of telework through collective bargaining	11
4. Bargaining approaches and outcomes	12
4.1 Sectoral analysis.....	12
4.1.1 Topics subjected to discussion.....	12
4.1.2 Priorities of social partner organisations.....	14
4.1.3 Negotiation process	14
4.1.4 Negotiation outcome and flexibility approach.....	15
4.2 Cross-sectoral analysis	17
5. Understanding collective bargaining approaches and outcomes	22
6. Conclusions	23
References	24
List of interviews.....	24

1. Introduction

This report was produced as part of the research project “TWING: Exploring the contribution of social dialogue and collective bargaining in the promotion of decent and productive telework in the post-COVID-19 scenario”. It contains the findings from the analysis of data collected during the field study, which consisted of 24 individual in-depth interviews (IDIs) with representatives of the social partners. The interviews were conducted between November 2023 and March 2024 with representatives of trade unions and employer organisations at national level and trade unions covering workers in four sectors: the chemical industry, IT consulting, central public administration and banking. The fieldwork was preceded by a desk research analysis, which resulted in a separate report¹. The main objectives of the interviews were to obtain in-depth and comprehensive knowledge on two main issues: the views of the social partners on the use of remote working (perception of the advantages and disadvantages of this solution from the perspective of both sides of the employment relationship, degree of support for it) and the social dialogue on remote work with its outcomes. It should be noted that due to the specificity of the Polish system of collective labour relations, the sample included only a relatively modest group of representatives of sectoral trade union structures and a complete absence of sectoral employer organisations. A significant part of the interviews were conducted with representatives of national-level trade unions or their federations or trade union organisations from the level of specific companies belonging to the studied sectors. Several interviews were conducted with representatives of sectoral union structures or federations. The reason for this is that only at national level (in the framework of the tripartite dialogue) and at company level was there any negotiation or consultation on the rules for the use of remote work, while nothing of the sort took place at sectoral or even multi-company level. In addition, several interviews were conducted with representatives of national-level employer organisations, while no representatives of sectoral employer organisations could be reached. The latter are generally not interested in entering into collective bargaining or other negotiations in Poland, the subject of which could be the rules on the use of remote work.

¹ Available at: <https://twingproject.eu/wp-content/uploads/2023/08/desk-research-final-report-TWING-PL.pdf>

2. Views and discourses on telework

The predominant view among interviewees is that remote work² is a potentially mutually beneficial solution to both sides of the employment relationship, without which it is now difficult to imagine the functioning of the labour market in some sectors of the economy. This is particularly true in the service sectors, while in industry – including the chemical industry – remote work is considerably limited, covering mainly administrative staff. This general support, depending on the organisation represented, has been justified with different arguments and surrounded by additional caveats. Trade unions, in general, listen to the opinions of the employees they represent, and these employees mostly want to work remotely. Hence, despite some reservations, these organisations are positive about the issue of remote working. They are of the opinion that it should not be remote work done throughout the week, instead they strongly prefer a hybrid formula, combining work in the office and work from home (in varying proportions - the most common talk is of two or three days of work in each location per week). The main reason for scepticism towards total remote working is the perceived negative consequences for the psychological, but also physical wellbeing of employees, for a whole week "locked within the four walls" of their home. Such work can result in a significant weakening of social ties, alienation of the employee, deterioration of their mental condition, lack of social activity or sufficient exercise. According to interviewees, these effects can be particularly detrimental for older workers, while younger people are more used to maintaining relationships via the internet or engaging in various activities outside the work environment.

² Throughout the study, the term of "remote work" was used, as it definitely dominates the Polish discourse and, as of spring 2023, it is also a form of work organisation defined in the Labour Code. Moreover, the notion of "telework", also present in the Polish language, was the subject of previous and now abolished regulations of the Labour Code, which did not catch on - formally, a very narrow margin of employees (comparing to the total number of working Poles), even during the COVID-19 pandemic, benefited from the former telework regulations. The latter was defined more narrowly than remote work, as work performed entirely outside the employer's premises on a weekly or monthly basis (no possibility of a hybrid formula) and was fraught with cumbersome obligations especially with regard to the control of compliance with health and safety conditions.

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Remote work is an objective phenomenon in the labour market so it is difficult to argue with it. Our position is unequivocal: it is not necessary to oppose objective trends, but it is necessary to ensure that this type of work provision is regulated in a civilised manner. (INT24)

Our position is that hybrid working is best when it comes to banking. This allows all documents to be brought into the office on a regular basis. The supervisor can control the quality of the work (...). The employee does not lose contact with the supervisor, with colleagues. Full remote working breeds pathology, as it keeps the employee confined within the four walls. A man does not want to get dressed, a woman does not want to put on make-up, and so this rhythm of work is maintained, a little at home, a little in the office. (INT4)

The scepticism of trade unions towards total remote work – demonstrated especially by nationwide organisations in the context of discussing the amendment to the Labour Code introducing this solution – also stems from fears of pushing employees out of certain companies, which will become something with an undefined, from the point of view of labour law, function in relation to the employee. Employee rights will not be properly exercised in such cases, the employee will not be able to go to the company in case of a problem, the company will be something of a phantom. Trade unionists derive this eventuality from the expansion of the platform economy and the emergence of business models in which there is a relationship between the employee and the company analogous to that of an employment relationship, while exempting the employer from most of its obligations under the Labour Code.

Total remote work can also pose a threat to trade unions themselves, as it not only weakens bonds and solidarity between workers, but also limits physical access to the organisation for its potential members in the workplace and opportunities to promote membership (still not all organisations carry out this type of activity effectively enough online). In the course of the interviews, only representatives of smaller organisations in the IT area were willing to allow remote working altogether, which should be linked to the preferences of some employees in this sector. In general, IT technicians and specialists – whether employed by IT companies or others – in many cases have a strong preference to work remotely as much as possible, and employers are willing to allow them to do so. Firstly, because they are employees with desirable and rare skills that are difficult to find in the labour market and can therefore dictate terms. Secondly, their tasks are to a particularly large extent able to be performed

away from the employer's premises (although hardware issues may be a limitation, if high computing power is required in a particular company, e.g. in the Gamedev subsector).

Employers also declare their support for remote work, although they also make many additional comments. It was they who, at the consultation stage of the amendment to the Labour Code introducing the principles of remote working, advocated the permissibility of full remote work, citing the principle of freedom of contract or the special needs of certain categories of employees. However, employers are also generally more in favour of hybrid work than full remote work.

In addition, legal experts in particular were inclined to emphasise that remote working is not a new form of employment in the legal sense, but merely an organisational solution, the application of which does not eliminate the basic principles governing the "traditional" employment relationship (including, in particular, the subordination of the employee and the employer's responsibility in the sphere of health and safety).

2.1.1 Main risks and benefits identified by employers

Employers were significantly less represented in the study than trade union representatives, but both were asked about the advantages and disadvantages of remote work for employers. However, it should be borne in mind that both sides have a different perspective, where trade unionists most probably tend to emphasise the benefits that companies enjoy and downplay the risks and drawbacks. A very large number of interviewees representing both sides pointed to the significant savings resulting from the possibility of reducing the number of employees on company premises at the same time. This makes it possible to significantly reduce the cost of utilities (water, heating/air-conditioning, electricity) and even reduce the area of rented premises. Also important to interviewees is the possibility for an employee to remain available to the employer and perform duties even if he or she is slightly ill, has to care for a sick child or has other unforeseen life events that do not completely prevent work, but which in the past would probably have resulted in sick or vacation leave. Employers can also source valuable employees with rare skills outside the local labour market, as long as it is possible for them to work remotely to a significant extent or exclusively. This provides a way of coping with sometimes significant labour shortages or "difficult" metropolitan labour markets, where wage expectations have been exceptionally high in recent years.

A risk arising from the use of remote working is the lack of direct supervision of the employee and real-time insight into the results of his or her work. It should be borne in mind that this disadvantage is not relevant in the case of the typically task-based nature of the work and where the results of the work are easily transferable and quickly visible (e.g. in the case of IT support). In other cases, however, some managers found it somewhat challenging to endow employees with trust, as did developing an appropriate model of cooperation and communication within the team. This is accompanied by some controversy regarding the evaluation of remote working performance. Some interviewees pointed out that after a period of pandemic, when many employees were concerned about keeping their jobs and were putting a lot of effort into their tasks (so that there was even talk of a certain increase in productivity), there was a certain “relaxation” among employees, resulting in a decrease in productivity. It was also highlighted that remote working done to a large extent can cause harm to teamwork, and an excessive number of online meetings organised by some managers was pointed out. This may be an attempt to maintain team cohesion and reinforce control over team members, but in the opinion of some interviewees it is strongly unproductive and time consuming. Implemented mechanisms for remote control of employee activity (login and logout time from the intranet, monitoring computer activities) were frequently mentioned in the interviews, although there were also sceptics, pointing to the existence of solutions e.g. simulating mouse clicks.

“ *The lack of supervision, I know that this is something that the employer takes quite a strong interest in. And there are some kind of audits here. (...) It's a bit hard for me to understand (...) because we have a queuing system that records the applications that come in, that we take up, close, pass on, and yet we were recently requested to email how many applications we did remotely. I don't understand what purpose this is supposed to serve, it's such a duplication of control. (INT3)*

Among the disadvantages or risks of remote work, the effects of the new Labour Code regulations were also indicated. In the opinion of some employer representatives, the new regulations are very extensive and detailed, impose a significant number of information obligations on employers, record-keeping of events related to the arrangement of remote work with an employee (in the opinion of one interviewee, some employers do not even know about this obligation) and introduce uncertainty regarding liability for accidents at work (some interviewees are waiting for the jurisprudence of labour courts and other institutions, such as the State Labour Inspectorate). Also a source of uncertainty for

companies are the very general rules for calculating the cash equivalent (reimbursement of the remote worker's costs) – in particular the lack of rates suggested by the general regulations and the non-taxation and non-coverage of this amount by compulsory insurance contributions. The latter makes employers, even if they wanted to, wary of setting too high an amount, which could lead to accusations of transferring part of the salary in it. The preliminary conclusions of the tax authorities' decisions, however, suggest that there are no situations that are disadvantageous from the perspective of companies. In general, however, the voluminous nature of the legislation and the high requirements placed on employers mean that smaller companies in particular, without separate HR departments, may feel a significant burden, which may even lead to the abandonment of remote work as a result. Also, the obligation itself to reimburse costs was seen as a potential burden for the smallest entities and for larger companies as a mechanism that reduces the financial benefits of the solution analysed and, thus, dampens enthusiasm for it.

“ *We are obliged to pay an equivalent to an employee for those days when he works away from his permanent place of work. And in some companies, and it should be recalled that the majority of employers are small and medium-sized enterprises, that's where it turned out to be a big cost that the employer was not able to bear. So that was also one of the reasons for the move away from this remote working.*
(INT8)

Interestingly, the issue of employees' expectations of the possibility of remote work (usually in a hybrid format) emerged in some interviews as a kind of making employment conditions more attractive – presented as an advantage of remote working. Such an expectation is particularly prevalent among young candidates, who value much more the possibility of reconciling their professional and private lives. This is why companies caring about their image as an employer open to the needs of employees, as part of their broader employer branding, provide the opportunity to partially work from home when competing for talent. However, this seems to be more of a forced situation than a benefit, and therefore should – as the minority of interviewees pointing to this phenomenon did – be placed on the side of the risks and challenges associated with the use of remote working. Security of sensitive data can also be problematic for the employer. This issue is particularly acute in the banking sector and in public administration (in the latter often posing a significant barrier to the development of remote work).

2.1.2 Main risks and benefits identified by trade unions

Representatives from both sides of the industrial relationship mentioned a number of benefits that employees gain from the possibility to work remotely (including in a hybrid format). The possibility to better reconcile work obligations with personal life, housekeeping and caring for children or other family members was mentioned very frequently. The ability to work from home during a mild illness of an employee or their child, on the other hand, makes it possible to avoid interrupting their duties, including sick leave, which entails a 20% pay cut. Employees also save on commuting costs and gain time – this is particularly important in congested cities, when, for various reasons, the employee wants to avoid using public transport (e.g. fear of infection), and if the employee lives a considerable distance from the employer's premises. Related to the latter is also the possibility - rare until the pandemic – of being employed by a company very far from one's place of residence. Previously, this generally required moving out of one's home town and costly renting a flat. This kind of convenience applies to employees who work (almost) exclusively remotely – especially IT specialists or highly skilled analysts in the banking industry.

“ *There is the convenience that I can get up, to put it ugly, pull on a tracksuit of some sort on my butt and I'm already at work [laughs]. It's a different thing when you have to commute, even through a small town like mine (...) shave, get to a decent state and go. (INT3)*

Saving time, well, because you have to get to the office and stand in traffic jams, back-offices are in big cities (...) saving on commuting costs. (INT6)

Being able to stay at home also means not having to prepare carefully for work, as some interviewees admitted – no make-up or elaborate clothing is needed, which means further savings both financially and in terms of time. The employee can get up a short time before the start of working hours, extending sleep time, keeping hygiene routines to a minimum as they see fit. He or she also feels – as far as the premises and the presence of other household members allow – more comfortable, being able to work in a friendly environment that he or she has arranged himself or herself.

“ *It's a [type of] work that has a future, and it would definitely solve and make it easier for women. (...) It would make work easier, it would contribute to getting extra time for the family, for oneself, for relaxation, for rest - for whatever one wants. (INT5)*

However, there are also a number of psychological and social risks associated with the latter. Staying at home for a long period of time (in the case of full-time remote working) may result in the severing of ties with one's work colleagues, a feeling of isolation and loneliness, as well as the deterioration of mood and general mental condition, the abandonment of social activities and the general neglect of the employee. Such a person, confined all the time within four walls, does not feel motivated to take care of his or her appearance and health. However, the risk of increasing the actual working hours and blurring the boundaries between work and private life was particularly often mentioned. This could be due to a variety of factors, including both certain attitudes of superiors – expecting subordinates to be ready to answer an email or phone call outside working hours – and the difficulty of organising one's work in an appropriate way, lack of self-discipline. Some interviewees even indicated from personal experience that it is not easy to step away from the computer after working hours when there are still certain things to do – as well as not logging on at all during the weekend.

“ *But the other way also this flexibility works (...) an email could be received at very different times, and this response in some people was required quite quickly, even though the working hours had passed. (INT6)*

The disadvantage of remote work from the employee's perspective is incurring additional costs related to providing oneself with appropriate equipment, furniture (as a rule, the latter expense is not reimbursed by the employer; in one case in the banking sector, the employer enabled the purchase of second-hand furniture at favourable prices), the organisation of the workstation, the consumption of electricity (computer, lighting), the heating of the flat (when present in the office, the heating could be turned off) and even, as indicated in some interviews, the consumption of tea or coffee and sugar, which are customarily provided to employees in the office. The cost of the telecommunication fee also comes into play, but also the quality of the connection (not always and everywhere fully satisfactory). It is true that the amendment to the Labour Code introduced the obligation to reimburse the cost of electricity and the telecommunications fee, but the amount negotiated with the employee side does not always fully cover even these two expenses, not to mention others. On the other hand, some interviewees suggested that even the savings from not commuting compensate for these expenses. Another risk for the worker may be the lack of suitable premises, the presence of household members (including, for example, young children) interfering with work and causing distractions.

Some of the risks and disadvantages of remote working stem from the shape of the legal solutions adopted. As on the employers' side, employee representatives condemned the still considerable uncertainty concerning the sphere of health and safety – how certain situations will be qualified, whether they will be recognised as accidents at work by the employer's health and safety services, the National Labour Inspectorate and – as a last resort – labour courts, who will be considered responsible for a given incident and whether employees will be able to count on compensation payments. There are still many issues related to the new regulations that have not been clarified in practice, with interviewees often pointing to the need to wait for certain decisions and court rulings.

3. Regulation of telework through collective bargaining

Discussing the issue of collective bargaining on remote working according to the structure adopted in this report is a challenge due to the specific shape of the collective labour relations system in Poland. This structure also translates into social dialogue on remote work. At the same time, it should be noted that – which is not the rule in our country – the dialogue around remote work was relatively lively during and after the pandemic period. Admittedly, just as the practice of multi-employer collective bargaining is almost non-existent (let alone sector-wide), no instances of multi-company negotiations on the rules for the use of remote working were identified in any of the sectors under scrutiny. However, firstly, there was an intensive tripartite dialogue on the amendment of the Labour Code between 2020 and 2022, which was expected to result in the introduction of a new, comprehensive chapter on remote work into this legislation (in place of the former chapter on teleworking, which was hardly used in practice). This is an important process from the point of view of the national system of collective labour relations that cannot be ignored. Therefore, it will be analysed in subsection 4.2 (with the author's awareness that the project leaders envisaged a different function for this chapter).

Secondly, the aforementioned amendment to the Labour Code imposed an obligation on employers to negotiate a remote working agreement with employee representation. However, this type of negotiation should not be confused with collective bargaining. A remote working agreement is not equivalent to a company collective agreement. Moreover, the employer can unilaterally introduce remote working regulations if no agreement is reached – although it should take into account those issues on which some agreement has been reached with the unions. Thus, we are not dealing with a form of collective bargaining,

but rather something between negotiation and consultation. The negotiation of company agreements on remote working, which in most companies took place in the spring or summer of 2023, will be the subject of subsection 4.1.

4. Bargaining approaches and outcomes

The following will be an analysis of the examples discussed during the interviews of negotiating company agreements on remote working in the four studied sectors (subsection 4.1.), followed by a brief cross-sectoral summary analysis and the main findings of the consultation process of the amendment to the Labour Code introducing regulations on remote working in a tripartite dialogue format (subsection 4.2.).

4.1 Sectoral analysis

An analysis of the cases of negotiated remote working agreements in the four sectors studied reveals relatively little variation in terms of the range of topics discussed as well as the priorities of the social partners. Hence, these issues will not be discussed by sector – at most, a few sector-specific issues will be indicated. More differences could be observed with regard to the conduct of the negotiation process and its outcome. On the one hand, this is due to significant differences in the negotiating power of trade unions. The IT sector stands out unfavourably here, where unionisation is negligible (unless we are talking about companies on the borderline of the sector, belonging more to telecommunications for example – although still employing a significant number of IT technicians). A few small organisations have only recently emerged in the sector, which are not fully recognised by the employers and do not participate in practically any kind of negotiation or even consultation. The second factor influencing negotiations and their outcomes is teleworkability. Here, the chemical sector in particular stands out for the low level of this indicator. This has an impact on the attitudes of both sides of the social dialogue: remote working is not a priority for them. For more on these determinants, see Chapter 5.

4.1.1 Topics subjected to discussion

The subject of the consultation on remote working principles at company level was in particular the range of jobs for which remote working can be used and the scale of its use. The first of these issues has, interestingly, sometimes caused controversy in a sector where remote working is a peripheral topic, i.e. the chemical industry. Precisely because of the low

teleworkability, in some cases a significant group of workers expressed bitterness that they were not provided with the opportunity to work remotely – even though it was quite obvious that the nature of their tasks, particularly related to production, made it impossible for them to move their work to home. In order not to escalate this sentiment, the trade union side accepted narrowing the range of positions where remote working was allowed to administrative positions only, although to some limited extent it would also be possible for some production positions. The idea was that those who are completely lacking in technical and organisational possibilities should not feel disadvantaged. Usually, however, the unions are pushing for the widest possible scope of remote working in the workplace (even including all staff), as this is what their members want. An expert representing a nationwide representative trade union organisation, having information on the negotiation process at numerous workplaces, listed typical techniques for determining the scope of remote working in a company. Usually, a list of jobs was drawn up (according to an internal payroll), where it was or was not possible to work remotely, or it was indicated – which the interviewee assessed as a vague rule – that remote working was possible in those jobs where its performance did not harm the operation of the company.

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All employees would like to use, and the manual worker on the machine would like to use [laughs] (...) Why exactly is my position not taken into account? (...) Everyone thinks that if there is remote work, you will also be able to benefit from it. (INT10)

A frequent and quite emotionally charged issue was the rules for calculating employee reimbursement rates. There are very different situations here, although employers often try to limit the catalogue of costs (only electricity and telecommunication fees are mandatory by law), although – especially in the banking sector – they are sometimes more generous. The amounts also depend on whether the employee has internet access or a company computer provided by the company. As a rule, they do not cover the furniture used by the employee at the workplace. There is a paradox associated with the issue of reimbursement: the parties realise that it cannot be a significant amount, and thus it is neither a significant addition to the salary nor too burdensome for the employer. However, it is on this point that the greatest discrepancies between the parties to the dialogue have occurred. There were even cases in the interviews where negotiations broke down for this reason and the employer adopted the principles of remote working unilaterally. Some interviewees representing trade unions explicitly admitted that they were afraid of being ridiculed in front of union members or – more broadly – the company's workforce if the negotiated rates were

very low. On the other hand, it is quite common practice to set rules for the valorisation of the refund amount, e.g. by the inflation rate for the previous year.

Another important issue – in the light of the not entirely clear general provisions - was the rules regarding health and safety and the control of its fulfilment (as well as the control of the process of remote working or employee sobriety). In this area, both sides felt rather insecure, and employers were willing to make some concessions. For example, they agreed with the trade unionists' demands that the inspection be announced in advance and attended by certain persons (such as a representative of the company's health and safety services accompanied by a trade union representative, but not by the direct supervisor). A separate issue also taken up during the consultation is the scope of remote work monitoring using ICT tools.

4.1.2 Priorities of social partner organisations

Typically, interviewees did not indicate clearly defined priorities when consulting on remote working policies in companies. However, as indicated above, they sometimes considered the employee reimbursement rate as a “point of honour”, ensuring that it was at a reasonable level. Sometimes, the subjective scope of the use of remote work (list of jobs entitled to perform it) may also have been a priority – as indicated above, limited teleworkability could cause tensions among employees (example from the chemical sector).

4.1.3 Negotiation process

According to the declarations of the interviewees, the negotiation process (or rather consultation, as the law allows the employer to unilaterally adopt the rules of remote working and include them in the regulations if no agreement is reached within one month) usually went smoothly, it was not uncommon to even speak of positive surprise at the attitude of both parties, the willingness to reach an agreement (with some rather rare exceptions) and general satisfaction with the results. Usually, the process took several weeks and consisted of several (e.g. three) meetings. As a rule, the employer took the initiative by proposing some draft agreement, which was then commented on by the union side and modified to some extent. It was not uncommon for both sides to have the support of lawyers. Sometimes some data was used, especially on the cost of energy consumption in Poland (usually done by the employer). Practically no negotiating strategies were chosen, both sides were generally acting ad hoc. Unions sometimes softened their position, fearing that the process would be prolonged, which could lead to the employer unilaterally adopting

rules. However, it was not uncommon for both sides to be interested in reaching an agreement, and the consultation process by the union representatives was judged to be genuine and fair. During the negotiations, there was some exchange of experience within cross-company trade union sectoral structures (no examples of more formal cooperation). They also benefited from the support of national federations and trade union organisations, which offered training and advice (also informal - an interviewee who is a legal expert in one of the federations admitted that he was often called with questions about, for example, a reasonable reimbursement rate for employee's costs).

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In all banks there were meetings, discussions. Some of the employers took the unions' proposals very seriously. We sent a request to our members who used remote working during the pandemic to send us their opinions and suggestions. (...) We are armed with lawyers, because we have companies on the other side that can even afford to hire an external law firm, and as you know, when you build an in-house labour law, it even matters where you put the comma. (INT4)

4.1.4 Negotiation outcome and flexibility approach

A typical outcome of consultations on remote working principles at company level is firstly the subjective scope – for what positions it applies. Here, a certain addition, especially in companies or institutions with lower teleworkability (especially in the chemical sector and in less digitalised public administration institutions), is occasional remote working, which can be requested by the employee from time to time, up to a maximum of 24 days per year. Where remote working is possible, hybrid working predominates. The highest proportion of working from home is found in the IT sector (mid to full week) and lower in the banking sector. In the head offices of large banks (unlike in local branches, where the work requires direct contact with the client and it is almost impossible to do it at home), the predominant pattern is 2-3 days of work in the office and 2-3 days of work at home (top-level professionals, as well as IT support staff, can count on a higher share of remote work). In ministries, 1-2 days of working from home per week is possible for some positions. In some government agencies, on the other hand, where still, despite significant efforts, a huge proportion of documents are processed in paper form, remote work is very strongly limited – often only to the aforementioned occasional formula. In the chemical industry, it can be done by office workers or sales/marketing departments, but even then it is often only occasional remote work.

As a rule, employers provide access to the office, even five days a week, to those employees who, for various reasons, wish to make use of such an opportunity. Trade unions strive to ensure that employees always have a full choice in this regard, according to their personal preferences. There are cases of a flexible approach when it comes to the proportion of time spent working in the office and at home: for example, in one company, certain monthly limits have been negotiated for remote working: a lower one of five days and a higher one of ten days. In the case of the lower one, the employee can agree on an ongoing basis with his/her immediate supervisor as to the specific days on which he/she will do remote work (it is typical practice to set such days per week "rigidly" in the employee's contract). In the case of a higher limit, the decision is made by the senior manager. Also in other companies, it is often managers and supervisors who have a say regarding which days employees can work from home, which may need to be harmonised with the work schedules of other team members (but cases of flexibility have also been reported, e.g. in the case of an employee's mild illness or other random events). There are also cases where it is the supervisor who decides whether a person can do remote work at all - e.g. in (rare) cases where the union side has managed to negotiate the possibility of remote work potentially for all staff (obviously something like this is possible in companies with high levels of teleworkability). There are also cases – one was reported in public administration – where the interviewee assessed that the formal path for accepting remote working (and this is still done occasionally, on an ad hoc request by the employee) is too long, when it could only involve the immediate supervisor.

The effect of negotiating reimbursement rates – where it did not become a reason for breaking off the talks – is a relatively wide range of amounts, starting from about € 0.20-0.25 per day, through what some interviewees described as a fairly average range of € 0.50-1.00, to rare cases of higher amounts (the record amount given during the interviews was as high as about € 2.80). Although it is difficult to establish this on the basis of the data obtained (they are by no means statistically representative), it can be concluded from some of the interviews that in Polish companies there were rather more cases of negotiating rates from the lower ranges. The reimbursement was usually calculated on the basis of the minimum set of costs specified in the law (only electricity for the operation of the computer and lighting of the workstation and part of the telecommunication fee).

The health and safety sphere, as indicated above, has been an issue where, in some companies, trade unionists have managed to negotiate some favourable rules for the employee, such as the establishment of a composition of the team carrying out the

inspection at the remote work site providing discretion or the notification of the inspection well in advance. At the same time, employers have so far shown a complete lack of enthusiasm for carrying out inspections at the remote work site (which the trade union health and safety expert considered in the interview to be a correct consequence of the practice of employees signing declarations that they have read the health and safety rules and will comply with them – under normal circumstances, in the interviewee's opinion, there is no reason to disbelieve the employee in this respect). Not a single instance of such control was cited during the interviews.

As a rule, the results of the consultations were included in separate remote working regulations, which constitute an internal act regulating the terms and conditions of employment in the company. It was rather very rarely decided to incorporate these regulations into the company's collective agreement, as this is a relatively time-consuming process, requiring the local labour inspectorate to be informed, and relatively difficult to amend later. Typically, cases of renegotiation of this document or its timing were not mentioned, although such cases also occur. For example, in a certain company in the chemical sector, the agreement was concluded until the end of 2023 and then – after minor amendments – extended for another year. This was therefore somewhat of a trial, although the interviewee suspects that the next extension will already be open-ended.

“

The parties noted as a success that we got these regulations done. I think everyone felt that we had put a lot of effort into this work, that it was a joint effort. That we were regulating something new that would become part of the canons of labour law forever. (...) It's not after all negotiations that a person has that feeling of a win-win situation. (INT1)

4.2 Cross-sectoral analysis

As indicated earlier, the differences between the sectors studied mainly boil down to the degree of teleworkability, resulting in greater or lesser interest of the parties in this issue. In the chemical industry and parts of central government, the low proportion of people able to work remotely made it a much less important issue for both the employer and the trade unions. In contrast, almost no consultation on the principles of remote working characterised the IT sector due to its negligible unionisation. At the same time, the catalogue of negotiated issues, as well as the negotiation process, did not differ significantly between sectors. At most, the emphasis was different – for example, low teleworkability

may have led to a greater focus on the range of positions for which remote working was allowed (the already discussed example from the chemicals sector).

At this point, it is important to touch upon another topic common to all sectors of the economy related to social dialogue, namely the tripartite dialogue within the Labour Law Team of the Social Dialogue Council – a body that includes representatives of representative organisations at the national level and the government. From autumn 2020 to mid-2022, public consultations on the amendment of the Labour Code, which includes provisions on remote work, were underway. At first, the government side presented an early, working draft of the amendment, which was proceeded for some time, which even included an attempt (unsuccessful) at a bipartite dialogue in early 2021. The trade unions and employer organisations failed to reach an agreement, so tripartite talks followed again, also not leading to a clear conclusion (although, as one interviewee put it, it was not time lost: all parties carefully considered their demands and gained - including the government side - a good understanding of the priorities of the other dialogue participants). Subsequently, the process entered the phase of legislative work, during which the social partners received the maturing draft amendment for their opinion several times.

The starting point for the work was a draft based on the previously existing chapter of the Labour Code on telework, which was to be replaced by a new chapter on remote work. This in itself was a source of controversy for employers in particular, as this previous chapter was extensive and detailed. In the meantime, employers had time to get used to the interim anti-pandemic regulations in force from spring 2020 to spring 2023, which allowed remote working to be mandated practically without any additional detailed standards (including, for example, the health and safety sphere). In the end, the regulations are even more detailed than those for telework, taking into account three scenarios: (a) commissioning remote work in case of exceptional circumstances under the pandemic regulations, (b) agreeing remote/hybrid work in an individual contract with the employee and (c) occasional remote work at the employee's request). The comprehensiveness and detail of the regulations is, among other things, the result of demands from the trade union side - to give one example, trade unionists pressed for an obligation to inform the employer in writing of any change in the location of performing remote work, treating this as one of the necessary conditions for maintaining the employer's health and safety responsibility. Some compensation for the complexity of the legislation for employers, including especially those in the SME sector and companies with low teleworkability, is the introduction of the possibility of electronic exchange of remote working documents and the solution of occasional remote work. It is

possible to do this on an ad hoc basis at the employee's request, for up to 24 days per year, in which most regulations, including those on reimbursement, do not apply – although the employer is still the main actor responsible for health and safety. This solution was received coldly by the trade union side, which called for a lower annual limit (12 days, while employers initially proposed 36 days).

For the trade union side, on the other hand, the priorities were: 1) the impermissibility of total remote work based on general regulations (it could possibly be negotiated with the trade union side at company level and, ideally, as part of multi-company bargaining), 2) the limitation or even abandonment of the introduction of occasional remote working, 3) the regulation at national level of the scope of reimbursement rates for employee costs (e.g. in the form of a regulation by the Minister of Labour), and 4) the introduction of an obligation to conclude an agreement between the unions and the employer (without the possibility for the latter to unilaterally introduce remote working rules if negotiations fail). The first demand stemmed from already mentioned concerns about the expansion of companies that would not properly fulfil the role of employers, being merely a “mailbox” for the employee, rather than a real entity providing all the facilities to which the employee is entitled. The idea of occasional remote working, on the other hand, did not appeal to the unions due to the radical narrowing of the regulations that would cover it. The unions also wanted minimum rates of reimbursement for employee costs, to ensure a certain minimum across the country. Interestingly, some of the employers in the interviews signalled that such rates defined in law would be convenient for them as well, providing a certain point of reference for negotiations. In addition, the two sides had quite different aspirations regarding the catalogue of reimbursed costs. The employers wanted the narrowest possible, or even the elimination of all items on the list under the nationwide legislation (the catalogue would be set at company level). The trade unionists, on the other hand, wanted the broadest possible list of costs, even including part of the rent or housing rental fees. With regard to postulate 4, the unions hoped for some revival of social dialogue at company level through the introduction of an obligation to conclude an agreement. It was assumed that remote working, being a relatively uncontroversial, “light” topic (compared to, for example, wage negotiations or the terms of collective redundancies) could be an effective stimulator of dialogue, teaching both sides to co-operate.

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At the beginning of these talks, we indicated very strongly that remote working should not be in a total form. We proposed that only a hybrid should be allowed. For psychological reasons, for health reasons, so that it would not be a disconnection of the employee from the workplace. (INT11)

The employers, I'll tell you frankly, I even remember that they wanted to throw it all into the agreement so that no costs would be mentioned (...) They were cutting it down, they wanted to cut it practically to zero. (INT11)

Here, our idea was to introduce a solution in a regulation, similar to the employer's payment of business travel costs. That is, such a minimum framework of these lump sums, allowances for remote work would result from a regulation issued on the basis of the Labour Code. That is, the legislator would determine the level of costs, the level of the lump sum. (...) some rules for calculating these costs. (INT7)

As such a shock absorber, we proposed a solution that was far from ideal, but ... we proposed that there should be occasional remote working. (INT13)

Ultimately, none of the aforementioned trade union priorities were met. Total remote working is allowed under the Labour Code, occasional remote working has been introduced (the government decided on a compromise 24-day annual limit), the suggested employee reimbursement rates have not been introduced in the generally applicable legislation, and the employer can unilaterally introduce remote working rules if no agreement is reached after one month. However, it should take into account the arrangements that have been reached with the union side. It turns out that the law still contains additional loopholes, which some legal experts pointed out in interviews. Unexpectedly, it appears from the legislation that it is in fact not necessary to negotiate collective rules for remote working in the company at all, and that it is only sufficient to negotiate them individually with the employee (trade unionists at the consultation stage of the amendment of the laws apparently hoped that this was only a transitional situation - i.e. that individual negotiations would be allowed until an agreement was concluded for the entire company; however, nothing of the sort appears from the wording of the legislation). Another loophole is the difference in the situation of an employee who agrees on remote working arrangements when first entering into a contract with an employer and one who requests the possibility to work remotely already during the course of employment – in the former case, an amending notice is required to withdraw from remote work. It should be noted that no solutions have

been adopted to ensure the right to disconnect – this has been argued, among other things, on the grounds that the Labour Code contains standards for an employee's daily and weekly rest. However, this seems to be far too little for the right to be offline to be guaranteed.

The area of health and safety also requires separate comment. Initially, the new law was intended to make the employee responsible for the organisation of his or her workplace. This strongly suggested removing a significant part of the responsibility for safety from the employer, contrary to the general principles of the employment relationship, and met with resistance from the trade union side. Ultimately, the legislation states that the employee organises the workplace taking ergonomic requirements into account, but in principle the employer remains the responsible party. This creates some controversy – for example, one employer representative assessed that the employer should only be responsible for reliably providing the employee with information on what the health and safety rules are. Trade unionists, on the other hand, want to maintain the principle of employer responsibility. A health and safety expert from one of the national trade unions expressed concern in particular about situations where an employee suffers a stroke or heart attack as a result of stress at work – no one currently knows whether this would entail compensation measures. In general, the representatives of both parties expect some settlement from the state institutions responsible for health and safety at work and are not sure of the shape of this. In contrast, one trade union representative, who is a social labour inspector, expressed strong reluctance to the prospect of him controlling a worker in his or her home.

In general, the representatives of the national-level organisations expressed at best moderate satisfaction and even dissatisfaction with the final shape of the new legislation. This is a paradoxical situation – one may be surprised both by the dissatisfaction on both sides (only one interviewee expressed a positive assessment, and interestingly it was a trade unionist) and by the fact that this unsatisfactory result was reached after almost two years of quite intensive bi- and tripartite talks. On the other hand, interviewees also acknowledged that the new legislation nevertheless allowed remote working to function properly without being an excessive barrier for employers and employees, and were willing to give it a chance, while waiting for some resolution of controversial issues before labour courts, tax authorities and control institutions.

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There is no perfect solution for everything, but if there are two parties who are unhappy with the way this legislation is working, well, I think this proves something. (INT8)

5. Understanding collective bargaining approaches and outcomes

At the national level, the conclusion of the tripartite dialogue - despite the controversies described above – was determined by the strong will of all parties to regulate remote working in permanent legislation. All social partners were aware that the temporary provisions on remote working would soon expire as the pandemic threat faded. They were also aware that work on a new law was underway in other countries, and that discussions on a new European framework agreement on telework were also conducted. Hence, both trade unionists and employers at national level took the need for new remote working regulations for granted.

When it came to negotiating the rules of remote working at company level, the success of the talks was often determined by analogous factors: the willingness of both sides to regulate the solution under consideration efficiently and quickly, thereby reducing uncertainty. An additional favourable factor was the experience from the time of the pandemic: in many companies, solutions had already been developed, IT tools for managing remote work and related procedures had been implemented, some permanent practices had been introduced, so the issue was not new. However, according to some interviewees, some employers approached the new legal situation with a certain degree of timidity, involving the trade union side in the development of the rules as a partner that could provide valuable substantive support. In addition, the partners often had the belief that the issue was not in itself sensitive, being a relatively easy problem to solve compared to other issues typically subject to collective bargaining. In particular, it was regarded as a non-problematic, secondary topic – with some exception as described above in this report – In areas of low teleworkability, where only a small group of employees can perform their duties outside the employer's premises. Many interviewees representing company-level unions declared that they felt that the discussions had been at least moderately successful, the consultation had been genuine, conducted with integrity and in a good atmosphere. However, there were also negative exceptions where the employer was not interested in reaching an agreement with the trade union side, although in the banking sector, for example, they were a definite minority. In contrast, there was almost no practice of consulting remote working rules in the IT sector, often due to the absence or weakness of unions. In one company, the union's position was ignored altogether, to which it responded by initiating a collective dispute (which also covered other issues). However, the company does everything to prevent the

union from having a say – it even uses the services of a law firm specialised in such practices.

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The infirmities of both sides became the basis for building the document together. (INT1)

As long as there is an employer's market in Poland, employees have little to say, including trade unions. Every employer is guided by the principle (...): how much does a person cost on the market, the cost of getting an employee. (...) I'm not going to pay more than the cost of an employee. (INT4)

They sort of didn't recognise this industrial action, they didn't want to negotiate those earlier issues either. So we entered the collective dispute again. We sent them letters (...) and in addition to the wage demands, we also put forward demands to start negotiating the remote working regulations. (INT17)

6. Conclusions

The fieldwork study in the TWING project took place at a very favourable time shortly after the new law came into force and consultations on the rules for the use of remote working were held in many Polish companies. This made it possible to talk to people who had been directly involved both in the national tripartite dialogue concerning new law and in the aforementioned workplace consultations, with fresh memories of these discussions. Remote working and the social dialogue on it is proving to be a complex issue and one that generates considerable emotion, particularly in those sectors where it can be widely used. At the same time, the new regulations have made social dialogue at company level more dynamic (even if less so than expected, especially by trade unionists) and, at the same time, have brought a certain amount of uncertainty to the interpretation of specific regulations, especially concerning health and safety at work and the responsibility of the parties for potential negative situations. At the same time, a large proportion of interviewees believe that the solution under consideration can benefit both sides of the employment relationship, creating a win-win situation. All the more surprising, then, the widespread complaints about the new regulations – they satisfy neither employers, who wished for simpler procedures and the transfer of some responsibility for the process of performing remote work to the employee, nor trade unionists, who wanted to ensure mechanisms that better guarantee

respect for employees' rights. Nonetheless, both sides view the new law with moderate optimism, believing that it has been possible to agree on a mechanism to enable the development of remote work on the Polish labour market.

References

Legal acts:

Act of 26 June 1974 Labour Code (Dz.U. 1974 No. 24 item 141)

List of interviews

Id	Sector	Type of organisation
INT1	banking	trade union
INT2	chemical industry	trade union
INT3	IT consulting	trade union
INT4	banking	trade union
INT5	public administration	trade union
INT6	banking	trade union
INT7	nationwide	trade union
INT8	nationwide	employer organisation
INT9	public administration	trade union
INT10	chemical industry	trade union
INT11	nationwide	trade union
INT12	IT consulting	trade union
INT13	nationwide	employer organisation
INT14	IT consulting	trade union
INT15	public administration	trade union
INT16	IT consulting	trade union
INT17	IT consulting	trade union
INT18	nationwide (industry sectors)	trade union
INT19	nationwide	trade union
INT20	public administration	trade union
INT21	nationwide	employer organisation
INT22	nationwide	trade union
INT23	chemical industry	trade union
INT24	nationwide	trade union