

## “Teleworking in Public Administrations. Notes for the future in Spain and France”

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**RESUMEN:** El presente estudio tiene como objetivo presentar la evolución y la forma en que este método de trabajo se ha establecido en el servicio público en los últimos años. La atención se centrará en la historia del marco normativo en ambos países, analizando la conceptualización técnica así como la naturaleza jurídica de la relación pública del trabajo a distancia. A partir del estudio de los casos francés y español, veremos qué impacto ha tenido la crisis sanitaria del Covid-19 y cómo esta pandemia y sus efectos marcan un punto de inflexión para el futuro de la administración pública, trascendiendo de una perspectiva sólo organizativa a través de nuevas fórmulas en cuanto a objetivos y clarificación de los derechos y deberes de los trabajadores que operan a distancia, planteando unos apuntes para el futuro de los que extraeremos sus conclusiones.

**ABSTRACT:** The present study aims to present the evolution and the way in which this working method has been established in the public service in recent years. The focus will be on the history of the regulatory framework in both countries, analyzing the technical conceptualization as well as the legal nature of the public relationship of remote work. Based on the study of the French and Spanish cases, we will see what impact the Covid-19 health crisis has had and how this pandemic and its effects mark a turning point for the future of public administration, transcending from a merely organizational perspective to through new formulas in terms of objectives and clarification of the rights and duties of workers who operate remotely, proposing some notes for the future from which we will draw our conclusions.

**Palabras clave:** Teletrabajo, Administraciones Públicas, Covid-19, Futuro, España, Francia

**Keywords:** Teleworking, Public Administrations, Covid-19, Future, Spain, France

### 1. Introduction

*"Teleworking in public administration is a difficult practice, since it is not recorded nor regulated in any special way".*

These words were pronounced by Brice Hortefeux, ex-French Minister for Labour, Solidarity and Civil Service, answering a question about teleworking in public administrations in 2009, at the National Assembly.

When the World Health Organization (WHO) declared Covid-19 as a pandemic in March 2020, it arose an unprecedented health, economic, social, and professional crisis. In a few months, the virus achieved global presence, while the governments offered a widespread response: the attempt of halting the spread of the virus by regulating the traffic flow. Therefore, one of the main measures taken by a great part of the countries was the confinement of the population, in a context of social distancing and decongestion of public spaces. These aspects will be of paramount importance for health policy. However, this need of social isolation to face the spread of the virus will induce the massive and fast development of teleworking. Thus, while a few years ago this practice was still marginal and episodic, it will turn into the ideal solution for keeping professional activities in the context of health crisis. Teleworking has been expanding and it is no longer limited to a few specific fields.

Particularly in Spain, the pandemic will be a genuine turning point, allowing the establishment of a regulatory framework regarding teleworking in public administration for the first time.

In France, even though teleworking in public administration was already included in the Labor Code since 2016 (which we will see more in detail), the pandemic will also have a great impact. While it represented 4% in 2019, teleworkers in civil service reached nearly 27% in January 2021, according to the National Institute of Statistics and Economic Studies (INSEE).

In France, as in Spain, the health crisis presented an ideal opportunity for development, regulation, and establishment of teleworking in general and in public administrations, due to the need of preventing the paralysis of public services.

Spain was the least prepared country in terms of teleworking, yet it was where the model flourished the most. Before the pandemic, only 7.3% teleworked daily, 5.3% did it several times a week and 4.6% several times a month, in line with the study "El teletrabajo en España. Antes, durante y después de la pandemia", by the National Observatory of Technology and Society (ONTSI). Due to the pandemic, 31.7% of the Spanish population began to work at home. This placed Spain in the tenth place amongst the EU countries with the least telework at that time. France, in sixteenth position with 37.2%.

In France, we observe different figures. Compared to 74.5% of the Spanish population who had never teleworked before, in France the percentage was lower: 62.2%. Of that percentage, 14% did it every day, 7.5% several times a week, 7% several times a month and 9.2% anecdotally. As the pandemic went by, regarding to the hours devoted to teleworking, in Spain it went from 16.7 hours to 15.1 hours, while in France it grew from 14.4 hours to 18.6 hours.

During the pandemic, in 2020, Spain disclosed the Royal Decree-Law 28/2020, of September 22<sup>nd</sup>, regarding remote working, which was already recorded in article 13 of Statute of Workers' Rights of 2015. In France, teleworking was regulated for the first time in 2006 in the French Labour Code with the articles L. 1222-9, L. 1222-10 y L. 1222-11. Nevertheless, as we shall see, there is a stronger tradition, both legally and operationally, in France, where we observed they spend more hours teleworking after the pandemic.

In short, this paper will analyze the establishment of teleworking, regarding the Spanish and French public administrations, by approaching it from a comparative framework and assessing its future potential in the professional world of our modern societies.

## **2. Justification**

In the last three years, teleworking has rapidly evolved, with a rise in the usage rates among workers across all sectors. In France, as in Spain, public service plays a very significant role in connecting with the population, the people. The main purpose of comparing both systems comes from the proximity of the geographic and administrative culture from both EU member states. Simultaneously, with such different data, we take specially into account that France may be considered a pioneer country in teleworking, that the pandemic is bringing the laws of both countries up to date and that we extract several data on the establishment of the public sector which can help to learn from one case and the other, their experiences and future prospects.

## **3. Methodology**

In pursuance of conducting this academic paper, the main method was a qualitative analysis, meaning a series of qualitative aspects were gathered in favor of gaining in-depth knowledge of this phenomenon's intricacies. Through this method of descriptive research, we were able to conduct a precise and complete study on teleworking alongside the gathering of documents and the analysis of internal documents and activity reports of official bodies. On this matter, the official page of the National Institute of the Public Administration (INAP) of Spain and the official page of the Directorate for Research, Studies and Statistics (DARES) of France were of precious help. Moreover, the quantitative method was used to quantify the phenomenon with a view to improve the display of its scope through official figures.

The analysis of public policies is another qualitative research method which has been essential for this academic paper. This method, which consists of studying what each government has established regarding the subject under study, was crucial. As a matter of fact, this study of public policies and its evolution over time in regard to teleworking in French and Spanish public administration has actually contributed to structure the whole research, thus bringing a more definite dimension. The objective is to analyze the effects induced by the responses of each administration, observing both national program designs and transitional regulations, as well as previous experiences identified in each country and the analysis of Spanish autonomous regulations.

To conclude, this paper is characterized and structured by three data gathering techniques: the extensive journalistic information survey, the existing rules, and regulations survey and, lastly, the use of qualitative as well as quantitative information (analysis of studies on the subject, from which figures were extracted). All these methods led to a thorough, in-depth and exhaustive study on teleworking in French and Spanish public administrations, striving for maximum rigor in the search to establish an equal framework of comparison using the same data for both Spain and France. Nonetheless, we allude to two different administrative systems and consider this comparative complexity beforehand, focusing on the chronological part and the evolution of teleworking in these countries since in France the matter was raised in 1994 with an eye to the future.

#### **4. Teleworking in spanish public administration**

##### **- From the first legislative developments to the impact of the COVID-19 pandemic**

Teleworking in Spanish administration is regulated by the Royal Decree-Law 28/2020, which establishes the tasks that must be done remotely by the employee and, by the Law 10/2021 of July 9<sup>th</sup>, about teleworking, which retains a temporary period of 3 years to apply the rule in labour relations that were already regulated by agreement or collective bargaining agreement which doesn't foresee a validity period.

According to Prof. Mellado Ruiz, "RDLT does not provide a minimum common regulatory framework for the regulation of public teleworking in our country –in noteworthy contrast to the regulation of private teleworking–, neither from the perspective of public employment nor of the external service relationship". This new regulation includes explicitly the personnel, in contrast to the existing autonomous regulations, which had been demanding specific requirements for teleworkers, with prior express authorization in all cases. Taking a critical approach, he addresses that the RDLT attempts to assure the gender equality in rights and duties of civil servants, regardless of service provision modality. It is clear that conciliation is not certainly one of the purposes of teleworking, even though there is a connection between working from home and a greater possibility of family reconciliation for public employees.

If we refer to article 34.8 of Statute of Workers' Rights, workers will be able to invoke this regulation after teleworking 30% of their working week for a three-month period (at least, two days a week). In addition, teleworking is regulated in the public administrations through article 47 bis of TREBEP.

As it is shown, its peculiarity resides in the Covid-19 pandemic, the main source of adding this practice in the Spanish public administration. The Law of Teleworking made history because it regularized a very rare practice in Spain until the appearance of the health crisis. Both public and private sector, many laws and decrees were passed, thereby providing for the first time a regulatory framework for teleworking practice. Thus, it is certain that there was no "before" and "after" the pandemic, where September 2020 was the key month for the regulation of teleworking, especially for the public sector.

When the World Health Organization (WHO) recognized Covid-19 as a pandemic on March 11th, 2020, it was the starting point of what would later lead to the recognition and establishment of teleworking in the Spanish public administration. Just after two days, the head of the Spanish government, Pedro Sánchez, decreed the health state of emergency in Spain; a state of emergency that comes into effect on March 15, 2020, through Royal Decree 463/2020.

In the wake of this announcement, a great number of civil servants, whose services are considered "non-essential", were compelled to go back home. The administrative activity was suspended, and it is here, in the context of continuing the activity and service provision of public administrations, where emerges the issue of teleworking. Thus, one of the main challenges of the past years for the public authorities is to achieve the establishment of an efficient digital public administration that ensures the provision of public services.

After the approval of the Royal Decree-Law 28/2020 on September 22nd regarding teleworking (decree that concerns the private sector and the labour relations in the private sector), the Royal Decree-Law 29/2020 was passed on September 29th, which proclaims urgent measures to address the health crisis, adding a new article to the Recast Text of Basic Law Statute of Public Employment (TREBEP). This new article 47 bis

enacts a basic framework for all public administrations and it is applied to more than 2.5 million of persons according to official figures (civil servants and public administrative personnel).

Article 47 TREBEP recognizes the administration's power to establish both general and special working hours for civil servants. Consecutively, article 14.j) TREBEP identifies as individual right of civil servants –in accordance with the legal nature of their service relationship– "the adoption of measures that favor the conciliation in private, family and working life". Additionally, it is precise to recall that the final provision 14 of the Organic Law 3/2018 of December 5th included article 14. j bis, which recognizes explicitly the right "to privacy regarding the use of digital devices placed at their disposal and the use of video surveillance and geolocation devices, as well as to digital disconnection under the terms established in the existing legislation with regards to information privacy and guaranteeing digital rights". As it is shown, the right to digital disconnection is enshrined in article 88 of Organic Law 3/2018, of December 5th, whereas in France this precept came into effect on January 1<sup>st</sup>, 2017, being one of the most relevant issues in the French labour reform ratified in 2016.

Prior to the introduction of article 47bis, which finally provides a regulatory framework for teleworking within civil servants, teleworking was not explicitly mentioned in TREBEP. From now on, teleworking in administration is legally defined as:

*"The modality of remote service provision in which the competency content of the job position can develop, as long as the needs of the service allow it, outside the premises of the administration, via information and communication technologies".*

It verifies that the health crisis drove teleworking from an option to a need, but even though the pandemic is the main cause for the establishment of a regulatory framework, the growth of the demand for telework establishment had already been increasing for some years. Actually, according to a survey conducted in 2020 by the trade union UGT, almost 86% AGE personnel believed necessary to implement teleworking on a regular basis. Among the survey respondents, 97% thought that the practice must be regulated and in the same survey conducted on 2000 persons, 70% of the respondents declared that 75% of the work they performed was compatible with teleworking.

If we go back in time to 2005, Plan Concilia, presented by the Ministry of Public Administrations (MAP), can be considered in Spain as the starting point of teleworking in administration. At the moment of this initiative, implementing teleworking in Spain was still very superficial, in a context where the lack of financial means, especially, balked its development. The project was, in fact, a pilot plan, consisting of the selection of a group of civil servants, from different departments of the Ministry and with different tasks, who would try to reconcile face-to-face work and teleworking for a three-month period. Therefore, the Ministry provided an IT platform used to send and receive tasks to be done and as a tracking tool. Moreover, a computer was provided to anyone who did not have their own computer equipment. Finally, the test showed that 70% of participants were satisfied with this working method. The main purpose of this MAP project was to highlight and address the issue of conciliation between work life and family work that many employees faced. Consequently, this project intended to underline the potential of teleworking, which at the time MAP saw as a potential tool for professional flexibility in the public administration field. In this instance, at the time, in the early 2000s, Spanish women were especially concerned of this issue of conciliation. As a matter of fact, the data speaks for itself: according to INE and its Labour Force Survey (EPA), only 47% of Spanish women were

working in the fourth quarter of 2005. It is the lowest rate among all EU state members at that time. For some experts, this can be explained by the fact that these women at that time were facing a "conservative welfare regime" (G. Esping-Andersen, 1993:85). It is a regime ruled by paternalism, elitist corporatism, and subsidiary statism (Álvaro Espina, 2002:6).

Besides Plan Concilia, which is therefore a first initiative, attempts of implementing teleworking in the Spanish public administration are scarce, since it was a little known and poorly developed practice due to reluctance to the alleged lack of control of the teleworker.

In 2011, the Department of Justice and Public Administration of Basque Country also developed a pilot plan with the purpose of promoting teleworking: TELANA project. Subsequently, with the approval of the Decree 9/2001, of 17 March, teleworking started to be regulated in the public administration of Castile and Leon. On that account, the Governing Council of Castile and Leon is considered the pioneer in the implementation of teleworking in Spain regarding public employment. More recently, the Generalitat of Catalunya, with the Decree 1/2020, of 8th January, created a work center baptized "Administrative District", with the establishment of internal regulations about teleworking.

Time has sided with few projects, such as Plan Concilia or TELANA, which sought to promote the practice of teleworking. Teleworking is recognized and legislated, owing primarily to the Covid-19 pandemic which, due to its emergency, expedited the implantation process. Today, near 2023, teleworking in the public sector concerns almost 340,000 jobs, with the possibility of civil servants performing up to 60% of their activity remotely. This proves that teleworking was the solution to avoid the total paralysis of public administrations during the Covid-19 pandemic.

In fact, during the first moments of the pandemic (at the beginning of the containment), the total closure of Spanish public administrations had been decided. Ramió (Carles Ramió, 2021:3) affirms that, even though the emergency and unprecedented situation may justify the decision taken at the beginning of the containment, it later became a symbolic and instrumental mistake. According to his assessment, it cannot be justified the closure of the public administration (except services such as police and health services, for instance), while at the same time some "essential" private entities can remain open. He also points out that some public institutions should have never close, for example the civil registry. It is a relevant conclusion, with which the majority agrees according to the figures. As a matter of fact, a survey done in 2020 by CIS about the social image of public institutions considering health crisis estimated that a great part of Spaniards had a poor opinion on this subject. Thus, this survey indicates that during the period from March through October 2020, Spain is one of the three worst rated public institutions regarding their response to the pandemic, with a score of -42% compared to -13% for the EU. These figures speak for themselves and can support the strategic mistake of closing the administration, condemned by Ramió. Nonetheless, this conclusion was reached at the beginning of the containment and in the early stages of emergency measures, hence it needs to be put into context. Now we know that the tendency was later reversed, with the EU being called to account for its management of the vaccination campaign, while the public administrations had resumed their activity thanks to the wide implementation of teleworking.

With all these and in the midst of the health emergency, the Resolution of June 17th, 2020 was passed, on measures to be adopted in the work centers dependent on the General State Administration in view of the new normal, differing between groups of priority workers (as defined by the corresponding health authorities,

with dependent minors up to 14 years old or with elderly, dependents or disabled, affected by the closure of residential social services center and senior centers in charge) and non-priority workers. The first ones would have a maximum of 20% of working week on site and the second ones a minimum of 20%. It is required an express authorization which limits insofar as it allows the Administration to check that a number of requirements are met, it is voluntary and reversible –for both administration and teleworker– (except in cases of service requirements), it is compatible with on-site work and its legislative development is a matter of collective bargaining, with a clear identification of goals and assessment of its fulfilment. The parameters should be precisely defined around which assessment is to take place and which goals, among other points are to be addressed.

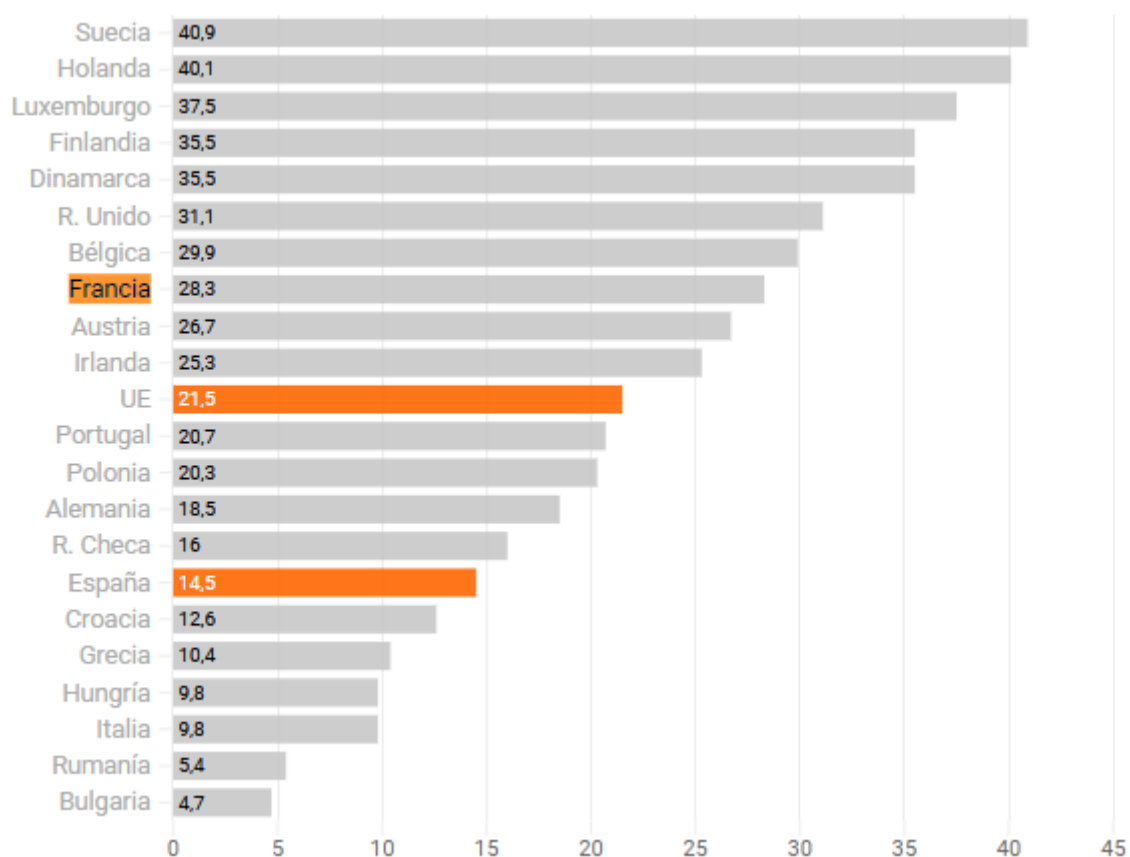
As for autonomous regulation, it is worth to mention that a great part is dedicated to teleworking in the public sector, breaking it down into two regulation groups. On one hand, there are those conceived before the Royal Decree-Law 29/2020, from which we could consider as pioneer Autonomous Communities in the regulation of teleworking in the public sector and, in the other hand, there are those developed after the lockdown decreed because of the health crisis. Among the first ones, we have the Decree 36/2013, of June 28th, from Balearic Islands; the Decree 16/2017, of June 7th, from Castile and Leon; the Decree 57/2013, of August 12th, from Castile-La Mancha; the Decree 82/2016, of July 8th, from Valencia; the Decree 127/2012, of July 6th, from Extremadura; the Order of December 20th 2013, from Galicia (replaced by the Order of December 14th of 2020); the Decree 45/2013, of December 5th, from La Rioja or the Decree 92/2012, of May 29th, from Basque Country. Both Valencian and La Mancha regulation are not in force, and they have been replaced for those from the group which were done after the crisis caused by Covid-19, which we will mention now.

After the arrival of the health emergency, the "new age" of autonomous regulation about teleworking in the public sector. In this group, we can find the Order HAP/320/2021, of March 31st, from Aragon; the Decree 65/2021, of June 9th, from Castile-La Mancha; the Decree 49/2021, of April 1st, from Catalonia and the Decree 79/2020, of September 16th, from Community of Madrid.

The first legislations already addressed controversial issues at the time, such as the allocation of jobs that are "suitable" for teleworking, the matter of "service needs", the assessment and supervision of teleworking or the establishment of teleworkers' rights and duties. With the addition of some innovations in the new regulations such as Catalonia, which regulates coworking by creating workspaces in its third additional provision, or Valencia, which establishes which jobs are eligible for incorporation and, therefore, which persons may apply for them, subject to the presence of enough budgetary provision (second additional provision).

Additionally, regarding quantitative data, we must mention the Spanish public sector digitalization if we address the implementation of teleworking, whose context was influenced by it. Spain, according with Adecco's data in 2021, continues to use teleworking less compared to France or the EU average.

**Graphic 1: Percentage of people working from home in the EU.**

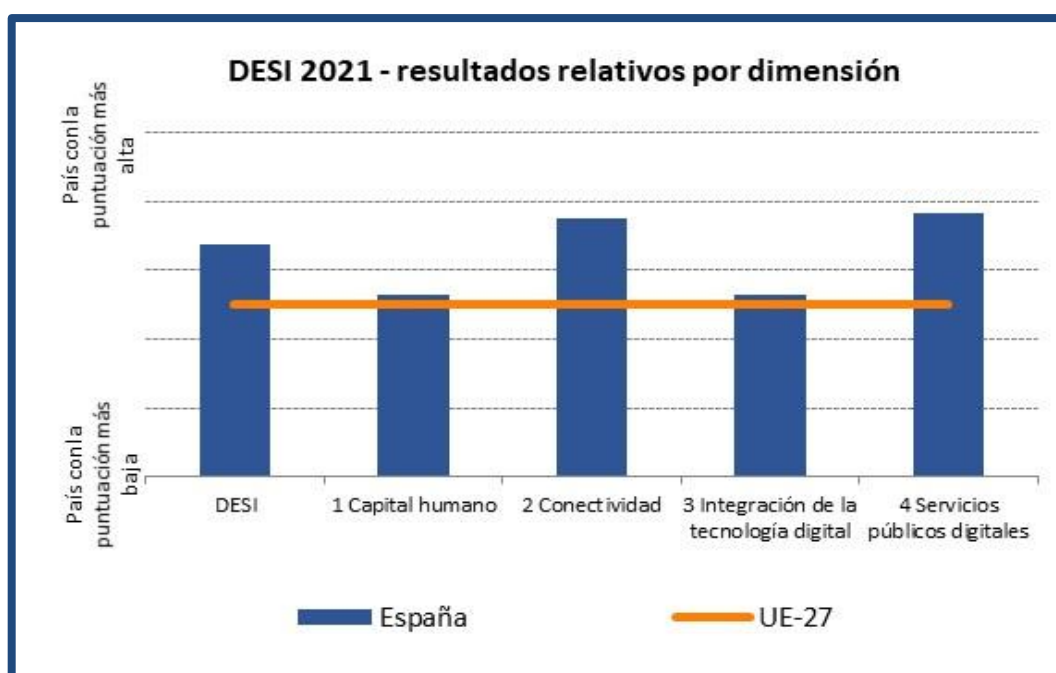


Source: Adecco (2021).

There is an index which represents the level of digitalization in European countries: the Digital Economy and Society Index (DESI). It tracks the digital competitiveness in the State members of the EU with the help of four elements: human capital, connectivity, digital technology, and public services integration. As you can see in the figures displayed in Graphic 2, Spain usually stands above the European average. Regarding digital public services, in addition to be above the European average, it is the category where Spain receives the highest score. Thus, according to this Index, Spain's results are above the European average and some other countries like France.



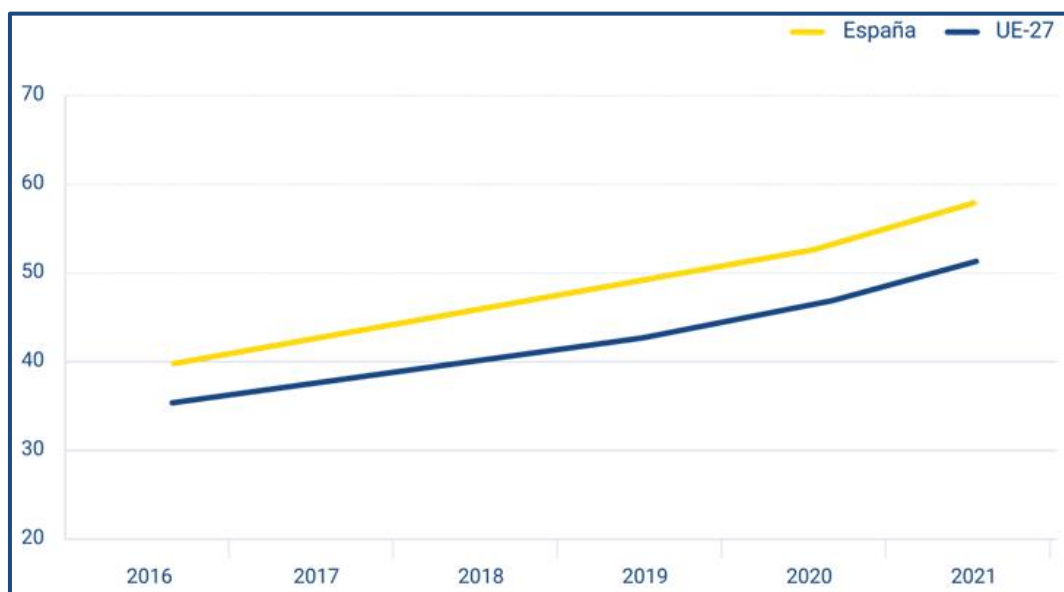
**Graphic 2:** Comparison of the Digital Index (DESI) between Spain and Europe.



Source: (DESI, 2020).

Specifically, if we observe the recent period between 2016 and 2021, the digitalization of the Spanish public services has been so much higher compared to the rest of European countries in the past years. However, there has been a positive evolution in both cases and at the same pace, as we can see in the following chart:

**Graphic 3:** Comparison of the evolution of digital public services in Spain and Europe between 2016 and 2021.



Source: (DESI, 2020).

It is necessary to keep in mind that this digitalization phenomenon has brought new challenges for the management of public administration. In fact, the means of authority and control are challenged by teleworking, which will establish new rules for its exercise. The current issue is how telework can be integrated and become part of a new organizational setup of public administration.

## 5. TELEWORKING IN FRENCH PUBLIC SERVICES

### - From the first legislative developments to the impact of the COVID-19 pandemic

France's situation differs from Spain's in that the Covid-19 pandemic was not the starting point for the legislation of teleworking in French public administration. As a matter of fact, even though the health crisis accelerated the implementation and popularization of this practice in the public administration, a regulatory framework already existed, albeit recently.

*Teleworking is a method of organization or execution of work done on a regular basis by a natural person under the following cumulative conditions: the work is performed remotely, i.e. outside the vicinity of the place where the result is expected, without the client having the need of supervise the teleworker's performance on-site" (Thierry Breton, 1994).*

In 1994, the issue of teleworking emerged. This is depicted with an extract of the report named "Teleworking in France, current situation, development prospects and legal aspects". It was written by Thierry Breton, then director of the computer company "Bull", at the request of the then Prime Minister Edouard Balladur. During that time, the idea of teleworking was more theoretical than practical, but still known. Two years after this report's publication, in 1995, France took the initiative to be the first country to put teleworking in the G7 agenda. This way, France wanted to encourage this practice, which was still undervalued. According to France, it was a real economic, social, and environmental asset (it restricted pollution and reduced transport and infrastructure costs). It gave no results and the issue of teleworking remained in the discussion phase.

The idea of notion finally became steady in 2002, while acquiring European dimension, thanks to the signing of the 16th of July agreements. It was a great progress that allowed teleworkers to enjoy the same rights as their colleagues who work in their workplace premises. Teleworking would be an opportunity to reduce the employee's stress and exhaustion, granting them more flexible working hours and leisure time. In the specific case of France, the adoption of teleworking is based on the National Interprofessional Agreement of July 19th, 2005. This is an agreement that would allow the implementation of the European agreement of 2002 in the country, after having been signed by the main French trade union organizations. Although this new agreement alludes the private sector, it raised the issue of legal framework in the French public sector.

As mentioned before, compared to Spain, France does not owe everything to the Covid-19 pandemic when it comes to the implementation of teleworking in the civil service. The Warsmann II law was passed in 2012. This law of March 12th, 2012 is "the law on access to permanent employment and the improvement of the employment conditions of civil service contract staff". Therefore, article 133 of this law defines teleworking as:

*"Any way of organization where the tasks to be performed in the employer's premises are done by an employee outside of these premises voluntarily, using information and communication technologies".*

Shortly later, on February 11th, 2016, the enabling act of the Sauvadet Law "on the conditions and forms of implementing teleworking in the civil service and judiciary" was published.

Thus, since 2016 and due to the adoption of this decree, teleworking in the civil service is regulated for most civil servants, raising several principles, such as voluntariness, maximum limit of teleworking days, reversibility of the authorization, etc. The number of working time is limited to three days per week, with only two days working on-site on the premises to avoid social isolation (Direction Générale de l'Administration et de la Fonction Publique, 2018:13).

The application conditions are established for the three public administrations (state, territorial and hospital civil services). First and foremost, article 2 addresses teleworking, which can be done in the worker's place of residence or any other different commercial premises than the employer's. Article 3 limits the practice to three days per week and article 4 stipulates that medical reasons can justify a derogatory condition. Lastly, article 5 points out that the civil servant's request must be submitted in writing to the head of the department. It is worth noting that the regularity criterion mentioned in article 3 was suspended during the pandemic, to allow professions, which were able to, not to stop their activity despite the confinement, with the switch to 100 % teleworking. Although the enabling act of the Sauvadet law does not bring any important innovation regarding the definition of the National Interprofessional Agreement of 2005, it specifies the duration of enactment and the framework of the exercise (Pascal Rassat, 2016:22), which will apply to the civil servants, magistrates, and non-civil servants.

The most recent update was Macron's 2017 ordinances, which allowed going even further. In fact, through these means, teleworking is finally recognized as a full-fledged working method, and it falls under the Labor Code, where it is regulated. Nowadays, in France, teleworking is legally defined by virtue of article L1222-9 of the Labor Code, in effect since December 27<sup>th</sup>, 2021:

*"Any work organization method where the work, which can be done in the employer's premises, is performed by an employee outside of the mentioned premises voluntarily, using information and communication technology."*

Firstly, it is important to recall that the state civil service is primarily a versatile civil service. Although a great part of its services is provided during office hours, others are provided during the 24 hours of the day, such as law enforcement or execution of judiciary measures. While some processes are not suitable for teleworking, those who are similar to the administrative tasks of great private companies are perfectly fitting (Michel Lartail, Cédric Siben and Benoît Bettinelli, 2011:6). Just as in Spain, the Covid-19 pandemic paralyzed public administrations in the early stages of the health crisis, and in France it created an absolute need to maintain the bond with the citizens, with the wish to avoid the paralysis of the administrations that was reflected in the nature of most of the laws passed in 2020.

Table 1: Negotiation topics in 2020\* regarding agreements on working conditions.

	All signatories		Shop steward		Elected or mandated employee, elected but not mandated		Two-thirds majority of employees	
	Number of texts	%	Number of texts	%	Number of texts	%	Number of texts	%
Working conditions	3 810	5	2 860	7,9	670	8,2	270	1,2
Agreements on the method (difficulty)	40	1,1	40	1,3	/	/	/	/
Stress, psychosocial risks	60	1.6	60	2	/	/	/	/
Other regulations regarding working conditions	2480	64,9	1 910	67	450	66,7	100	/
Intensity of work	220	5,9	200	6,8	30	3,9	/	/
Teleworking	1980	51,9	1 540	53,9	350	52,4	80	30,6
Right to disconnection and digital tools	1 070	28	680	23,9	210	31,1	170	64,9

*\*Only agreements signed in 2020 and registered before January 1<sup>st</sup>, 2021.*

Source: (Ministry of Labour, Employment and Integration, and Directorate for Research, Studies, and Statistics, 2020, of France).

The previous table and its figures show that, effectively, in 2020, 53% of the agreements which discusses working conditions and have a shop steward addressed the issue of teleworking. This is a clear sign of the impact of the health crisis in the implementation of teleworking, becoming into an important issue in the political sphere. Teleworking increased from 4% of the employees who teleworked in 2019 to 27% in 2017; a nearly seven-fold increase.

Having said that, compared to the private sector, teleworking in the public administration means the deterioration of the working conditions, according to the various surveys on the subject (DARES, 2022:8). This is due to diverse factors, such as the difficulties to conciliate personal and professional life, the duration and intensity of the work or emotional demands. All of this are aspects that are highlighted in the following table:

**Table 2:** Changes in the working conditions of teleworkers, according to the employer (percentage points).

*\*Regular teleworkers: groups of recurrent and regular teleworkers.*

REGULAR TELEWORK*		
	Public administration	Public and private sector companies
Reduced autonomy and margin of maneuver	-12	-10
Loss of meaning in work	-2	0
Lack of cooperation and social support	5	4
Targeted figures not adjusted	6	16
Conflicts of values	9	5
Job insecurity	11	30
Conciliation difficulties	17	9
Staggered work schedules (in the afternoon, in the evening, very early in the morning)	19	19
Emotional demands	32	19
Increase of working hours	32	27
Intensity of work	37	21

Source: (DARES, TraCov Survey, 2022).<sup>1</sup>

Thus, among regular teleworkers in the public administration, the percentage of those who declare an increase of the intensity of work after implementing teleworking is over 37 points compared to those who declare a decrease. However, on a more positive note, the feeling of job insecurity has increased comparatively much more in the private sector than in the public sector (+30 points, opposite to +11 points in the public sector).

Furthermore, regular teleworkers of the public administration have achieved more autonomy and purpose in their work. In short, the aim of this survey was “to describe the particular consequences of the health crisis on working conditions and psychosocial risks for workers”.

Just like Spain, before the pandemic, which caused this spectacular and fast evolution in the implementation of teleworking, this was rarely used in general and in the public administration. In 2011, teleworking was a practice in its early stages in the public sector. During that time, experiments that had already been carried out were few, but enough to delimit the obstacles and barriers of teleworking and,

<sup>1</sup> Survey “TraCoy” of all persons from 20 to 62 years old who have worked for at least one week between March 2020 and January 2021; questionnaire on schedules, patterns of work, use of digital tools, teleworking, emotional demands, work-life balance, etc.

therefore, we can suggest a suitable framework. It was perceived as a solution to isolated or individual situations (Michel Lartail, Cédric Siben and Benoît Bettinelli, 2011:6).

One way of measuring the position of telework in public administration in 2013 was the survey “Working Conditions”, conducted by the Directorate of Animation of Research, Studies, and Statistics (DARES). The survey given to respondents differed according to the type of structure. Therefore, there was a survey about “public service”, targeted at the services of the State and local authorities, highlighting the progress of teleworking in public administration. In 2013, these are the results received:

**Table 3: Teleworking, a nearly non-existent phenomenon in the public administration\* (2013)**

PERCENTAGE OF EMPLOYEES WHO TELEWORK	
State public administration (SPA)	0.7
Territorial public administration (TPA)	0.1
SPA and TPA	0.4

*\*Except hospital public service*

Source: (DARES, 2013)

In view of these low figures, it is clear that at the time there were still very few teleworking initiatives in the French public administration and that the practice was certainly more of an experiment. Given these observations, it is necessary to explain and consider that, in 2013, the decree implementing the Sauvadet law (mentioned before) had not yet been brought into force, which may explain such a low implementation of teleworking. Years later, in 2017, the data of DARES reveals an improvement, featuring a concentration of teleworking among executives in the State public administration. This is confirmed by the data in the table below:

**Table 4: Employment of teleworking according to the employee's traits and the employer's nature**

		All employees	Executives	Intermediate occupations
Gender	Men	3.2	11	4.1
	Women	2.9	11.1	2.4
Age	15 to 29 years old	2	7.2	2.2
	30 to 39 years old	3.2	10.7	3.4
	40 to 49 years old	3.9	13.1	3.3
	50 to 59 years old	2.9	10.9	3.6
	60 years old and over	2.6	9.2	3
Private employee	Private sector employee	3.1	11.1	3,8
Public sector employee	State Public Administration	6.4	16.1	3
	Administration of public hospitals	0.1	0	0.2
	Territorial public administration	1.2	0	1.0

*\*Percentage of employees*

Source: (DARES survey, 2017).

In 2017, teleworking among the executives is more prevalent than in the rest of the private sector, with a rate of 16.1% versus 11.1%. Additionally, teleworking remains an almost non-existent practice in the hospital public service with a rate of only 0.1%, which can be explained by the uniqueness of the professions that belong to this sector and are not suitable for teleworking for the most part (DARES, 2019:2).

The public agenda starts to deal with teleworking in the public sector more thoroughly by the law of 2012, “Loi n° 2012-347 du 12 mars 2012 re-lative à l'accès à l'emploi titulaire et à l'amélioration des conditions d'emploi des agents contractuels dans la fonction publique”, expressly referring to teleworking in the public sphere, in line with article L.122-9 of Code du travail in the private sphere, provided that teleworking would take place at the request of the civil servant and upon agreement with his department supervisor, which could be terminated after a certain period of notice. In turn, article 133 recognizes the principle of equal treatment regarding on-site workers.

Subsequently, the “Décret n° 2016-151 du 11 février 2016 relatif aux conditions et modalités de mise en œuvre du télétravail dans la fonction publique et la magistrature” was passed in 2016, regulating herewith the teleworking for civil servants. And with the new Decree of 2020, the “Décret n° 2020-524 du 5 mai”, modified the previous one and this new one is a consequence of the health crisis, ratified following the “Loi n° 2019-828 du 6 août” of the previous year, which was crucial in making the legal framework for teleworking more flexible. In response to the health crisis, the reference to regularity was removed, expressly recognizing its possible occasional nature.

In France, to telework, article 5 of the Décret establishes the requirements. There we observe the need for the public employee to attach a written request and a certificate on the suitability of the place chosen to carry out the work activity. The supervisor, based on the scope of public sphere to which the works belongs, will be in charge of resolving it. Teleworking can be reverted by unilateral initiative of the Administration or of the teleworker with a three-month notice, although in the first case a statement of reasons and a preliminary interview are necessary. Teleworking in the public sector, from a general standpoint, can be performed in a maximum of three days a week. The specific days will be shown in the granted authorization, as we can see in art. 4, along with the place where the functions will be performed and the hours of availability. Moreover, art. 7 stipulates that two documents must be submitted: one, of an informative nature, which has to do with the monitoring of the time spent and the equipment provided to the employee and, two, regarding the regulatory development of teleworking and health and safety regulation, with an express recognition in the granting of rights and duties among teleworkers and on-site workers. If a teleworker has some kind of disability, the Administration will bear the computer equipment costs, provided that these are not out of proportion, without much precision on this point if we compare with the aid system of, for example, the German administration.

## **6. TELEWORKING IN PUBLIC ADMINISTRATION, A TOOL FORGING THE FUTURE OR A LIMITED PRACTICE DUE TO ITS DISADVANTAGES?**

*"Teleworking is at the crossroads of restructuring the creation of the company's value and the employee's new prospects regarding life quality and environmental concerns". These is the*

*statement of French economist Daniel Cohen, who defends that teleworking has much to contribute to our modern societies.*

An initial remark of the rise of teleworking has to do with the trust-based relationship between the supervision and the worker, opting for a motivated personnel. According to ILO, trust is the key to this new way of working (International Labour Organization, 2020) and, therefore, within the trust there is a debate about the convenience (or not) of installing a teleworking control software.

It is important to be aware that poorly organized teleworking can have serious consequences. Besides, the increase of psychosocial risks must be kept in mind, considering that the worker can have difficulties to conciliate professional and personal life, without confusing both concepts. The duty to fulfill professional and life commitments at the same time and space (since the employees work from home, where their family members can easily approach them) can quickly become suffocating. Therefore, it is important that the boundary between the professional and personal sphere must be kept strict to ensure a good living environment and good mental health. As this balance is especially difficult to achieve in the teleworking context, we must consider if teleworking is actually feasible in the long term, since we will reflect on the topic and will find solutions. This role of ensuring the balance between the company's productivity and the welfare of individuals belongs to human resources (Alberto Pinto and Gonzalo J. Muñoz, 2020:2), with the design of a program for the mental health of workers.

In both French and Spanish cases, another issue that must be addressed, apart from the mental health of teleworkers, is gender inequality in teleworking. As a matter of fact, the working world, included teleworking, is influenced by gender. In France, the Sauvadet law addresses the issue of parity and requires a ratio of at least 60/40 between men and women in the civil service (it also takes into account that the same numbers are respected if the majority hiring is female). In the EU, during 2019, 30% of female workers were part-time workers, while only 8% were men. In this context, teleworking might seem the perfect solution, as it offers the same advantages than a part-time work, balancing personal and professional life, while, at the same time, granting the same rights as an employee who does not telework. Furthermore, these practices allow female workers to have no career breaks or an irregular or intermittent career. Nonetheless, this phenomenon must be analyzed a little bit more. In fact, the much greater position of women in these practices should be concerning, it proves that the traditional view of home and the role of the women in it is still predominant. Thus, we should be aware of the following danger: the perpetuation of gender roles (Ángel Belzunegui-Eraso, 2022:92).

According to a study conducted at the beginning of the 2000s by the academics Carmen Pérez Sánchez and Ana María Gálvez Mozo (2009:70), among all female teleworkers who were interviewed (30% of whom worked in the public sector), the responses were neither homogeneous nor linear - quite the opposite. Lots of contradictions appear, in proportion with this new practice, which is perceived as a trap for some and an opportunity for other, personal fulfillment or resignation. Nonetheless, everyone agrees with one aspect: the



potential risks of teleworking, though they must be kept in mind, are not enough to outshine its potential and advantages that it can bring in the future professional world.<sup>2</sup>

The main challenge for Juan José Rastrollo Suárez is to avoid at all costs the denaturing of public services, preserving the social role that plays the administration. Thus, he notes that teleworking must be used as a lever to promote the administration's modernization through the reorganization of the past organization structure (Juan José Rastrollo Suárez, 2022:1). Although there is nothing new, nowadays teleworking will serve to put in place more trust-based mechanisms. In fact, the reason why teleworking was rejected until now was the social perspective of civil servants and public sector employees, based on stereotypes: they cannot be trusted (Ángel Belzunegui-Eraso, 2022:44). The implantation of teleworking now implies a change in the companies' organizational culture, and with regards to administration, it implies remedying the "bureaucratic ritualism", condemned by the American sociologist RK Merton.

In addition to this great challenge, we must not forget there are some requirements to fulfill if we wish to implement teleworking, such as access to a good and reliable Internet connection from home and access to electronic equipment with the same characteristics. Only in Spain there is a part of the area affected by the so-called "digital divide". Basically, it is a spatial gap in accessibility that is related to people's socio-economic status. The possible solutions to overcome this inequality, which might halt the development of teleworking, would be the constitution of a European fund for this purpose and an increase in investments in the digital field, where it is still too superficial (Diego Rodríguez, 2020:12). Workers who are not familiar with this practice and digital tools will have to make an extra effort to adapt to teleworking as efficient as possible (JM. Peiró and A. Soler, 2020:5).

Lewis (1994) underlined the importance of teleworkers' self-discipline, who make a personal effort to organize their physical workspace, while they are interested in organizing the tasks to be performed. The objective is to find a real balance between work and daily life, and to avoid the obstacles and disadvantages of teleworking (Jacek Gądecki, Marcin Jewdokimow and Magdalena ĩadkowska, 2018:93).

This leads us to the qualitative approach of teleworking; with the problems we find in the composition of home workspace as well as the worker's social isolation.

## **7. CONCLUSIONS**

Due to the context of a health emergency, teleworking made a strong entrance in France and Spain. As a matter of fact, on one side, the pandemic allowed Spain to establish for the first time a regulatory framework regarding this practice in public services, and on another side, it allowed France to make this practice popular, already regulated long ago. In both cases, the consequences were the same: a skyrocketing increase of the rates of people teleworking.

Teleworking, despite its many advantages, also poses many challenges, as it was shown, being necessary to establish the methods of implementation and regulation of this practice, in order to make the most of it. Through organizational restructuring, the implantation of teleworking in public administration is based on a

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<sup>2</sup> Survey of 24 in-depth interviews and 10 discussions groups throughout 2007 with teleworking women with dependents (mainly, children). The total represents 73 teleworking women interviewed.

reinforced trust-based relationship between the supervisor and the employees. This is the key factor that allows the teleworking employees to feel listened and to develop the self-discipline and organization necessary to perform their tasks in the unique methods of teleworking.

Trust between employees and supervisors are essential to this new way of work, with positive effects in the organizational culture and there must be a highly motivated personnel. The right to digital disconnection must be kept ensured as more and more work will be done in search of results, while designing strategical planning, identifying goals, and assessing the compliance. This commitment to increased programming is related to a constant accountability, with a performance analysis of competences and a HR department committed to their job. SMART goals in the private sphere (specific, measurable, attainable, relevant, timely) are another method for the evaluation and qualification of the work done remotely.

As far as France is concerned, one of the first conclusions worth stressing is that the public sphere seems to be the force behind the development and expansion of teleworking, as it is the State who has promoted this practice since the beginning and has supported it by legislating in favor of teleworkers as new realities and demands emerged, since the approval of the Law of 2012 until 2020's pandemic.

In the discussion, the agenda, and the content of the regulations, they point out some issues such as the environmental topic and its consequences for the health and the future of the population, with concerns very similar to the ones observed in Spain, regarding the benefits of less car traffic, awareness of less pollution, greater reduction of greenhouse gas emissions, etc.

Another topic to underline in the French regulation and in the promotion of teleworking in the public sphere is the savings brought by teleworking, even if the related costs, such as Internet connection and mobile service, are incurred by the State. Several issues that emerged because of teleworking are referred as challenges that arise and will need to be addressed, such as management tasks and control and assessment of the performance. Just like Spain, teleworking is voluntary with the adjustments established by the legislation, and it can be pursued through a pilot test for a period of up to three months. In the case of public service, moreover, the civil servant has the right of halting teleworking and return, with prior notice, to face-to-face work, with relevance to the organizational debate on management by objectives rather than by results. Since the civil servant submits the application to telework, where the conditions of their work activity are displayed, until the administration announces its resolution, no more than a work month should elapse since the receipt of the application.

Regarding Spain, a more critical vision exists as far as the new basic norm of teleworking is concerned, as it lacks a strategic, coordinated, and integrated vision in a scenario of emergency legislation (Lorenzo Mellado, 2021).

As it was shown, teleworking has been a reality imposed in the public sphere due to the health emergency and the measures resulting from lockdown. Prior to the pandemic, Spain had some experience with Plan Concilia of the Ministry of Public Administration (2005) and some autonomous legislations as mentioned above, but they were isolated experiences and there was not a mass use of teleworking by civil servants.

France, for its part, taking into account that it is a pioneer country regarding legislation and it has a more open mentality towards this approach of labour relations, we observe that those concerning the public sphere

are found in its legal system in 2012, 2016 and 2020, with very specific proposals such as a maximum of three days per week with prior written request, certificate of suitability in the workplace, as well as other points which the Administrations specifies each issue related to technical support, health and safety, as well as costs associated with teleworking, especially in situations where there is a disability.

While assessing the French regulation in 2020 in comparison to the RDL 29/2020, we can appreciate the handicaps of the Spanish decree, taking into account the health crisis caused by Covid-19 is not the best situation to help the regulation of teleworking in the public sphere due to its exceptional nature and for not providing tools for future analysis given the relevance of public functions and everything that roughly has to do with public matters, as regards the pursuit of general interest, with collective bargaining playing a key role.

In Spain, autonomous legislation which began prior to the pandemic aimed, indeed, to establish with more clarity teleworking issues, such as who could or could not apply for it, among many other things, such as "service requirements". The later was expressed with a lack of precision but highlighted the reinforcements of areas like work training and assessment, through goals. Following the pandemic, there is a more complete vision of teleworking regarding the modernization of the administrative organization, planning a good assessment of performance, its quality measurement and the development of social public policies, which involves issues related to the environmental impact or the fight against the rural depopulation in Spain. One of the commitments consists of avoiding excessive discretion and specifying better, just like France, the suitability, promoting monitoring and control bodies with really defined functions and with enough autonomy regarding the teleworker.

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