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LEGAL ANALYSIS ON REGULATION AND IMPLEMENTATION OF “TELEWORK” IN THE MACEDONIAN LABOUR LEGAL CONTEXT



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**AUTHORS:
ALEKSANDAR RISTOVSKI
CRISTINA MIHES**

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CONTENTS	
I. GENERAL CONSIDERATION ON TELEWORK	5
Introduction	5
II TELEWORK (WORK FROM HOME) IN THE CONTEXT OF THE MACEDONIAN LABOUR LAW.....	7
1.State of play and dilemmas	7
2. Conclusions	12
3. Recommendations	13
III. GUIDE ON IMPLEMENTATION OF THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK	14
1. Definition and scope.....	14
2. Voluntary character of telework.....	15
3. Employment and working conditions.....	17
4. Data protection	18
5. Privacy protection	19
6. Work equipment.....	20
7. Health and Safety	21
8. Organization of work.....	23
9. Trainings	25
10. Collective Rights	25
IV. ALIGNMENT OF THE PROPOSED PROVISION FOR TELEWORK IN THE DRAFT LAW ON LABOUR RELATIONS TO THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK	26
1. Definition and scope.....	26
2. Voluntary character of telework.....	27
3. Employment and working conditions.....	28
4. Data protection and privacy	28
5. Work equipment.....	29
6. Health and Safety	29
7. Organization of work.....	30
8. Training	31
9. Collective Rights	31



I. GENERAL CONSIDERATION ON TELEWORK

Introduction

Telework can broadly be defined as “use of information and communication devices (ICT) to perform work from outside the employer’s premises”.¹ Although globally, there are different terms that are used for telework², the term telework is for now considered as most comprehensive and adequate.

The term telework is used in the European Framework Agreement on Telework concluded between the European Social Partners (ETUC, UNICE / UEAMP and CEEP) in 2002. The European Framework Agreement on Telework is a supranational legal source in the EU acquis and the first agreement concluded as a result of autonomous social partnership between the European social partners that includes special rules for regulating telework. The agreement expresses the idea of flexibility and safety, since on one hand it offers modernization of the work organization in the companies and the public sector organization, and on the other hand allows harmonization of work and family obligations and increases the autonomy of the workers in performing working tasks. A specific feature of the European Framework Agreement on Telework is that the manner of its implementation in EU member states depends on the model chosen by the members (workers’ and employers’ organizations) of the signatories to the agreement, in accordance with the industrial relations system in the individual country. Given this flexible approach in the selection of the most suitable model for implementing the Framework Agreement, the social partners of the EU member states decide on different implementation models that vary between the following options: concluding Agreements between social partners (such as the examples in Finland, Spain, the Netherlands, and other countries), which provide guidelines or recommendations that must be taken into account when regulating remote work with collective agreements, internal acts of employers or individual employment contracts; concluding Collective Agreements on a country, sectoral or company level (such as Belgium, France, Italy, Luxembourg, Greece, Denmark, Sweden and other countries); concluding Guidelines or Codes of Practice (such as in the United Kingdom and Ireland) or obliging the public authorities to intervene in the national labour legislation in direction of complete implementation of the Framework Agreement or certain parts thereof which do not fall under the scope of competence for independent regulation by the social partners (such as the examples in the Czech Republic, Poland, Hungary, Portugal and other countries).³ Finally, a specific feature of the Framework Agreement on Telework is that the general provisions of the Framework Agreement refer to its application and implementation in EU candidate countries such as the Republic of N. Macedonia, obliging the members of the parties - signatories to the Agreement (in this case of SSM and KSS as members of ETUC) to implement the Agreement in their countries in accordance with the national industrial relations system.⁴

1 Messenger, C.J. (2019), *Telework in the 21st Century: An evolutionary perspective*, International Labour Organization, p.2.

2 Such as: electronic home based work, flexi-space, dispersed working, telesubstitution, independent work location, home-based work, alternative officing, virtual office, geographically independent work, distance work , off-site work, work in tele-cottages or tele-centers. See C.Avery and D.Zabel, *The Flexible Workplace*, Quorum Books, London, 2001, pp.10-11.

3 See Implementation of the European Framework Agreement on Telework (Report by the European Social Partners), September, 2006, pp.13.

4 More info: EFAT, Article 1

Work from home, as one of the non-standard forms of work arrangement performed in a separate workplace, has been continuously present within the Macedonian labour legislation since the country's independence and its first Law on Labour Relations since 1993⁵, until today. However, in conditions of tectonic changes in the way of performing work that include modern technologies and communications and in modern information and knowledge-based societies as the Macedonian society tends or aspires to be, the need to introduce and implement the so-called telework becomes increasingly important for both employers and employees. Despite the relatively low representation of telework in the Macedonian labour market, the current health and economic crisis, caused by the COVID-19 pandemic, further increased the need for introduction and proper regulation and implementation of remote work, which is an effective mechanism for protecting workers in the workplace, including the protection of their safety and health at work. According to a recent study conducted by the ILO and the EBRD on the assessment of the impact of COVID-19 on employment in North Macedonia, as many as 15% of employers that responded to the survey have implemented remote work (i.e. telework).⁶ The multitude of legal acts adopted by the Government of the Republic of N. Macedonia to protect against and deal with the consequences of the coronavirus COVID-19, promote expectation on the side of the employers in the private and public sector to move to organizing work from home, i.e. remote work, to the extent possible. Transition to remote work is not expected solely for workers who are released from coming to work at the employer's premises based on the temporary measures for protection against the spread and prevention of coronavirus COVID-19 (one of the working parents of minors under the age of 10; pregnant women and the chronically ill workers), but also in relation to other private and public sector workers with option to work from home, i.e. to telework.

One of the main assumptions for temporary or permanent transfer from work in the employers' premises to work remotely, i.e. for the application of the telework in general, is the creation of an appropriate legal framework for the implementation of this non-standard form of work arrangement in N. Macedonia. The existing Macedonian labour legislation does not regulate the remote work, and the same conclusion is relevant for the autonomous sources of labour law in the country (primarily the General and Branch Collective Agreements). This situation creates a legal vacuum in the application of remote work and causes legal uncertainty on the part of both employers and workers. Hence, we believe that the request of the social partners presented in the Economic and Social Council for legal analysis for regulation and implementation of "telework" in the context of the Macedonian labour law, is justified.

5 Labour Relations Law, Official Gazette of the Republic of Macedonia, no.80 / 93, from 30.12.1993

6 See ILO / EBRD Rapid Assessment of the COVID-19 and the World of Work Employment Impacts and Policy Responses for North Macedonia, pp. 21, 2020.

II TELEWORK (WORK FROM HOME) IN THE CONTEXT OF THE MACEDONIAN LABOUR LAW

1. State of play and dilemmas

The existing legal framework for regulating work outside the business premises of the employer in N. Macedonia, covers only the “traditional” form of work in a separate workplace, and that is work from home regulated by the Law on Labour Relations, whose legal basis is the conclusion of employment contract by performing work from home.⁷ In the context of regulating work from home/telework, a number of legal regulations (bylaws and decrees with a force of law) can be observed in the past period, aimed at preventing and protecting against the pandemic caused by COVID-19; among them being the Measures and the Conclusions of the Government of RNM dated 10, 11 and 12 March, 2020, which explicitly oblige the employers in the public sector that employ specifically determined categories of persons (*one of the working parents of minors under the age of 10; pregnant women and the chronically ill employees*) to release these persons from work, unilaterally assigning them to work from home (to be available and correspond via e-mail) and expecting them to be present in the employer’s premises for 2-3 hours if urgent need occurs. The same government measures and conclusions contain similar recommendations for private sector employers, which gives rise to the expectation to work from home / remotely. Finally, General Collective Agreements for the private and public sector in RNM do not address the matter of work from home/telework at all, and the same goes for the branch collective agreements. Having in mind the existing architecture of legal sources, we believe that the permission and the models for implementation of the work from home / telework, should be sought in the existing labour legislation, i.e. Law on Labour Relations and the Collective Agreements.

Under the Law on Labour Relations, work from home means work that the employee carries out in his/her home or in other premises of his/her choice other than the employer’s business premises.⁸ This definition of work from home indicates to the existence of two elements: the first being the workplace, i.e. the location where the work is performed acquires a meaning of an important, essential element of the employment contract that is subject to an agreement between the employer and the employee⁹ and the second one, the workplace, i.e. the location where the work is performed has to be located outside the usual, business premises of the employer in which the business activity is performed, i.e. in the employee’s home (the place in which he lives or resides or from which s/he usually comes to work) or another place determined by the employee (second residence, another place owned or leased by the employee). A specific feature of the Macedonian labour legislation is that it provides certain “indicators” for determining the legal nature of employment contracts that include working from home, and thus determining the labour and legal status of the workers working from home. In this regard, the Labour Relations Law stipulates that within the employment contract that includes performing work from home, the employer and the employee can agree for *the employee to perform*

7 More info: LRL, Article 50.

8 More info: LLR, Article 50, paragraph 1.

9 Unlike the standard employment contracts that are performed in the employer’s business premises, where the workplace, i.e. the location of the activities is not subject to agreement between the contracting parties and is usually determined unilaterally by the employer as an integral part of its management prerogatives, it becomes a key specific feature of the employment contracts that include work from home.

*the work that falls under the activity of the employer or is required for the performance of the employer's activity from home.*¹⁰ We believe that the existence of such a provision does not preclude the performance of work from home in the form of “independent work” (self-employment), and especially if the work from home is done for works needed for the performance of the employer's activity, i.e. works that are not within the main activity of the employer. However, the very fact that the Labour Relations Law stipulates such indicators, placing them in the context of defining of work from home, it seems that the Law inclines towards treating work from home as work that is done within an employment relationship and in the widest possible range of cases.

Although the current labour legislation does not make a distinction between the “type of working activities” that are subject to regulation under the employment contracts for work from home, however, it seems that these contracts in the Macedonian labour-legal context are more related to performance of work activities and tasks that involve making certain products (for example, sewing a certain amount of textile products on a sewing machine or cutting a certain amount of wood on a wood cutting machine, etc.) or services (for example, translating a certain number of pages of text in a foreign language, etc.), rather than applying modern ICT technologies in the usual work process. The existing employment contracts that include work from home should be understood more as contracts whose subject matter is performing certain working activities in the employee's home, or in premises of his/her choice, which can be quantified and valued (such as making products per piece or providing services that can be quantified), rather than as contracts whose subject matter is to perform working activities using modern ICT technologies that require direct and continuous supervision by the employer, no matter how “diluted” or relativized such supervision is in the conditions of working from home, given the limited contact between the employer and the employee. However, taking into account the existing legal framework that defines and determines employment contracts that include work from home, it should not be concluded that the work tasks performed by applying IC technologies and for which the so-called employment contracts that include telework are usually concluded cannot be subject to these contracts. We believe that in the given context which requires urgent response to the needs of the employers and the employees for telework, and without making a more serious legal intervention that would distinguish between “traditional” employment contracts that include work from home and the “new” employment contracts that include telework, employers and employees have no limitation in applying the existing legal framework on work from home, as legal grounds for the use of forms of teleworking. This does not mean that the legal framework is favorable and should not be modernized. On the contrary, the existing legal framework regulating the performance of work from home is rigid and does not offer answers to many questions such as:

- *Can “work from home” (and in that context telework as well) be agreed at a later stage of the employment relationship and what is the degree of flexibility between the contracting parties in agreeing the models of work arrangements that will include a combined performance of the working activities in the employee's home or other place of his/her choice and the employer's business premises, (i.e. can the work in a separate place be done in ad-hoc, scheduled or fixed arrangement”?*;
- *in what way, i.e. on which legal basis, there can be a change in the organization of the work that will include a full or partial, permanent or temporary change of the place of performance of the working activities”?* and

¹⁰ More info: LLR, Article 50, paragraph 2.

- *what would the legal consequences be if the employee rejects the employer’s offer to perform the work from home or another place of his/her choice outside the employer’s business premises”?*

In order to provide answers to the above listed questions, we apply an extensive interpretation of the existing labour legislation, while noting that these questions, as well as many others related to the implementation of telework, should be subject to detailed elaboration within one of the existing legal sources that regulate labour relations (primarily the Law on Labour Relations or collective agreements).

- By analyzing the relevant provisions of the Law on Labour Relations for employment contracts that include work from home, we believe that the legislator considered the conclusion of these contracts in a form of initial contracts that from the very signing and the establishment of the employment relation would be considered and implemented as contracts for performing the work in a separate place. This finding is supported by the obligation of employers to submit the employment contract concluded for performing work from home to the labour inspector, within three days from the day of its conclusion.¹¹ However, the very fact that the Law on Labour Relations, does not prohibit successive, full or partial, temporary or permanent change of work place, i.e. the location of the performance of the work, or the transition from performing work tasks in the business premises of the employer to the premises of the employee’s choice or vice versa, it could be considered that the contracting parties have the contractual freedom to make subsequent modifications to the initial employment contract, regardless of whether it is concluded for the work to be performed in the employer’s business premises or in a separate workplace.

If we take the assumption that the Law on Labour Relations does not prohibit changes in the employment contract and successive agreement on work from home, i.e. work from a separate workplace (including remote work, i.e. telework) at a later stage of the employment, then, it is logical to conclude that it does not provide for any restrictions on the organization or dynamics combined working schedule - the employer’s business premises / premises chosen by the employee outside the employer’s business premises. This would mean that the contracting parties are free to negotiate telework in any of the following options: “ad-hoc remote work”¹², “scheduled remote work”¹³ or “fixed remote work”¹⁴. However, in this part, the question that would rightly occur is whether in each of the options in which work is organized from home, i.e. remotely, the employer will have an obligation to inform the labour inspector, i.e. within 3 days to submit to the labour

11 More info: LLR, Article 50, paragraph 3.

12 Ad-hoc remote work can be defined as a form of remote work, in which the employee performs work activities outside the employer’s business premises for a short period of time, usually for a few hours a day or one full workday. The goal of ad-hoc remote work is to perform a specific task or solve a work-related problem (for example, project completion) or to resolve a specific situation related to the employee’s personal or family life, after which a return of the employee to work in the employer’s premises is expected.

13 The scheduled form of remote work can be defined as the form of remote work which consists of combining the performance of work activities in the employer’s business premises and in the employee’s home or other premises of his/her choice. This form usually involves performing work in a separate workplace for at least one day a week (for example, two days from the employee’s home), while on the remaining days of the week the employee works at the employer’s business premises.

14 The fixed form of remote work can be defined as the form of remote work which is intended to perform the work outside the business premises of the employer for a longer period of time, during which the employee works entirely from his/her home or premises of his/her choice, without the obligation to perform part of the work activities in the business premises of the employer.

inspector the legal act by which it is agreed the work to be performed from home or in other premises of the employee's choice (in accordance with Article 50, paragraph 3 of the Law on Labour Relations). We consider that in the absence of appropriate provisions for special and separate regulation of employment contracts that include remote work, as well as in conditions of a "legal gap" regarding the regulation of the possibility for flexible organization and transfer from work at the employer's business premises to work in a separate place, the employer will be obliged to inform the labour inspector about the performance of telework in any case and regardless of the chosen option in which the work will be performed, and especially if the work from home, i.e. remotely is performed in a form of "scheduled" or "fixed" remote work.

- According to the Law on Labour Relations, employment is a contractual relationship (Article 5, paragraph 1, item 1) and any amendment to the employment contract is subject to mutual agreement between the contracting parties (Article 28-a, paragraph 4), with the exception of certain situations provided under the law and /or collective agreement in which unilateral amendment of the employment contract by the employer without the employee's consent is possible. Therefore, we believe that the change of the place of performing the working tasks, i.e. the transition from work in the employer's business premises to work from home or in premises of the employee's choice must be subject to mutual agreement between the contracting parties, regardless whether it is full or partial, permanent or temporary change of the "spatial" organization of the operations. The transition to telework is an important, essential amendment to the employment contract, for which, in accordance with the general rules for amending the employment contract regulated by the Law on Labour Relations, it is mandatory to conclude an "annex" to the employment contract.¹⁵ In addition, the annex to the employment contract should be concluded in the same form as the employment contract, in accordance with the law (which is – in writing).¹⁶ Although the current Macedonian labour legislation, with the exception of the employer's obligation to provide safe working conditions in case of work from home (Article 50, paragraph 6) and the employee's right to compensation for the use of his/her means of work at home (Article 50, paragraph 4), does not provide almost any specifics, i.e. details related to the implementation of employment contracts that include performing work from home / telework (for example, working conditions, data protection and employee privacy, more detailed rules related to the use of working equipment, organization of work, training, collective labour rights, etc.), we believe that the annex to the employment contract should contain exactly such details. It seems that the legal basis for regulating these details is contained in Article 50, paragraph 4 of the Law on Labour Relations, which stipulates that rights, obligations and conditions that depend on the nature of work from home, are regulated between the employer and the employee under the employment contract.¹⁷

When determining the manner, i.e. determining the legal basis on which the arrangement of work can be changed and the telework can be introduced, and above all, taking into account the current health and economic situation caused by the coronavirus COVID-19 and the recent state of emergency declared on the territory of the whole country, one should take into account the provision of the Law on Labour Relations which enables "unilateral change" of the employment contract in exceptional circumstances of natural

¹⁵ Article 28-a, paragraph 2.

¹⁶ Article 28-1, paragraph 3.

¹⁷ See: LLR, Article 153, paragraph 4.

or other disasters. Namely, according to the Law, in such circumstances, when the life and health of people or the employer’s property is endangered, the type or *place* of the work performed, determined within the employment contract, *may be temporarily changed*, and also *without the consent of the employee*, but only as long as such circumstances exist.¹⁸ Under the “place” of performing the work, here, the separate place of work can be implied, i.e. the telework (from the employee’s home or from another place of his/her choice, outside the employer’s business premises). Although the labour legislation implicitly provides an opportunity and contains a legal basis for unilateral deployment of a worker to perform work remotely, we believe that a distinction should be made between “unilateral deployment of the employee to perform other work / tasks or to perform the work elsewhere, but within the employer’s business premises” and “unilateral deployment of the employee to perform the work from home”. The unilateral deployment of the employee to perform work from home / remote work, in any case, could be feasible, only if the employer provides appropriate conditions beforehand (equipment, devices, etc.) for smooth and normal performance of the working activities by the employee.

- Amendments to the employment contract may be proposed by both the employer and the employee.¹⁹ In the context of work from home / telework, this provision would mean that the offer to organize the work by doing the work from home or elsewhere at the choice of the employee, can be initiated both by the employer and the employee. Taking into account the current health and economic situation, we consider the legal consequences of the offer initiated by the employer. If the employee agrees to the offered annex to the employment contract and accepts the terms offered by the employer, then the amended contract will begin to produce legal effect. The situation is more complicated if the employee does not agree with the proposed amendments to the employment contract and wants to continue working under the existing employment contract by performing the work in the business premises of the employer. In such situation, it seems that employers have no obstacle to apply Article 78 of the Law on Labour Relations and cancel the existing employment contract, offering the employee a new amended contract, with complete or partial, permanent or temporary performance of work from home/telework. Even in such circumstances, the employer will have to state the basis and prove the grounds for the termination of the existing employment contract (for example for a reason based on the needs of the employer, the so-called business reason), and the employee will must express his/her position on the new amended employment contract within 15 days from the date of receipt of the offer.²⁰ The employee may accept the offer of the employer and in that case the new amended employment contract comes into effect and the work is performed remotely, and he/she can reject the offer of the employer, after which his/her employment would end and he would acquire the right to severance pay established by law.

¹⁸ See: LLR, Article 153.

¹⁹ See: LLR, Article 28-a, paragraph 1.

²⁰ See: LLR, Article 78, paragraph 2.

2. Conclusions

2.1 Macedonian Labour Legislation and Collective Agreements do not regulate telework

- The Law on Labour Relations in N. Macedonia regulates solely the employment contracts that include work from home, but it does not regulate the employment contracts what include telework. The general collective agreements for the private and public sector applicable to all employees and employers in the private, i.e. public sector, do not contain provisions on the work from home/telework. In the past period during the lockdown phase due to the crises caused by Covid-19, the Government of N. Macedonia adopted by-laws in the form of Measures and Recommendations containing only instructional, but not substantive, regulation of the remote work/telework.

2.2. There are no legal obstacles to the introduction of telework as a form of work arrangement

- From the provisions of the Law on Labour Relations, which regulate the performance of work from home (Articles 50, 51 and 52), it can be concluded that the intention of the legislator is to regulate employment contracts with work from home in a form of “initial” contracts under which employment relation is established, and the subject matter of these contract is be the performance of certain work tasks that can be quantified (making products and / or performance of services). However, labour legislation does not contain an explicit prohibition on the performance of work tasks and activities that involve modern IC technologies and are usually included in the so-called work tasks for which employment contracts are concluded for performing remote work, and does not explicitly limit the “spatial” flexibility in the organization of the work and the combined models of work that include performing work in the employer’s business premises and in a separate workplace of the employee’s choice, in line with a schedule and dynamics contractually agreed between the contracting parties.

2.3. Under normal conditions and circumstances, telework may be introduced only on the basis of mutual consent of the employer and the employee and an annex to the employment contract

- The change of the place of work, with full or partial, permanent or temporary replacement of the employer’s business premises with the home or other premises at the employee’s choice, is an important, i.e. essential change of the elements of the employment contract, which requires mutual agreement between the employer and the employee. Therefore, in accordance with the existing legal framework, we consider that when amending the employment contract in order to determine the performance of work from home/telework, regardless of the model (ad-hoc, scheduled or fixed form of remote work/telework), it is necessary and sufficient to make an “annex” to the employment contract (according to Article 28-a of the Law on Labour Relations) which will regulate the rights, obligations and conditions that depend on the nature of the work from home (according to Article 50, paragraph 4 of the Law on Labour Relations) .

2.4. In case of extraordinary and exceptional circumstances, the legal framework provides for the possibility of temporary introduction of telework by unilateral decision of the employer

- As an alternative to the contractual arrangement of the work from home/telework with mutual consent of the contracting parties, it should be taken into consideration that the Macedonian labour legislation (under Article 153 of the LLR), offers possibility for unilateral amendment to the employment contract by the employer in case of exceptional circumstances (natural and other disasters). Therefore, currently there is not a single legal basis for the introduction of telework, nor an unambiguous legal procedure for organization of the work by performing work from home/telework.
- specifics of home work/remote work, is the most appropriate way to implement home work/remote work, in conditions when the legal framework for regulating working arrangements that assume “spatial” flexibility is either rigid or unregulated.

3. Recommendations

3.1. Recommendations intended for implementation of telework on short-term basis

- Introduction of telework by concluding annex to an employment contract. The annex to the employment contract should contain provisions on: application of ICT’s at work, working conditions including limitation on the duration of working time, organization of working hours and breaks and rest periods, OSH rules, protection of employer data and employee privacy, rules related to the use of work equipment, etc. Such provisions should also be included in the decision of the employer for unilateral temporary assignment of the employee to work remotely, in conditions of extraordinary and exceptional circumstances.
- Amendments to company level Collective Agreements, based on the guidelines on implementation of the European Framework Agreement on Telework
- Internal Acts (rulebooks, decisions) of the employers for regulating Remote/Telework

3.2. Recommendations intended for implementation of telework on medium-term basis

- Implementation of the European Framework Agreement on Telework through the GCAs in the public and private sector
- Implementation of the European Framework Agreement on Telework through a new provision in the Law on Labour Relations

III. GUIDE ON IMPLEMENTATION OF THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK

1. Definition and scope

Article 2 from the European Framework Agreement on Telework

Telework is a form of organizing and/or performing work, using information technology, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis.

Telework is performed based on concluded employment contract, or established labour relation.

Teleworker is any person carrying out telework in accordance with the law.

When defining and determining the scope of telework, the following elements should be considered in order to better explain the concept of telework.

- The definition of telework emphasizes the manner, i.e. the organization of the way work is performed.
- Telework is always performed with the use of information and telecommunication technologies in the broadest sense (smart phones, laptop or desktop computer, tablet etc.). This feature also highlights the main distinction between telework as a type of work from home and homework.
- Telework is regulated by an employment contract or it is performed within the employment relation, which means that self-employed workers are excluded from the rules covered by the Framework Agreement.
- Telework is performed on a “regular basis”, which assumes the existence of a certain continuity and consistence in such a method of work organization (for instance, it is performed at least ½ day, one day per week/month or follows another dynamic in certain reference period). Performing work on regular basis, in itself, does not preclude the existence of “occasional” or “interrupted” telework (for instance, ad-hoc agreement on telework in certain day of the week, if the worker needs increased concentration to work, there is an announced strike in the public transport, bad weather, personal needs of the worker, or telework due to emergency and unpredictable circumstances such as an outbreak of pandemic, disaster, etc.).
- Telework is performed outside the business premises of the employer, but if needed it can also be performed in employer's premises. This provides greater “spatial” flexibility in the work arrangement, in order to cover as different forms of organization and types of remote work as possible, including various combined methods of telework which in part of the working hours of the worker are performed in the worker's home/telework, and in other part in the employer's premises. The spatial flexibility in telework is also reflected in the fact that the employee can also do the work from home (telework at home), and from certain common areas used by people employed with different employers (telecenters/telecottages),

locations that are physically separated from the employer’s premises (remote office telework), as well as other types of mobile telework²¹

2. Voluntary character of telework

Article 3 from the European Framework Agreement on Telework

Telework is voluntary for the worker and the employer.

Telework can be a component to the initial description of the working tasks of the employee for which labour relation is established or it can be additionally determined on voluntary basis.

In any case, the employer is obliged to notify the teleworker in writing on the contents covered under the Directive 91/533/EC which among others contain information on applicable collective agreements, description of the work tasks to be performed and other similar elements. The written notification should contain additional information in relation to the department of the company the teleworker belongs to, the supervising employee to whom the teleworker reports on his/her work or another person to whom she/he can address about professional and personal matters, the reporting manner, etc.

If telework is not included in the initial work description based on which employment relation is established, and the employer offers the employee to telework, the employee can accept or reject such offer. The transition to telework only changes the manner of performing the work tasks, so this does not change the status of the teleworker as employed person.

The rejection of the offer to telework by the employee, by itself, cannot constitute grounds for cancellation of the employment contract, nor does it lead to less favorable working conditions.

If telework is not contained in the initial work description for which employment relation is established, and the employee and the employer have further agreed to perform the work remotely, such an agreement may later be changed again, and the employee, at his request or at the request of the employer, can return to perform his/her work in the employee’s business premises.

The way these changes are performed is regulated under an employment contract and/or collective agreement.

When introducing or organizing the work by performing work remotely, it should be considered that not every job and not every employee is suitable for telework.²² The voluntary nature of the telework, which presupposes mutual agreement of the contracting

²¹ More info: European Trade Union Confederation, *Voluntary Agreement on Telework*, pp.10.

²² Telework can be efficiently performed if the teleworkers have the following characteristics: self-discipline, self-motivation (work under no direct supervision), independence, organizational skills, efficient time-management skills, communication skills, ability to effectively manage potential conflicts between work and family in order to minimize impairment of concentration and commitment to work (See: L.Macdonald, *Managing Fixed-Term and Part-Time Workers*, 2nd Edition, LexisNexis UK, 2003, pp.320). When it comes to jobs/professions suitable for telework, the theory highlights the following groups of workers: managers, lawyers, accountants, financial managers and analysts, sales representatives, commercialists, engineers, technicians, IT specialist, scientists, market researchers, technical, logistical and client support, etc. More info: C.Abery and D.Zabel, *The Flexible Workplace*, Quorum Books, London, 2001, pp.94.

parties, is essential for the implementation of this method of work. The proposal or the request for telework can be initiated by the employer or the employee. In doing so, it should be taken into account that organizing the work by performing the work tasks remotely is a right (opportunity), and not an obligation (duty) for the contracting parties. This means that the employee has the right to reject employer's request to work remotely, and by doing so there should be no detrimental consequences resulting thereof, including the ban on canceling the employment contract of the respective employee only because he/she refused to perform work remotely. By the same principle, an employee should be protected against any harmful consequences including a ban on dismissal, if, after having already made a change in the organization of the work and transitioning to work remotely, he/she refuses to return to the organization of work tasks that foresees performing work tasks in the premises of the employers. We consider that the sole exception from this rule is the case in which the teleworker refuses the employer's request with no valid reason (justified grounds), despite the fact that the organization of the work and the business activity of the employer require return of the employee back to the employer's premises. On the other hand, the employer also has the right to reject request for telework, when the suggestion comes from the employee. We believe that in this case, similar to the previous one, the employer should have a valid reason (justified grounds) for refusing the employee's request to work remotely or to return to the employer's premises after the already agreed telework. In any case, employees' request to telework can be put in function of the policies for improving life-work balance, and as such to gain more importance.²³

The voluntary character of the telework is manifested in two instances: in the initial job description based on which employment relation is established, i.e. at the initial conclusion of the employment contract and in the additional agreement or transfer to telework. In practice, there are often cases in which employers and employees successively agree to introduce telework, which is usually operationalized in the form of "scheduled telework (performed regularly) or in the form of ad-hoc telework (performed on occasional basis). While "scheduled" or telework performed on regular basis (for instance, at least once a week) falls entirely under the rules governing telework under the European Framework Agreement on Telework, "ad-hoc" telework is usually excluded from the scope of application of the Framework Agreement.²⁴ Therefore, the social partners in the phase of implementation of telework with intervention in the national legislation or in another way, as well as the contracting parties (employers, or their associations and employees, or the trade unions) in the phase of implementation of telework through individual employment agreements and/or collective agreements, should more closely determine the model of telework, from which, its "scheduled" (regular) or "ad-hoc" (occasional) character will emerge.

In any case, regardless whether the telework is determined in the initial job description based on which employment relation is established, or later on, during the employment relation, it must be specified in writing, which means that the employer has to inform the employee in writing on all important elements of the employment relations including other specifics in performing the work remotely. The legal regulations that regulate the telework in certain countries (such as France, Belgium, Poland, Hungary,

23 For instance, in line with the regulations of the United Kingdom, workers - parents to children with disabilities or under the age of 6 can ask employers for flexibility in work arrangements, and the employers are obliged to take such request by employees into consideration.

24 A similar view is presented by the eminent Belgian professor Roger Blanpain, interpreting the scope of the National Collective Agreement of Belgium no. 85 which implements the European Framework Agreement on Telework (Labour Law in Belgium, Wolters Kluwer, 2012, pp.139).

Romania, Bulgaria, Slovakia, etc.) explicitly stipulate that the rights and obligations of the contracting parties, the working arrangements and conditions for telework must be regulated in a form of “annex” to the employment contract.²⁵ The annex to the employment contract or any other form of written notification, among other provisions, should include provisions on the manner/method of telework (e.g. days in which the employee is teleworking and days/hours in which the employee works in the employer’s premises;²⁶ the terms and conditions under which the combined work regime is realized in the premises of the employer by teleworking, as well as the terms and conditions for transitioning from telework to work at the employer’s premises²⁷).

If the telework is subsequently agreed (not part of the initial employment contract based on which the employee established an employment relation), it can be contractually revoked (principle of reversibility). This means that just as the transition to telework is done based on the request of the employer or employee, the telework can be interrupted at the request of any of the contracting parties and the employee can return to the previous method of work arrangement by performing the working activities in the employer’s premises. The manner and procedure for return of the employee in the employer’s premises should be regulated between the contracting parties in writing (with individual and/or collective agreement). In this direction, employers and employees can agree on a so-called “adaptation period” during which any of the contracting parties can unilaterally cancel the telework with a notice period after which the employee can return to the previous or similar work position in the employer’s premises.²⁸ Following the adaptation period, the return to work in the premises of the employer will be possible only if there is a mutual consent between the contracting parties.

3. Employment and working conditions

Article 4 of the European Framework Agreement on Telework

Teleworkers have the same rights determined under a law and collective agreement, as the employees working in the employer’s premises.

Certain, special features and characteristics of the telework can be agreed under a collective agreement and/or employment contract.

Regardless of the fact whether the employees have concluded an employment contract including telework from the very beginning or have transitioned into telework during the employment relation and as a result obtained the status of “teleworkers”, they enjoy the same and equal rights determined under the law and collective agreement as the other workers working in the employer’s premises. In this regard, in the telework, the principle of prohibition of discrimination is fully expressed, i.e. equal treatment of remote workers with comparative workers working in the employer’s premises. This principle applies in all employment and working conditions, labour rights and obligations.

²⁵ More info: *Implementation of the European Framework Agreement on Telework*, Report by the European Social Partners, September 2006, pp.17.

²⁶ More info: Collective Agreement no.85 of 9 November 2005 in Belgium.

²⁷ More info: Labour Code of Bulgaria, Art. 107з.

²⁸ More info: *Implementation of the European Framework Agreement on Telework* (no.5), French national cross-industry agreement, art.2; similarly, the Greek labour legislation includes a period of adaptation of 3 months, during which any of the contracting parties can cancel the model of telework with a notice period of 15 days. (V.Sp.Douka and V.Th.Koniaris, *Labour Law in Greece*, Wolters Kluwer, 2015, pp.138).

Despite the unconditional application of the principle of non-discrimination/equal treatment, there are certain specifics in telework that at first glance may seem like certain deviations from equal treatment between the two types of workers. Teleworkers may have nominally “different” treatment compared to workers working in the employer’s premises, in respect of certain, specific rights and benefits. These are the so-called “natural” (non-monetary) benefits (meals from the canteen of the employer, free parking card) that can be provided only for employees that work in the employer’s premises, and the employers should not neglect the expenses incurred by the teleworkers when traveling to the employer’s premises in order to attend regular or occasional meetings with superiors or colleagues, etc.²⁹

4. Data protection

Article 5 of the European Framework Agreement on Telework

The employer is responsible for taking appropriate measures to protect the data (especially the software data) used by the teleworker in performing the work tasks. The employer notifies the teleworker of all legal regulations and internal data protection acts.

The teleworker has an obligation to respect and comply with the regulations and rules for data protection.

The employer also notifies the teleworker on the following:

- restrictions on the use of information equipment or tools, including the use of the Internet
- sanctions for non-compliance with restrictions

In conditions of organizing the work by performing work tasks remotely and by applying modern IC technologies in the operation, the risks of “leakage” or misuse of certain data that are important for the employer because they have the character of confidential information and are protected as business secrets or represent personal data of third parties protected by law, increase. Hence, it is logical for employers to be interested and therefore responsible for providing maximum protection to the data used by workers in performing remote work. In addition to protecting the confidential data of business interests used in the operation, employers are obliged to provide protection of personal data of third parties in accordance with the law.

The measures that employers can take in order to provide protection for the data used in the operation are different and depend on the specific circumstances in which the telework is performed. Common data security measures include: installing the appropriate software protection, introducing anti-virus programs, changing passwords occasionally, backing up recorded data, and more. If the teleworker works with data that is used in a more conventional way (for example, registers or document folders in paper form), it is also recommended to properly protect and lock this data in the employee’s working premises. The purpose of data protection measures is to prevent unauthorized access by third parties, including the family members of the teleworker. Therefore, in

²⁹ For instance, the Spanish Labour Law (*Estatuto de los Trabajadores, Decree 1/1995 of 24 March with the 2012 amendments*) guarantees equal rights of teleworkers and employees working at the employer’s premises, with the exception of the rights that are inherent to working at the employer’s premises.

order to achieve the goal of data protection, employers usually notify workers in writing of the necessary protection measures to be applied in the operation, expecting them to fully comply with the measures.

5. Privacy protection

Article 6 of the European Framework Agreement on Telework

The employer is obliged to respect the privacy of teleworkers.

If any type of work supervision system is applied to the employee, such a system must be proportionate to the purpose and be introduced in accordance with Directive 90/270 on display screen equipment.

The protection of workers' privacy in the employment relationship has risen to the rank of protection of human rights to privacy and protection of dignity. In this regard, despite the fact that the application of IC technologies offers wide opportunities for electronic surveillance of teleworkers (access to the Internet and e-mail when using a computer; control and surveillance of phones and mobile phones, video surveillance, locating the location of employees, etc.), employers must respect the privacy of teleworkers, applying surveillance measures that are proportional to the purpose of efficient and productive work. In addition, employers must take into account the provisions of Directive 90/270 on display screen equipment³⁰, according to which, before the introduction of a control system, it is mandatory to inform and consult workers' representatives. In summary, the installation of an electronic surveillance system on the operation of the teleworker could be permitted if the following preconditions were met: electronic surveillance should be agreed in advance between the contracting parties in writing, i.e. the employee to give a written statement that s/he is aware and agrees to be subject to electronic surveillance and the manner in which the electronic surveillance will be performed to be proportionate to the goal that the employer wants to achieve and to be implemented in accordance with the minimum requirements for protection of safety and health when working with display screens.³¹ The employer should be limited in carrying out surveillance only during working time, and should apply the least intrusive methods of surveillance.

³⁰ In the Macedonian context, this is the Rulebook on protection measures when working with display screens (Official Gazette of RM, no. 13/98).

³¹ See: E.Zammit, *Labour Law in Malta*, Wolters Kluwer, 2014, pp.85

6. Work equipment

Article 7 of the European Framework Agreement on Telework

All matters related to equipment, liability and costs must be clearly defined before starting work remotely.

As a rule, the employer is responsible for providing, installing and maintaining the equipment needed to perform the work remotely on a regular basis, unless the teleworker uses his own work equipment.

If the telework is performed on a regular basis, the employer reimburses or pays the direct costs incurred as a result of the performance of the work, and in particular the communication costs.

The employer has an obligation to provide appropriate technical support to the teleworker.

The employer bears the cost of losing and damaging the equipment and data used by the teleworker while performing the work activities.

The teleworker takes care of the equipment provided as a good host and does not store or distribute illicit materials online.

The specifics related to the equipment, the responsibility and the costs for the use of the equipment for performing the work activities, should be agreed in writing between the employer and the employee before starting the remote work. In addition, the equipment can imply both “working” (furniture, chair, desk, etc.) and “technical” (computer, modem, software, telephone lines, mobile phones, scanner, printer, etc.) conditions and work devices.³²

The general rule is that the employer is responsible for providing, installing and maintaining the equipment needed to perform the work remotely, if remote work is performed on a regular basis. This rule derives its logic from the employer’s obligation to provide data protection that is used when working remotely and that data can be more adequately protected if the teleworker uses equipment provided by the employer. Argumentum a contrario, the work done remotely ad-hoc or occasionally, does not have to be subject to this principal obligation of the employer. The type of equipment required or needed to perform the work remotely depends on the specific work tasks performed by the teleworker. In any case, taking into account the principle of non-discrimination, i.e. equal treatment, teleworkers have the right to equally usable equipment as other workers working in the employer’s premises.

As an exception, equipment for remote operation can be provided by the worker himself. Such an exception would be applicable if, for example, the employee already possesses work equipment that corresponds to the work equipment used by the employer in performing the business activity, but in any case, if agreed between the two contracting parties in writing. The costs incurred during the performance of the work, regardless of whether the work equipment is provided by the employer or the employee himself, are reimbursed or covered by the employer. The employer bears the burden of reimbursing all direct costs related to remote operation, especially the costs required for communication (internet, telephone connection, etc.). The costs incurred by the employer could be offset proportionately to the teleworker’s work engagement, based on pre-determined

³² More info: Мръчков.В, К.Средкова, А.Василев, *Коменїар на Кодекса на Труда*, Сиби, 2016, pp.311.

compensation rules. A similar way of reimbursing costs is the payment of lump sums by the employer whose amount and rules for payment should be agreed in advance in writing.³³ The rules that determine the obligation of the employer to reimburse operating costs, refer to the work at a distance that is performed on a regular basis.

Regardless of whether the telework is performed using work equipment provided by the employer or the employee, the employer is obliged to provide appropriate technical support to the teleworker when performing remote work (for example, access to the IT department of the company). The technical support costs are borne by the employer, as such costs arise directly as a result of the performance of the work. The same applies to the cost of loss and damage to equipment and data used by the remote worker in performing work activities. However, given the spirit of the European Framework Agreement on Telework, it is considered that the liability of the employee is not unlimited and unconditional, as it is determined in accordance with national rules and regulations on liability for damages.

Hence, the obligation to indemnify can be borne by both the employer and, in some cases, the employee.³⁴ Such a conclusion arises from the very obligation of the teleworker to take care of the equipment that is made available with an attention of a good host and not to store or distribute illicit materials on the Internet that would harm the employer. In case of damage to the equipment, the remote worker is expected to notify the employer immediately.³⁵

7. Health and Safety

Article 8 of the European Framework Agreement on Telework

The employer is obliged to apply the rules for protection of the health and safety of remote workers in accordance with Directive 89/391 and other special directives, national legislation and collective agreements.

The employer is obliged to inform the remote worker about the internal regulations for safety and health at work, and especially about the measures for protection at work with screens. The remote worker is obliged to comply with the regulations and measures for protection at work.

In order to ensure compliance with the regulations and measures for health and safety at work by workers, employers, workers' representatives, the competent authorities of the state have the right to access the place where the remote worker performs the work tasks, in compliance with the restrictions provided for in national legislation and collective agreements. If the remote worker works from home, access to his home is prerequisite with prior notice and consent of the employee. The remote worker has the right to request a visit by a competent inspector.

³³ R.Blainpain (no.4), pp.137.

³⁴ For example, the legal framework for remote work in Malta provides that the costs of losing, damaging or abusing equipment and data used by a remote worker in the performance of work tasks shall be borne by either the employer or the employee, in accordance with the provisions of Civil Code. More info: E.Zammit (no.11), pp.85. According to the rules for compensation of damages provided in the Macedonian labour legislation, the responsibility for compensation of damages will be borne by the employee if she/he intentionally or due to gross negligence caused damage to the employer (LLR, Article 156, paragraph 1). In all other cases, the employer is liable for damages.

³⁵ For example, such a provision exists in the legal framework for the regulation of remote operation in Belgium and Bulgaria (Article 107 paragraph 4)

The obligations of the employer related to the application of the measures for protection of the health and safety of the workers are generally equal, regardless of whether the workers work in the employer's premises or at a distance. In this regard, employers are obliged to ensure that the designated home workplace meets OSH requirement including safe workplace (in terms of work space) and safe equipment for remote work (primarily in terms of protection when working with screens), which will minimize the risk of injury and accidents at work.

Comparative law finds some differences in the regulation of employers' obligations to provide healthy and safe working conditions for remote workers. Although the countries that have implemented the Framework Agreement on Telework, without exception, provide for the application of the general regulations for OSH protection, still some countries differ from others in terms of details, comprehensiveness and depth in the regulation of this remote operation segment. For example, the legal framework in certain countries explicitly provides for an obligation for employers, before organizing the telework, to obtain the consent of teleworkers working in their homes to access their homes in order to *perform risk assessment in operation* such as: risks of cable injuries, hazardous electrical installations, slippery floors, further ergonomic risks (sitting, warming, lighting) as well as the risks faced by women in case of pregnancy or maternity.³⁶ In other countries there are certain exceptions to the general framework for the protection of the health and safety of workers at work, such as the rules for providing appropriate sanitary or safety conditions applicable in the premises of the employer.³⁷ In applying distance work outside of Europe, we have also found practices in which the responsibility for protecting health and safety at work falls primarily on workers, who are required to confirm in writing that the workroom from which they telework (i.e. their home) meets the OSH standards and they will continue maintain the respective standards.³⁸

Regardless whether the legal framework governing employers' obligations to apply OSH measures to remote workers is more or less rigid, employers are required to provide minimum working conditions for the protection of remote workers, including the obligation to mandatory written notification to remote workers of labour protection measures and requirements specified in the company's internal OSH regulations and policies. On the other hand, remote workers have an obligation to comply with labour protection measures and requirements (for example, wearing personal protective equipment at work, etc.).

The control over the appropriate application of the measures and regulations for protection at work of remote workers is mainly performed in two ways: first, with access by the employer, the workers' representatives and/or the competent authorities of the state (for example, inspection services) in the place where the remote worker performs the work tasks and secondly, by visiting the workplace by a competent inspector at the request of the employee. Given the inviolability of the right to privacy and the constitutional guarantees of inviolability of the home, the dilemma regarding the admissibility of control visits to the home of a worker who is at the same time his place of work is rightly imposed. Access to the teleworker's home is allowed only after prior notice and with the consent of the employee. The employer, the workers' representative or the competent state authority (for example, the labour inspector) could access the teleworker's home, for example, provided that the access is carried out within the agreed

36 L.Macdonald (no.2), pp.244.

37 More info: Z.Hajn and L.Mitrus, *Labour Law in Poland*, Wolters Kluwer, 2016, pp.158.

38 C.Abery and D.Zabel (no.2), pp.117.

working hours of the employee and of course with a prior mandatory notification to the employee and with his consent. If the mentioned conditions are met, the employee can refuse the access to his home only if he has good reason to do so.³⁹ The initiative, i.e. the request of the remote worker addressed to the competent inspection service to visit the place where he performs the work tasks (for example, his home), provides familiarization of the inspection service with the conditions in which the employee works.

The occupational safety and health in the case of remote work open other dilemmas. Of interest to the practice would be to resolve dilemmas related to the legal consequences of a possible injury or accident to a remote worker. If such a case arises, initially it must be determined whether the injury or accident occurred at the “workplace” designated by the employee and specified in the contract governing the rights and obligations between the contracting parties or elsewhere (for example, the injury occurred while the employee was in the basement, not while working in the room adapted as an office). Then, it should be determined whether the injury or accident occurred during the employee’s working hours or not. These matters are very complex, but it is desirable that they be agreed in advance between the contracting parties. Prior consent of the contracting parties is also desirable in terms of regulating their liabilities related to the compensation of damages caused as a result of work-related accidents or injuries.

8. Organization of work

Article 9 of the European Framework Agreement on Telework

The remote worker organizes his/her working hours independently, in accordance with the legal regulations, collective agreements and the acts of the employer.

The remote worker has the same scope and norms of working with the comparative worker working in the employer’s premises.

The employer is obliged to ensure the application of measures to protect the employee from isolation from the rest of the employees in the enterprise, enabling the employee to meet regularly with colleagues and to have access to the information of the company.

Remote work, in itself, presupposes a flexible organization of work in which the increased autonomy of the employee in the performance of work tasks is expressed. In that direction are the legal rules that regulate the working hours of remote workers, which on the one hand, allow and stimulate the independence of the employee in the organization of their working hours, but on the other hand limit such independence by mandatory compliance with legal regulations, collective agreements, but also the acts of the employer in which the working hours regulated.

What is meant by the ability of the remote worker to organize his working time on his own? This right or opportunity of the employee arises from the very nature of the telework, within which the employee independently determines both the duration and the schedule of working hours during the working day or week. However, the right of the remote worker to organize the working hours independently is not an absolute right. The degree of autonomy of the employee will depend on case-by-case basis, depending on the type and specifics of the job. Usually, the teleworker organizes his working hours,

³⁹ More info: Labour Code of Bulgaria, Art. 107-k.

but within the existing work schedule that is applied at the employer's,⁴⁰ or similarly to this, the employee organizes his working hours alone, but with the obligation to be available to the employer in the time in which the employer and his business partners are in a communication.⁴¹ The working hours in which the employee works remotely, regardless of whether they are organized in fixed working hours (with minimal employee autonomy) or in flexible working hours (with exact appointment of the time / hours in which the employee should be available to the employer) , should be properly recorded. The registration of working hours can be done on a monthly basis, with the obligation of the employee for written recording of the real, i.e. actually done work. If the employee registers working hours that do not correspond to the real, i.e. the actual number of hours worked, he may be subject to disciplinary liability.

In summary, when regulating telework, the general principle that should be taken into account is that the regulations and rules governing, above all, the limitations on the maximum duration of working hours (daily and / or weekly working hours limits), and then the minimum duration of breaks and leaves (daily, weekly and annual leaves) apply equally to both workers working in the employer's premises and to remote workers. However, having in mind the right, i.e. the possibility, for the employee to organize his working hours independently (i.e. to decide for himself/herself when s/he will start working, when s/he will take a break and when s/he will finish his/her work), in certain countries one can find provisions by which remote workers are exempt from certain aspects of the legal regimes of arranging working hours. Such exceptions usually apply to the provisions of: weekly working hours, overtime pay, state holiday work, night work and work in difficult working conditions, as well as salary allowances for paid leave due to personal reasons other than the death of a family member (Slovakia)⁴² or overtime work, night work and work during public holidays (example of Bulgaria)⁴³. The specifics related to the organization of working hours (including the hours in which the employee should be available to the employer), breaks and leaves, records of working hours, possible deviations from certain aspects of the legal regulations governing working hours if they are expressly permitted and other matters, are the subject of an agreement between the contracting parties and it is desirable that they are agreed in writing.

The next important segment that refers to the organization of remote work is the equalization of the scope and norms of work of remote workers, with the scope and norms of work of workers working in the premises of the employer. In other words, remote workers can neither be required nor expected to work more or better than workers working in the employer's premises. This is so that, at the expense of the flexibility and autonomy enjoyed by remote workers, they can be exposed to overwork and exploitation of their labour.

Finally, when negotiating remote work, employers must take into account the fact that remote workers face the risk of isolation from other colleagues, as well as from their superiors, which can negatively affect their occupational health and safety and the productivity of in the operations. Therefore, they are obliged to allow remote workers to meet with other colleagues on a regular basis (for example, formal and informal meetings, etc.), as well as to have access to the information of the company (for example, about career opportunities, vacancies in the enterprise, etc.).

40 R.Blainpain (no.4), pp.137

41 Labour Code of Bulgaria, Art.107-к.

42 More info: Barancova.A, A.Ošlovská, *Labour Law in Slovakia*, Wolters Kluwer, 2015, pp.78.

43 Labour Code of Bulgaria, Art.107-l, (2).

9. Trainings

Article 10 of the European Framework Agreement on Telework

Remote workers have equal access to training and equal opportunities for career development as the workers working in the employer’s premises and the same evaluation policies apply to them.

Remote workers have the right to appropriate training for the application of the technical equipment they use as well as for the organization of the work performed remotely. The workers at managerial positions as well as the other associates that telework have the right to training for management and organizing the remote work.

The general principle of equal employment and working conditions between remote workers and workers working in the employer’s premises is also found in the area of access to training and career development opportunities. First of all, it is important that remote workers are properly informed about the training and career opportunities offered by their employer, and if they apply for some training, retraining or additional qualifications, to get an equal chance to participate, regardless of the location from which they work.

The legal framework regulating remote work should also address the need to provide adequate training for workers, their superiors (supervisors) and associates, which may include the following areas: first, the application of IC technologies, ie. equipment for remote work (this training is designed for remote workers), second, familiarization with the organizational aspects of remote work (designed for remote workers, their associates, as well as management workers) and third, management, supervision and control over the work of remote workers (this training is intended for managerial workers).

10. Collective Rights

Article 11 of the European Framework Agreement on Telework

Remote workers have equal collective rights as workers working in the employer’s premises. Employers should remove any barriers that prevent or hinder communication between remote workers and workers’ representatives.

For remote workers, the same conditions apply for participating in and running for elections for workers’ representatives. Remote workers are included in the determination of certain thresholds required for the selection of representative bodies, in accordance with legal regulations, collective agreement and practice.

In order to exercise the collective labour rights, from the very beginning of the telework, the organizational unit of the company to which the remote worker belongs is precisely determined. Workers’ representatives are informed and consulted on the introduction of remote work, in accordance with legal regulations, collective agreements and practices.

Remote workers, in full and completely, enjoy identical collective labour rights as the workers working in the employer’s premises.

IV. ALIGNMENT OF THE PROPOSED PROVISION FOR TELEWORK IN THE DRAFT LAW ON LABOUR RELATIONS TO THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK

The labour legislation in preparation, i.e. the Draft Law on Labour Relations, for the first time, mentions remote work, envisaging it as a separate form of employment, which should exist in parallel with the traditional form of employment with work from home.

From the analysis of the legal framework that provides for the regulation of remote work (Article 16 of the Draft Law on Labour Relations), below you can find our conclusions regarding the compliance between Article 16 of the Draft Law on Labour Relations and the European Framework Agreement on Telework and proposals that could improve the text of the draft provision for remote work in the future adoption of the new Law.

1. Definition and scope

The draft provision on remote work, in general does not provide a definition of telework, nor does it define teleworkers.

Hence, we propose adaptation of the definition of telework to the one in Article 2 of the European Framework Agreement on Telework to the Macedonian labour law context. First of all, when defining telework, the constitutive elements that determine this form of organization or performance of the work should be taken into account, which are: use of IC technologies, to perform the work outside the employer's premises and on a regular basis. While the first two elements are indisputable and must be an integral part of the definition of telework, the third element (telework to be performed regularly, ie on a regular basis) can be inserted into the definition as it is, in order to give room to social partners with collective agreements and to the contracting parties in the employment relationship with individual employment contracts, to specify its meaning or the law itself, to determine this term more specifically indicating that telework performed on a regular basis means working outside the employer's premises/remotely, at least once a week, once every two weeks, once a month and so on. The determination of the status of workers as "teleworkers" will depend on how the element "regular performance of telework" is regulated. Ultimately, it will also determine the personal scope of application of all the rules, rights and obligations governing telework.

Additionally, we consider that the provision of the Draft Law on Labour Relations (Article 16, paragraph 2) which determines the places (premises) from which the work can be done remotely, unnecessarily points out that the remote work, in addition to performing the work in the premises of the employee may include *other premises not owned or leased by the employer*. Such provision may unnecessarily limit the spatial flexibility of the contracting parties and act restrictively in relation to the organization of remote work in the so-called tele-centers/satellite offices, provided and equipped by the employer.

2. Voluntary character of telework

The draft provision for remote work, **provides for certain aspects that refer to the contractual and voluntary nature of remote work**. In that direction, the existing draft definition envisages a framework of possible rights and obligations (content) that should be contained in the written agreement regulating the remote work (Article 16, paragraph 2, lines 1-5), and provides an opportunity for the arrangement of remote work in a form of a combined operating model that would include performing work activities in and outside the employer’s premises (Article 16, paragraph 4). In any case, we believe that in these parts, improvements and refinements are needed in the spirit of Article 3 of the European Framework Agreement on Telework.

First, the new provision governing remote work should explicitly provide that it may be an integral part of the initial employment contract (i.e. be an integral part of the initial job description for which the employee established employment relation), but also to be additionally agreed, during the duration of the employment relationship concluded in the employer’s premises, on a voluntary basis. In order to achieve the voluntary nature of remote work, the new provision must stipulate that the refusal of the employee to work remotely, in itself, must not be a ground for termination of the employment contract by the employer, nor in turn, lead to any adverse consequences for the employee. If remote work is subsequently agreed (at the request of either of the contracting parties and by mutual consent), it should be regulated by an annex to the existing employment contract. Once the remote work is agreed, it can be revoked and the employee can return to work at the employer’s premises. The revoking of remote work, must be voluntary, upon the proposal / request of any of the contracting parties and by mutual consent. In this section, the legal framework for regulating remote work could regulate certain principled and instructive rules (such as the existence of a certain “period of adaptation” for the duration of which any of the contracting parties could unilaterally revoke remote work within a certain notice period) or, in its entirety, to leave the matter to the contracting parties with the possibility of arranging it in a collective agreement and/or individual agreement, i.e. an annex to the existing employment contract.

Secondly, the “annex” to the employment contract which additionally, contractually and voluntarily regulates the remote work should provide for the most important aspects (contents) of the organization of remote work. We believe that in addition to the clauses that make the content of the contract governing remote work mandatory (Article 16, paragraph 2, lines 1-5 of the draft law), the following contents should be added: indication of the manner/the model of remote work by specifying the days/hours in which the employee works remotely and the days/hours in which he works in the employer’s premises if the organization of remote work is performed in the form of a combined model; appointment (specification) of the place/premises in which the employee works, which are outside the premises of the employer and where he/she can demonstrate that OSH requirements are met; specifying the rules for revoking remote work; but also specifying the organization of the employee’s working hours by indicating the time/hours in which it is expected for the employee to be available to the employer.

3. Employment and working conditions

The draft provision on remote work regulation, **does not contain a special provision designating the principle of prohibition of discrimination, ie. equal treatment** of remote workers with the workers working in the employer's premises.

According to the draft provision (Article 16, paragraph 5), the principle of equal treatment is placed in the context of the collective labour rights of remote workers, but not in the context of other, individual rights.

Therefore, although the principle of prohibition of discrimination / equal treatment of remote workers could be derived from the general regulations for equal treatment and protection against discrimination, we believe that the new provision on remote work should specifically provide for this principle in accordance with Article 4 of the European Framework Agreement on Telework.

4. Data protection and privacy

The draft provision on remote work **does not fully, clearly and comprehensively regulate the area of data protection**. Analyzing the proposed text in paragraph 7 of Article 16, it is concluded that the author of the text refers only to the protection of personal data when working remotely, but not to the protection of other data used by the remote worker which are confidential or treated as a business secret by the employer. The draft provision does not contain any obligation on the part of the employer to notify the remote worker of the legal regulations or internal acts and policies for data protection, nor does it provide an obligation for the remote worker to comply with such regulations or acts and policies.

In order to protect data in remote work, we consider that the new provision on remote work should address the measures taken by the employer to protect data (such as restrictions on the use and application of equipment for remote work, including access and work on the Internet), as well as possible sanctions for the remote worker who does not adhere to such measures. In this section, the new provision should be harmonized with Article 5 of the European Framework Agreement on Telework.

The draft provision on remote work, in general **does not address the issue of privacy protection of the remote worker**. We believe that the new provision on remote work should establish at least general rules and principles for the protection of the privacy of remote workers in order to protect them from unauthorized electronic surveillance by the employer. In this section, the new provision should be harmonized with Article 6 of the European Framework Agreement on Telework.

5. Work equipment

The draft provision for remote work **addresses matter related to the entity in charge of providing equipment for work** (this is primarily the employer, but may also be the employee, for which he acquires the right to adequate compensation for the costs of use as well as other costs in remote work), **but not to the issues related to the responsibility for compensation of possible damages** of the work equipment or caused by loss/misuse of certain data, which should be regulated in accordance with Art. 7 of the European Framework Agreement on Telework.

The specific feature of the European Framework Agreement on Telework, which is not reflected in the draft provision for remote work, is the obligation of the employer to provide, install and maintain the equipment for work, as well as to reimburse the costs of the employee incurred in performing the work remotely, but only if the work is done remotely on a regular basis.

6. Health and Safety

The draft provision on remote work, or more precisely paragraph 3 of Article 16, **in principle regulates the obligations and rights of employers and workers related to the protection of occupational health and safety at remote work**. Analyzing the proposed text, it is concluded that the draft provision is partially harmonized with Article 8 of the European Framework Agreement on Telework. The general principle in both the Framework Agreement and the draft provision on remote work is the assumption that employers are required to apply OSH rules, and workers are required to comply with such rules. However, we believe that there is room for a more detailed and specific regulation of the rights and obligations of the contracting parties in the field of OSH. First of all, the new provision for remote work should provide for a special obligation for employers to notify remote workers of the internal rules and policies of the OSH, including measures for protection against working with display screens. However, in an agreement between the social partners, certain exceptions / restrictions from the general legal regime for protection of safety and health at work could be envisaged, in function of a more balanced legal framework of OSH obligations and rights between the contracting parties, i.e. greater flexibility in the application of the obligations arising from the OSH system, primarily for employers. An extremely important matter that the draft provision for remote work **fails to regulate is the area of conditions and rules for access** in the premises used by the remote worker in performing work activities, and above all, when the work is performed in the home of the worker. The need for access to the home of the remote worker, primarily arises from the need to check and control the implementation and compliance with the OSH rules. We consider that the new provision for remote work should necessarily regulate the access to the employee's home and provide the conditions and rules under which the employer, the employees' representative and above all the competent labour inspector will be able to access the home of the employee, without violating his privacy and constitutionally guaranteed right to inviolability of the home. For that purpose, the new provision should allow access to the teleworker's home, only after prior notice and with the employee's consent.

Access to the teleworker's home should be limited only to the working hours agreed by the contracting parties and to the room (for example, the part of the apartment) specified in the contract as the place where the remote work will take place. The right of the employee to refuse the announced access to his home should be regulated, but only if the employee gives a reasonable reason for refusing access to his home within the announced time. Finally, the new provision on remote work should provide the right of the remote worker to work from home, in his own interest concerning occupational safety, to call the competent labour inspector, to carry out control and to get acquainted with his/her working conditions.

7. Organization of work

The draft provision on remote work, or more precisely, paragraph 2 of Article 16, **refers to certain aspects of the organization of remote work** that are subject to regulation in Article 9 of the European Framework Agreement on Telework. The proposed text in paragraph 2 emphasizes the autonomy of the employee for self-determination of working hours and rest periods and protects remote workers from the disallowed increase of the volume and work norm at the expense of exercising the rights to daily and weekly rest. However, we consider that the draft provision lacks a general definition that the legal regime for regulating working hours in labour legislation and collective agreements, and above all, the restrictions on the maximum duration of working hours (daily and / or weekly working hours limits), and then the minimum duration of breaks and leaves (daily, weekly and annual leaves), apply equally to both workers working in the employer's premises and to remote workers.

However, the right of the remote worker to organize the working hours independently is not an absolute right and should not be interpreted as such. This means that, when organizing their working hours, the remote worker should take into account the employer's internal rules for the distribution of working hours, i.e. to be available to the employer at specific time intervals.

The specifics related to the organization of working hours (including the hours in which the employee should be available to the employer), breaks and leaves, records of working hours, possible deviations from certain aspects of the legal regulations governing working hours if they are expressly permitted and other matters, are the subject of an agreement between the contracting parties and it is desirable that they are agreed in writing.

Given the fact that one of the main risks faced by remote workers is the risk of their isolation from other associates and senior employees, we believe that the new provision for remote work should also regulate this issue, in accordance with Article 9 of the European Framework Agreement on Telework.

8. Training

In paragraph 2, line 4, the draft provision on remote work, **refers to the right to training and vocational training** of remote workers. The right to training and vocational training of remote workers is provided as an integral part of the employment contract that organizes remote work.

In order to better and more comprehensively regulate the matter of training and career development of remote workers, we believe that the new provision on remote work should more adequately adapt Article 10 of the European Framework Agreement on Telework.

9. Collective Rights

The draft provision on remote work emphasizes equality in the exercise of the collective rights of remote workers compared to workers working in the employer’s premises, without providing for any exceptions.

In that direction, **paragraph 5 from Article 16, is fully harmonized with Article 11 of the European Framework Agreement on Telework.**



