

Naked at Home: How Teleworking During COVID-19 Opens Doors for Omnipresence of Employers in Workers' Life

Branka Andjelkovic & Tanja Jakobi

Public Policy Research Centre
Belgrade, Serbia





Context

- With the introduction of lock-down in April 2020, teleworking became either ultimate or preferable form of work for about 10 % of active labour force in Serbia (cca 300. 000 workers).
- This represent significant but much lower percentage than in Europe where approximately 25% od active labour force was engaged in this form of work.
- This massive shift to work from home produced increasing interest of employers to introduce ICT-enabled surveillance during telework. New monitoring tools were often diving deep into workers home settings, in this way jeopardizing their privacy and labour rights.



Context

Research question:

How monitoring of workers at their homes during telework affected their labour rights and right to privacy?

- The key findings of the study are grouped into four categories:
 - 1) Regulations governing remote work
 - 2) Legitimacy of collecting employees' personal data
 - 3) Monitoring employees' performance
 - 4) Storing personal data

Aim of the research

- To provide recommendations to policy makers/employers in Serbia on how to **improve legal acts and practices** in terms of the right to privacy of workers while working from home



Setting the scene

Definition of teleworking

- Telework is defined as the use of information and communications technologies (ICT), such as smartphones, tablets, laptops, and desktop computers, for work that is performed outside the employer's premises (Eurofound and ILO, 2017). Telework implies work achieved with the help of ICTs and conducted outside the employer's locations.
- Teleworking should happen in a voluntary agreement between the employer and the employee. The term teleworking and remote work is used interchangeably.
- Teleworking usually does NOT include those working in the platform or gig economy; for example a freelancer who works primarily from home may not be classified as a teleworker but might be classified as a home-based worker, under the terms of ILO Convention 177 on Homework (1996).



Setting the scene

Privacy and data protection as fundamental rights

- In the European context, the right to privacy is considered a fundamental human right. Privacy is freedom from interference or intrusion and includes the right to control information and access to information about an individual (Westin, 1967; Parent, 1983). The term was for the first time used in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953).
- Privacy is also a structural component of the employment relationship (Mitrou & Karyda, 2006). The lack of privacy can have destructive effects on the capacity for free decision-making and employees' autonomy.
- The right to protection of personal data evolved out of the right to privacy and became an autonomous fundamental right in 2000 when the Charter of Fundamental Rights of the European Union was adopted. The EU's 2016 General Data Protection Regulation (GDPR) was another giant step forward.
- This data protection framework applies also to work-related relations. In fact, as the extent of surveillance has continued to grow, ethical considerations and key employee rights, such as the right to privacy, have come to the forefront of the regulatory discussion (Bodie et al., 2016)



Methodology

- Two online surveys:

1) Quantitative CAWI online survey focuses on the working age population in Serbia who have the experience in remote work.

Total of 366 respondents across different industries

Survey carried out in July 2021

2) Online survey concentrates on managers across different industries to explore their experience in the usage of the ICT- enabled monitoring tools.

Total of 113 respondent.

Survey carried out in August and September 2021



Methodology (Cont.)

3) Interviews with shapers in the field of labour law and data protection (policy makers, scholars, law firms, representatives of trade unions, monitoring businesses, etc.) with the aim to obtain more detailed and reflexive responses about the topic.

A total of 11 interviews were conducted from October 2021 to February 2022.

Limitations

a) Respondents to the surveys were dominantly from sectors already present in the field of remote work (such as finance and banking, ICT, PR and communication, R&D, public administration and public services (schools), and other services

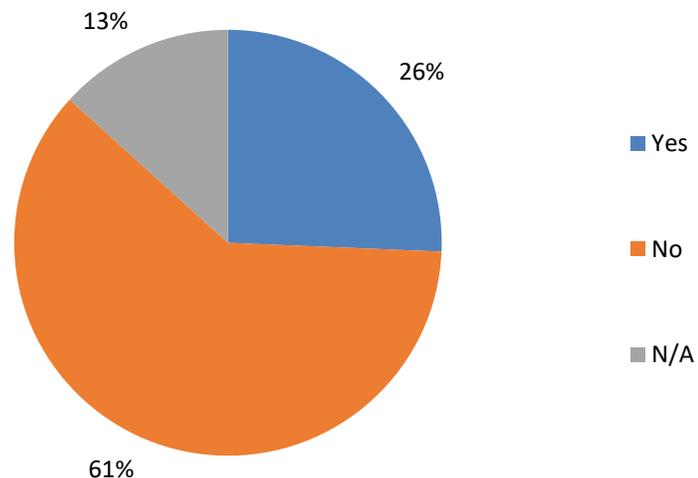
b) Workers and employers came from the same sectors but not from the same companies not allowing comparisons at the level of a firm.



Findings:

Regulations governing remote work: managers' responses

Did you conclude the annex to the employment contract for the remote workers?



Remote and work from home are governed by the Serbian Labour Law (2005). The basic instrument regulating this kind of work is the employment agreement (in cases where the employee is able to work from home as soon as they join a firm) or an addendum to the employment agreement where the employee switches from working on company premises to working from home (Labour Law, 2005).

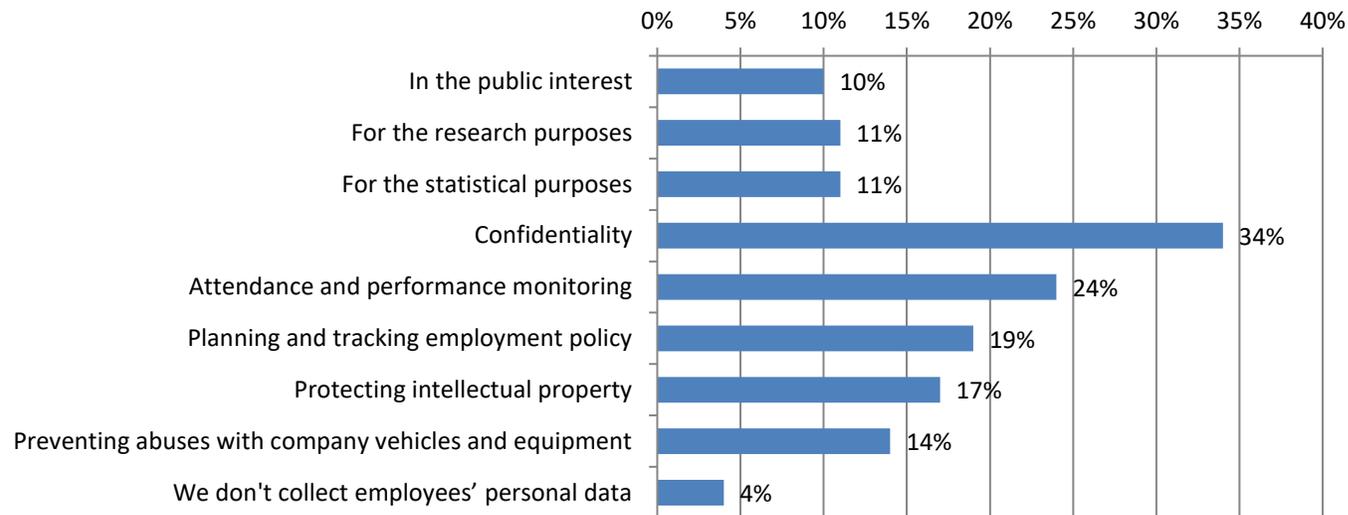
Even though the executives and managers surveyed for this study were no strangers to working from home, most of their companies (**61 percent**) did not offer their staff addenda to employment agreements when shifting to remote work. Only one-quarter (**26 percent**) claimed to have done so, whilst the remainder (**13 percent**) did not answer the question.



Findings

Legitimacy of personal data collection: managers' responses

What are the reasons for processing employees' data?



Serbian employers collect employees' data regardless of their work setting (office or remote).

The most common reasons for collecting employees' data: keeping business secrets (34%), monitoring the presence and efficiency of employees (24% each), monitoring and planning employment policy (19%), protection of intellectual property (17%), and prevention of misuse of official vehicles and equipment (14 %),

The legal basis for the collection of personal data is the Personal Data Protection Law (2018). In accordance with the Law, the employers are obliged to determine in detail the purpose of processing this data, which seems to be the internal acts of the employer.

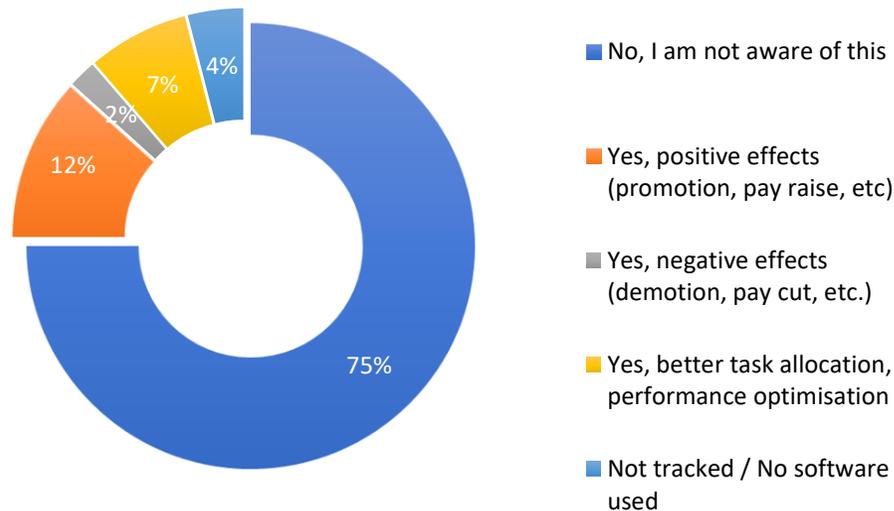
However, the majority of employers did not fulfil this obligation - only 41% of employers surveyed regulated personal data processing by internal acts.



Findings

Monitoring employees' performances: workers' responses

Awareness of the consequences of performance and/or productivity tracking



How is it monitored?

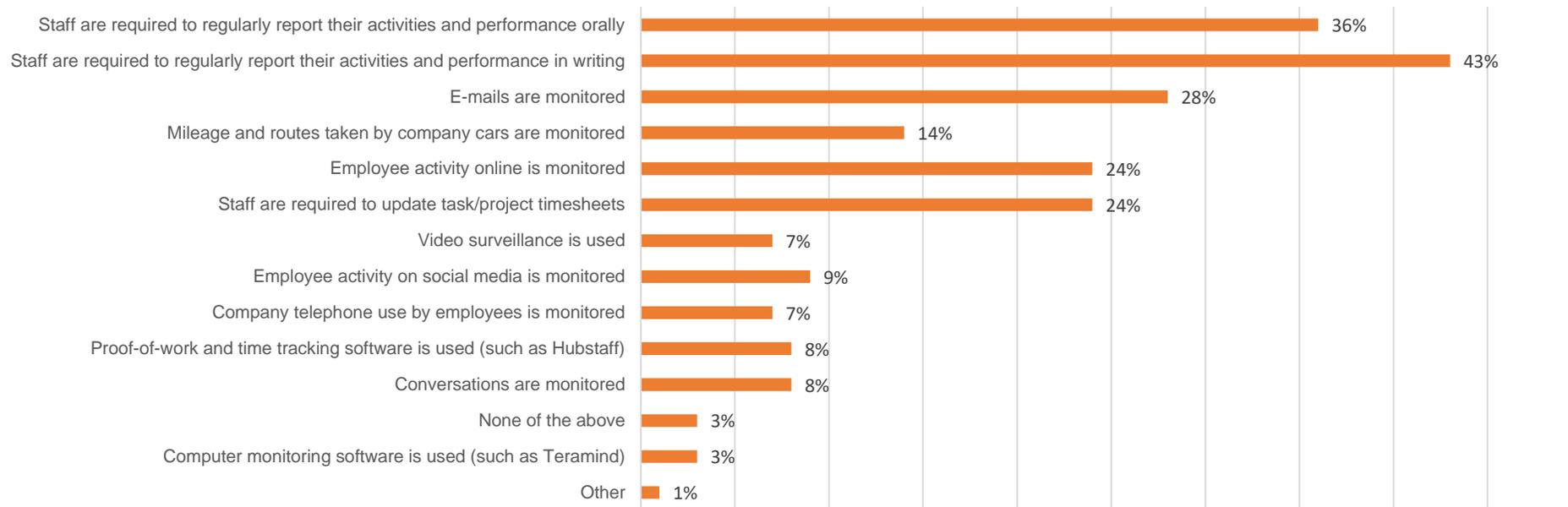


Most respondents (75%) were not aware of the consequences of performance tracking. The greatest share of those who were, reported its positive aspects including promotions, pay raises, and/or performance optimization.



Findings

Monitoring employees performances when working from home: workers' responses



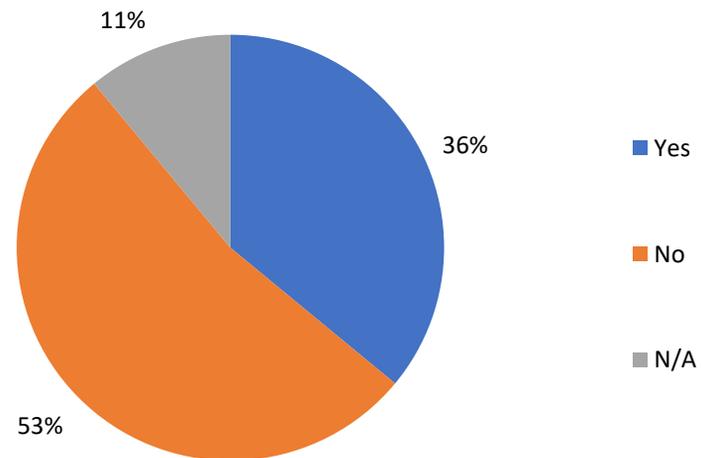
Written and/or oral reporting of activities and outcomes was the most commonly reported form of performance tracking both in the office and at home, but written reports were more often used when working remotely. Monitoring of e-mail and internet surfing, company car tracking, and even video surveillance are not uncommon, as reported by one in four or five of those polled. Time logging is a feature of the IT industry regardless of where work is done. As many as 7% of those polled reported video surveillance at home (these were mostly workers in administrative and service firms and transport and warehousing, one-third of them based in Belgrade).



Findings

Monitoring employees performances: managers' responses

Does your company monitor performance, efficiency and / or presence while working from home?



How is it monitored?

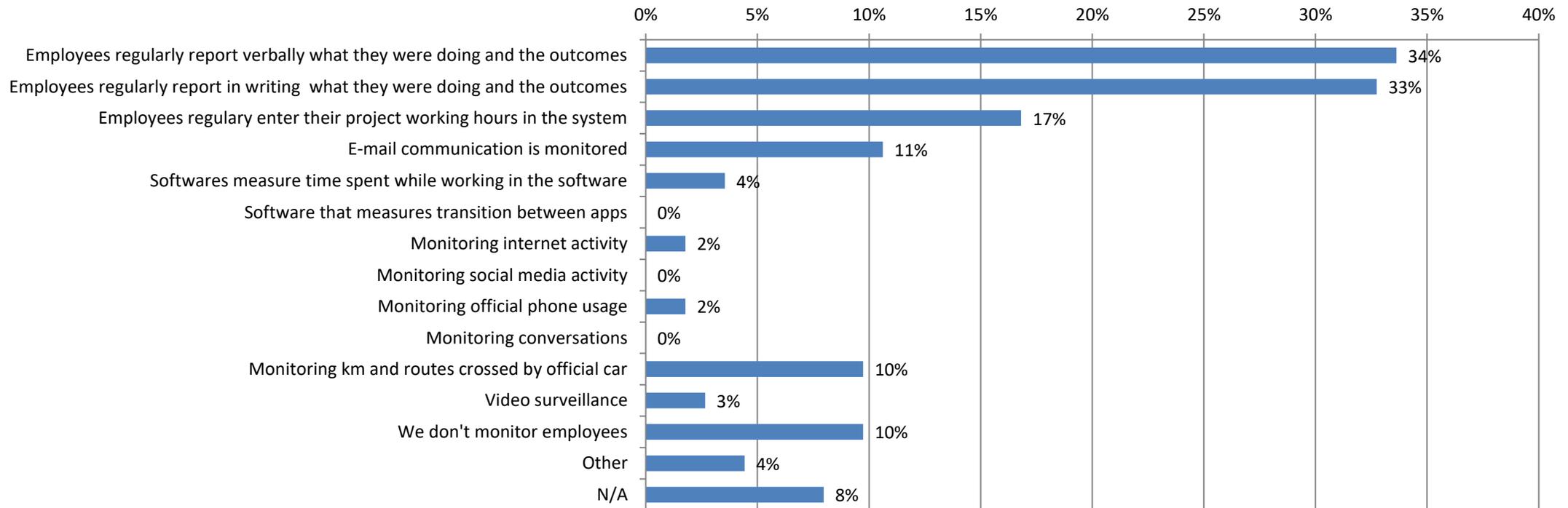




Findings

Monitoring employees performances: managers' responses

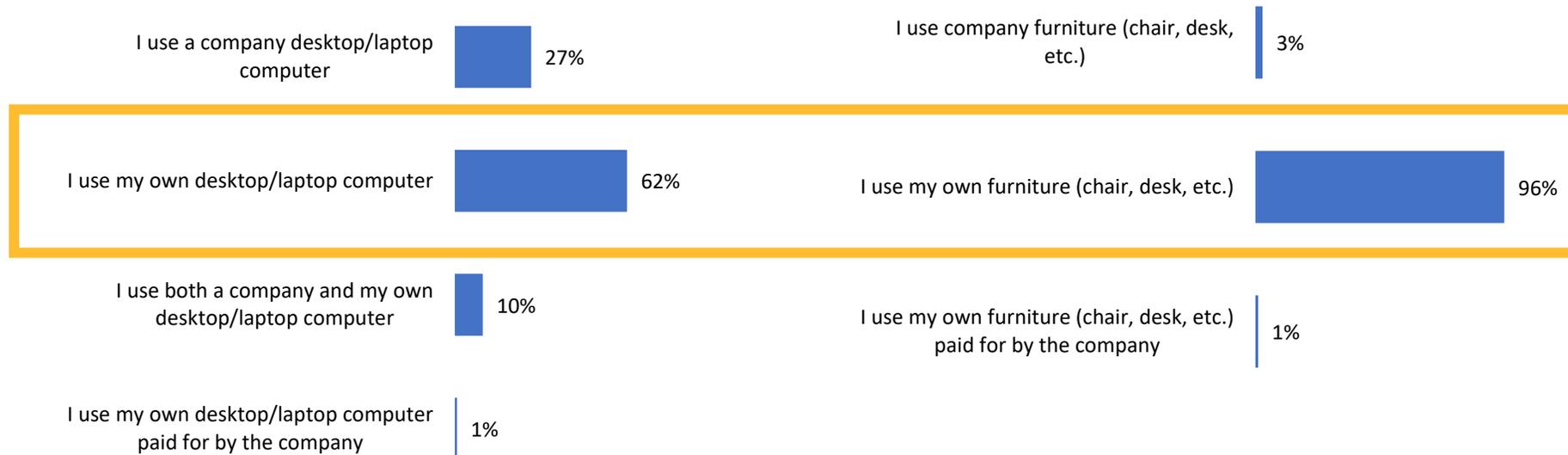
Most frequent practices in your company since the work was organized from home





Findings

Equipment and furniture used when working from home: workers' responses

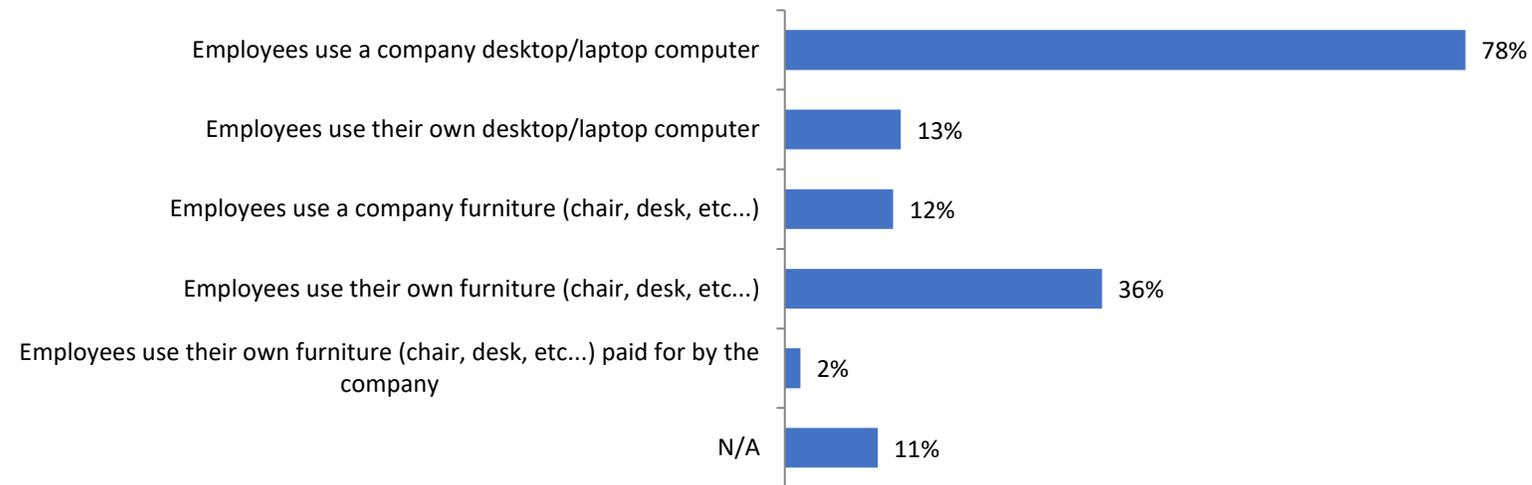


When working for home, the respondents generally used their own IT equipment and furniture. Residents of Belgrade and IT workers tended to use company desktop/laptop computers more commonly than other groups.



Findings

Equipment and furniture used when working from home: managers' responses

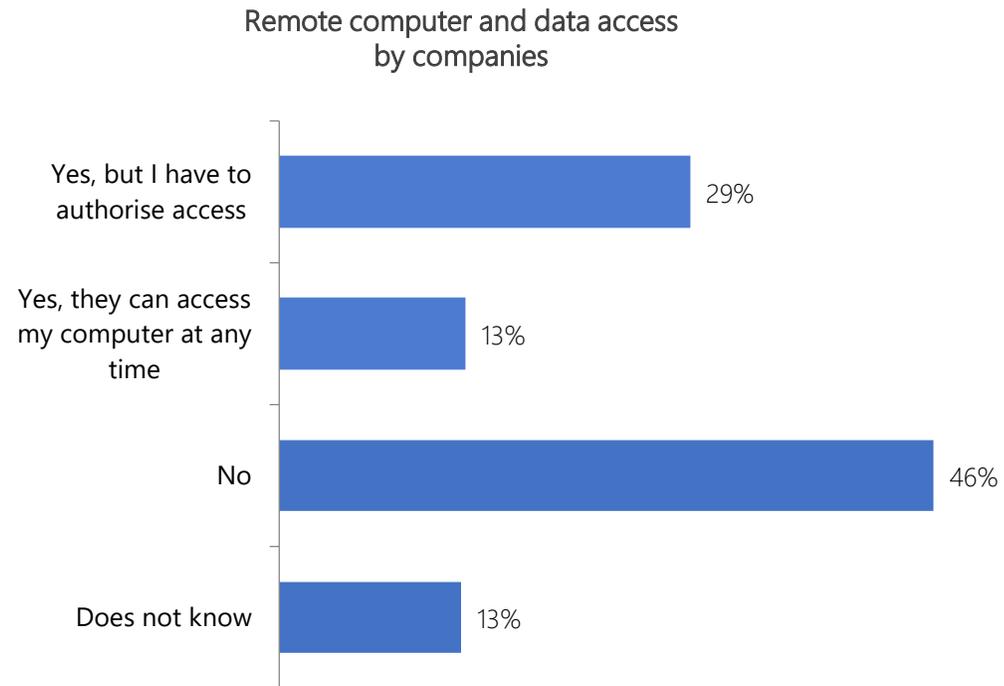


According to managers' testimonies, in most cases companies provided IT equipment to their workers (almost in 80% of cases). Managers' responses differ from the ones of the workers (presented in the previous slide).



Findings

Remote computer access by companies: workers' responses



Awareness of performance/productivity tracking



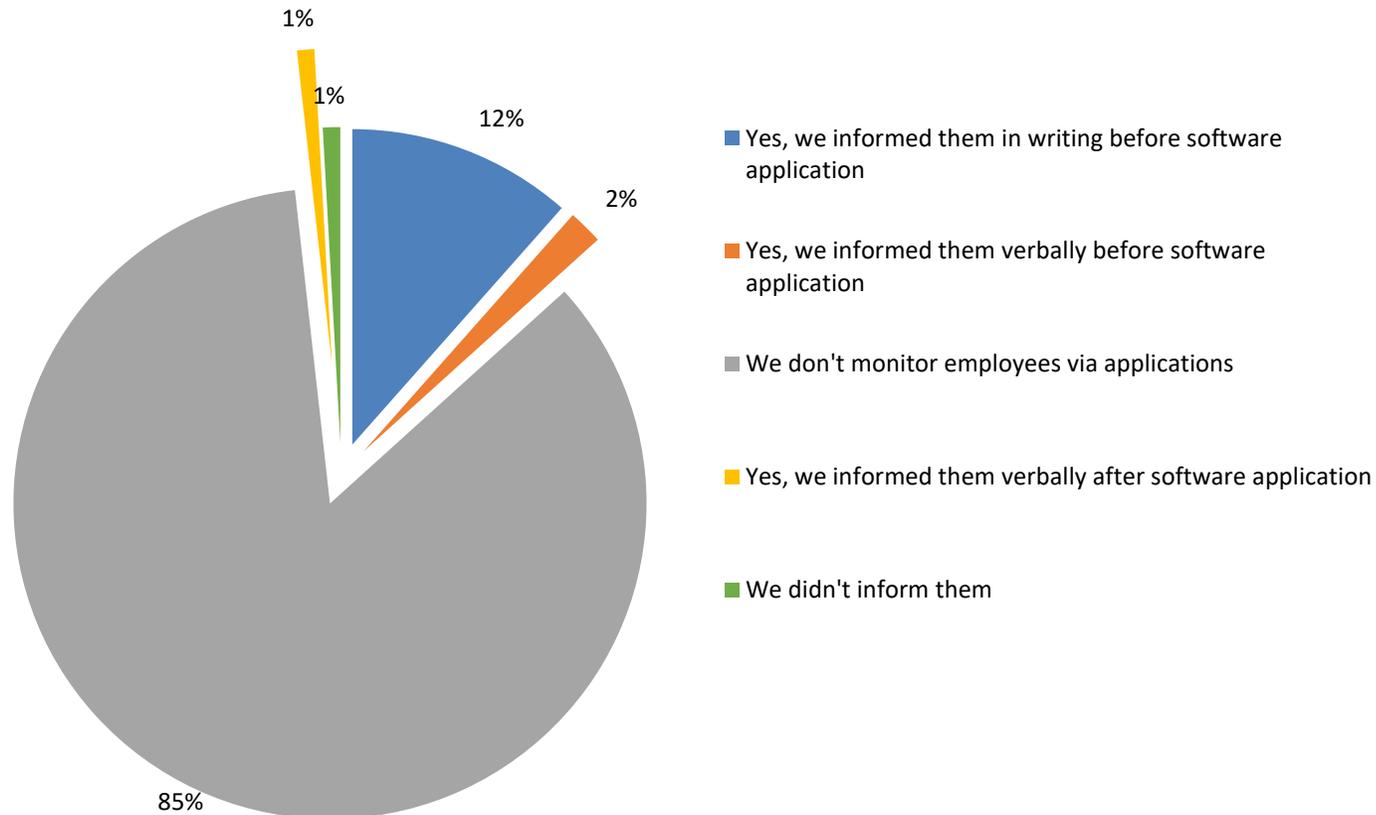
Some 40% of all respondents claimed employers had remote access to their computers. One-third did not have to authorise access and their employer was able to access their computer at any time. An additional 13% did not know or were unsure whether their employer could access their computer. A total of 15% of those polled said they were certain their employer did not track their performance and/or productivity, and more than one-half were aware performance was tracked. Two-thirds of those who knew performance was tracked found this out from their employer or superior, with the rest learning about this either on their own.



Findings

Employee surveillance using dedicated software: managers' responses

If you monitor your employees via apps, did you inform them?

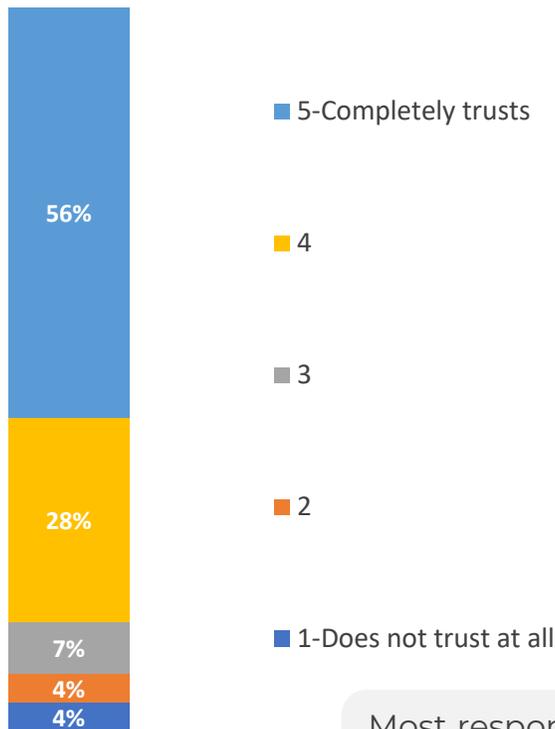




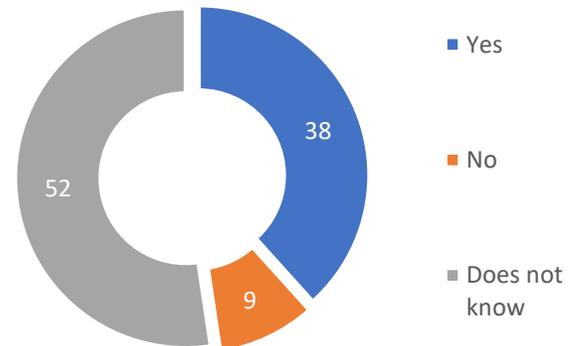
Findings

Use of personal data and trust in companies: workers' responses

Trust in lawful use of personal data

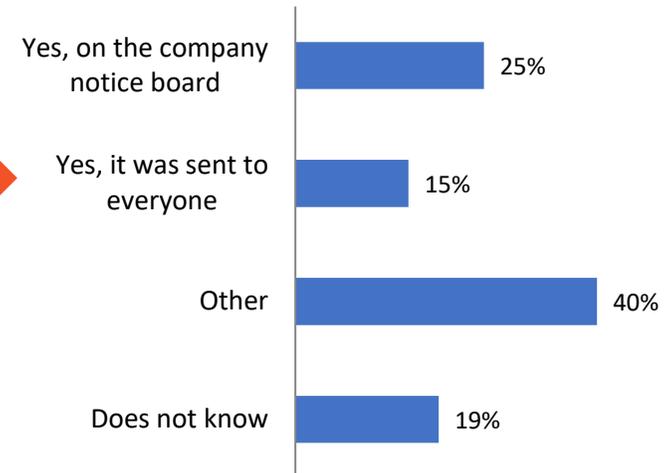


Are personal data processing rules in place?



If personal data processing rules are in place:

Is this document readily available to employees?



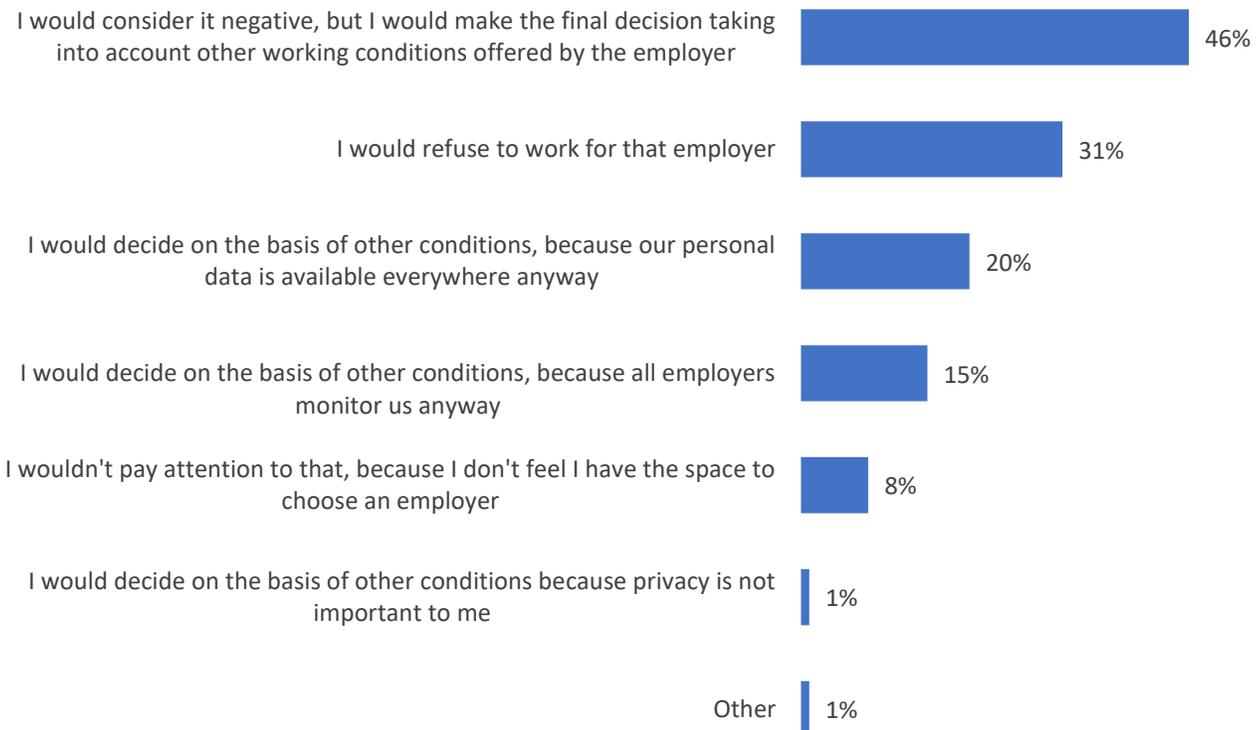
Most respondents (80%) reported completely or mostly trusting their company to use their personal data lawfully. By contrast, one-half of those polled were not aware of whether there was a formal set of rules governing how employee personal data were used.



Findings

Personal experiences with breaches of privacy: workers' responses

If you find out that the company you work for / plan to hire unauthorized collects personal data:



Unauthorized collection of data on employees is perceived as negative, but not crucial. However, for 30% it is a "deal breaker", and they would refuse to work for that employer.

More than a 25 percent believe that privacy, ie unauthorized data collection, is not a topic, given that employers generally monitor and that personal data is available everywhere.

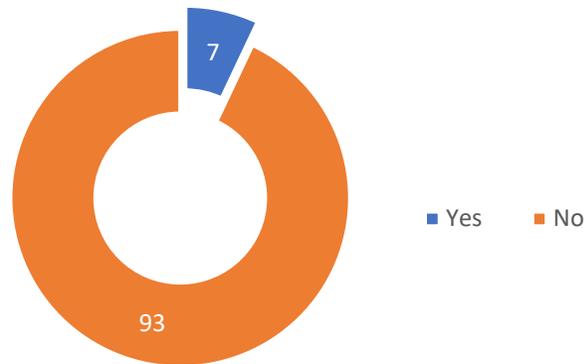


Findings

Personal experiences with breaches of privacy

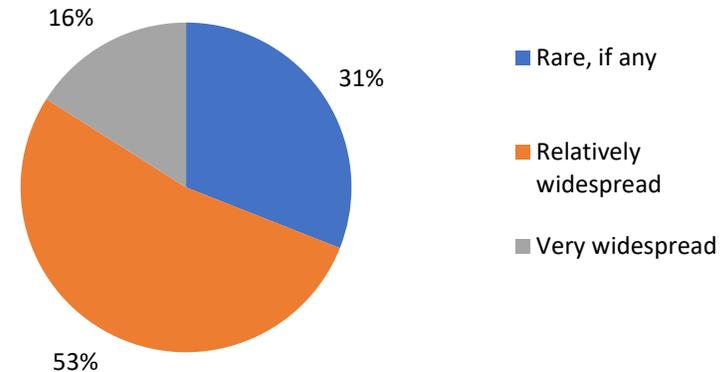
Have you ever been in a situation you would describe as a breach of privacy?

WORKERS' RESPONSES



How widespread are cases of the unauthorized data collection?

MANAGERS' RESPONSES



Both managers and employees report a low percentage of violations of the right to privacy in their companies.

Less than 10 % of employees interviewed stated that they had first-hand experience with the violation of privacy rights.

However, as many as 69 % of managers believe that cases of unauthorized employee data collection are relatively or very widespread in other companies.

CONCLUSIONS | Remote work – workers' labour rights and rights to privacy

Rapid shift to telework in Serbia came as a result of the imposed lockdown measures due to COVID 19, thus pressing both the employers and the employees to adapt to the type of work which was rarely practiced before the outburst of COVID 19. Increased usage of communication tools, rules related to installation of various applications on workers computers, ability of third parties to access employees' devices, etc. created huge possibility for potential abuse.

- **In contrast to many countries where surveillance proliferated among broad variety of industries in which workers were for the first time confined to telework, in Serbia this has not been the case.** As this research shows, workers' labour rights and rights to privacy were intruded only partially. One may argue that this is due to the lack of knowledge on both the side of workers and managers about new technologies.
- As complementary research points out, most Serbian companies only moderately completed digitalization and automation of business and workplace processes, which prevented systemic and efficient use of new tools. Monitoring tools were mostly installed in call centers and IT companies, the majority of which completed these process as they work for foreign markets.
- Although **almost none of the interviewed employees reported breaches of their privacy rights but showed strong confidence in their managers, their ignorance of their rights to privacy and autonomy at work show that their rights might as well end up compromised unnoticed.** Even the most digitally skilled workers lack the ability to detect and/or confront employer's imposed surveillance.

CONCLUSIONS | Remote work – workers' rights to privacy

- In broader perspective, this research confirms other research findings (JRC, 2020) that massive shift to telework which is expected to outlive COVID 19, requires more focus on policy actions able to envisage and regulate new avenues of possible breaches of above mentioned workers' rights. The interviews conducted reveal the complexity of the new types of surveillance tools and techniques recognisable only to experts in combined fields of law and technology.
- As noted by other researchers (Spencer et al., 2021), the weakness of organised labour makes it more difficult for workers to limit employer surveillance. At the same time, **new technologies and methods challenge the ability of the law to protect worker privacy in the US (Ajunwa et al., 2017) and Europe (Aloisi and Gamino, 2019). This poses limitations to workers, or the collective parties to the employment relationship,** to negotiate the collection and use of data and ownership issues around the data itself.
- **This research shows that workers in Serbia are not aware of the effects of new technologies for surveillance purposes, while managers and policy makers are also lagging behind.** The findings aim to inform public policies seeking to reconcile application of technology at work, labor rights and the right to privacy.

Thank you for your attention!