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Podgorica



- ▶ **Legal analysis of the regulation and implementation of “teleworking” in Montenegro’s Labour Framework**

Legal analysis of the regulation and implementation of “teleworking” in Montenegro’s Labour Framework

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► Introduction

The Covid-19 pandemic, officially declared by the World Health Organization (WHO) in March 2020, has had a profound effect on labour relations and the organization of work across sectors. In many instances, social actors have introduced remote working – or teleworking – in response to the changing working conditions and unpredictable turn of events caused by the rapidly proliferating virus. While “remote working” and “teleworking” are often used interchangeably, the latter is highly dependent on the use of digital information and communication technologies. According to the Framework Agreement on Telework, concluded by the key social partners at the EU level in 2002¹, telework is defined as:

a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis.

The Framework Agreement, which is also supposed to be implemented in EU candidate countries, such as Montenegro, emphasises a number of principles governing the organization of teleworking. These include the following:

- it should be voluntary;²
- there should be the same employment conditions as for comparable workers at the employer’s premises;
- data protection, privacy for teleworkers and an appropriate monitoring system;
- equipment should be provided as a general responsibility of the employer, unless the teleworker uses their own equipment;
- the occupational health and safety of the teleworker must be protected;
- the workload and performance standards must be comparable to those of workers at the employer’s premises;
- there should be the same access to training and career development as for comparable workers at the employer’s premises; and
- teleworkers’ collective rights must be safeguarded.

Despite the general principles for organizing telework, as defined in the Framework Agreement, the need to shift to teleworking came as a surprise to many. Implementing this form of work organization has been a challenge because of underregulation. Montenegro is not exceptional in that regard. According to the enterprise survey conducted by the Montenegrin Employers

1 Framework Agreement on Telework, 2002, concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederations of Europe/the European Union of Crafts and Small and Medium-Sized Enterprises (UNICE/UEAPME), and the Centre of Enterprises with Public Participation (ECPE).

2 “Telework may be required as part of a worker’s initial job description or it may be engaged in as a voluntary arrangement subsequently. In both cases, the employer provides the teleworker with relevant written information in accordance with Directive 91/533/EEC”, reads the agreement.

Federation (MEF), in cooperation with the International Labour Organization (ILO) and the European Bank for Reconstruction and Development (EBRD), during the first wave of the pandemic, the majority of companies implemented some measures in order to adjust to the new circumstances. Among the survey respondents, almost one-third had introduced telework, although the results vary depending on the size of the enterprise: telework was least common among micro enterprises (28 per cent) and most widespread in large ones (80 per cent)³.

There are no comprehensive data about the extent of teleworking in specific sectors, such as education or state administration, while the regular statistical reports (labour market surveys and statistical yearbooks) do not cover teleworking.

In order to better understand the needs and challenges faced on the ground, we have conducted in-depth interviews with representatives of the Employers’ Association, the Confederation of Trade Unions of Montenegro, the Union of Free Trade Unions, the Ministry of Economic Development (formerly the Ministry of Labour and Social Welfare) and the The Trade Union of Education of Montenegro. The aim of this analysis is to provide an overview of the legal regulation of teleworking in Montenegro, with a view to analysing the available space in the legal framework for the application of teleworking. Because of teachers’ peculiar position during the pandemic, a special section describes the key challenges they have faced, according to the interview conducted with the respective trade union. A series of recommendations is provided concerning the existing entry-points and the changes needed in the legal framework, as well as the potential to improve teleworking practices.

3 COVID-19 and the World of Work: Rapid Assessment of the Employment Impacts and Policy Responses – Montenegro, International Labour Organization in cooperation with European Bank for Reconstruction and Development, June 2020.

Teleworking in Montenegro today and its legal framework

The 2019 Labour Code does not regulate teleworking as such, in its full meaning as defined in the Framework Agreement. In Articles 42 and 43, however, it provides for the possibility of remote working or working from home, implying work outside the employer’s premises as the key defining feature of such an employment relationship.

Article 43 requires that the employer keep records of all employment contracts envisaging remote working or working from home and that the employer inform the labour inspectorate about it. The labour inspectorate may prohibit the employer from demanding that work be performed outside the employer’s premises when there may be imminent danger to employees’ life or health and if that work may endanger the environment. Although it may represent an entry point for the further development of teleworking, the relevant labour law provisions do not address all the general principles of the Framework Agreement, especially the use of information technology and interconnected issues of data protection, occupational and health safety, teleworkers’ privacy and inspection in more detailed terms. Also, the provisions on remote work do not foresee or allow their further elaboration in the General Collective Agreement, which interviewees see as an impediment to using the new General Collective Agreement as an entry point for better regulation of teleworking without parallel amendments of the Labour Code.

► Relevant provision of the Labour Code:

Article 42

A labour relationship may be established for the performance of work outside the premises of the employer, when the nature of the work allows it.

A labour relationship for performing work outside the premises of the employer includes remote work and work from home.

The employment contract concluded in terms of paragraph 1 of this Article, in addition to the data referred to in Article 31, paragraph 1 of this Law, shall also contain information on:

- 1) type of work and manner of work organization;
- 2) working conditions and manner of performing work supervision;
- 3) use of own equipment for work and reimbursement of expenses for its use;
- 4) reimbursement of other costs related to the performance of activities and the manner of their determination;
- 5) other rights and obligations.

The new Labour Code came into force in January 2020, while conclusion of the General Collective Agreement, aligned with the law, is still pending: the deadline was prolonged until the end of 2021.⁴ This provides a good opportunity for the further development of teleworking in parallel with the required legal changes. The key challenges pertaining to the organization of telework and the protection of teleworkers are presented in the sections that follow.

4 Ukaz o proglašenju Zakona o izmjeni Zakona o radu (“Službeni list Crne Gore”, br. 008/21 od 26.01.2021).

Voluntary nature of teleworking and emergency situations

As a general principle, teleworking should be voluntary; the Framework Agreement is clear on this. It draws a distinction between teleworking as a labour relationship defined from the outset and subsequent changes leading to the bilateral introduction of teleworking.

Nonetheless, within the context of the Covid-19 pandemic and similar emergencies and extraordinary circumstances, some countries have permitted or required that employers temporarily impose teleworking arrangements where possible. For example, Bulgaria and Greece, although they maintain that teleworking is voluntary, have allowed for its unilateral introduction in response to the current pandemic when conditions for such an arrangement are in place. Hungary leaves the possibility for introducing teleworking unilaterally for a predefined time period (44 days per year).⁵

Also, certain countries have used an official state of emergency to pass decrees that may suspend certain labour rights. Hungary and Serbia, for example, have exercised this option. Despite the weak legal basis, after the outbreak of the Covid-19 pandemic, employers in Montenegro – as already explained – introduced remote working or working from home. Government measures in practice allow employers to introduce this type of work unilaterally, when the nature of work allows, emphasizing that remote employees are still entitled to a full wage.⁶

Because teleworking in this context is a response to the pandemic, it can also be interpreted in light of employees’ duty, prescribed by the Law on Health and Safety at Work, to cooperate with the employer until safe working conditions are ensured.⁷ Additionally, the Law on Protecting the Population from Contagious Diseases envisages the introduction of extraordinary measures in extraordinary situations.⁸ Such measures do not include work (re)organization, but do entail the obligatory cooperation of legal entities, companies and citizens in countering health risks, and also restrictions on movement.

The Labour Code (Article 47) stipulates that employers and employees can amend labour contracts to meet needs arising from work organization and work processes. This legal provision allows the flexibility needed to cope with unforeseen situations, including a pandemic. On the other hand, as noted by the trade union representatives during the interviews conducted in the course of preparations for this analysis, it is questionable how far the contractual amendments related to the needs arising from work organization and processes are voluntary, because the employer has the right to terminate labour relationships if the employee refuses to conclude an annex to their contract in such situations (Article 172). This approach, although it is not limited to teleworking, **may not be in line** with the Framework Agreement, which states that a “worker’s refusal to opt for telework is not, as such, a reason for terminating the employment relationship

5 Andersen Global, European Guide to Support Employers: Teleworking in Europe, October 2020

6 <https://www.coronainfocg.me/>

7 Zakon o zaštiti i zdravlju na radu, Službeni list Crne Gore, , br. 034/14 od 08.08.2014, 044/18 od 06.07.2018).

8 Extraordinary situations in light of this law are defined as: natural disasters and catastrophes, outbreaks of infectious diseases, new or insufficiently known infectious diseases and in case of suspicion of the use of a biological agent, when the risks and threats or consequences of disasters, emergencies and other hazards to the population, environment and material goods are of such scope and intensity that their occurrence or consequences cannot be prevented or eliminated by regular action, and they can endanger human health and life and there is a danger of mass transmission of infectious diseases.

or changing the terms and conditions of employment of that worker”. Still, the distinction should be made between individual agreements on teleworking or amending individual labour contracts, and an employer’s decision to change their operations to be fully or mainly remote. The latter can be considered to be a reorganization of the business model and as a change in the place of work, and the employer has legal grounds to impose it.

Obviously, there is some tension between the need to introduce teleworking unilaterally in certain situations, and the voluntary character of this type of work. A potential exit from such working can be sought in the provisions regulating emergency situations or employees’ duty to cooperate in ensuring safe working conditions. This solution exists in some countries, such as France. Article L. 1222-11 of the French Labour Code states that “in exceptional circumstances, notably the threat of an epidemic, or in cases of force majeure, the implementation of telework may be considered as a workstation adjustment made necessary to allow the continuity of the company’s activity and to guarantee the protection of employees”.⁹

In these circumstances, the implementation of teleworking is within the employer’s power. In Montenegro, extraordinary or emergency situations, such as those defined in the Law on the Protection of the Population from Contagious Diseases, are neither defined in the Labour Code or formally introduced as a ground for imposing telework.

Organization and monitoring of work under teleworking

The Labour Code (Article 32) prescribes that the employment contract concluded for remote working should, among other things, contain information on: the type of work and the manner of work organization and working conditions, as well as the manner of performing work supervision. As already mentioned, working conditions should be the same for both teleworkers and comparable employees performing their tasks at the employer’s premises. This includes working time and breaks.

Because of the absence of face-to-face contact and the interconnected challenges of providing effective feedback and performance management, however, it is difficult to adjust supervision mechanisms to teleworking arrangements. The EU regulations clearly forbid the use of intrusive software, which can breach an employee’s privacy. The Framework Agreement also stipulates that if any kind of monitoring system is put in place, it needs to be proportionate to the objective and introduced in accordance with Directive 90/270 on visual display units. The ILO Code of Practice concerning the protection of workers’ data¹⁰ also highlights the following:

“Employer must minimize intrusions into the privacy of workers.”

- ILO

9 Article L. 1222-11 of the French Labour Code, available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000035643952/

10 International Labour Organization, An ILO Code of Practice: Protection of workers’ personal data (1997).

For example, in Austria, employers may not require employees to continuously keep their computer’s video camera turned on and may not use software that monitors keyboard or mouse movements.¹¹ Continuous monitoring of email correspondence and internet use is also considered to be overly intrusive, and in some countries, such as Finland and Germany, it can be introduced solely on specific grounds, such as suspicion of criminal activity or serious malpractice.¹² This does not exclude the obligation of employees to participate in video conferences or the employer’s right to be able to get in touch with the employee electronically (phone calls or video-chats) anytime during designated working hours. In general, Montenegro’s legal framework on personal data protection does not envisage potential privacy concerns with regard to telework. As a general rule, however, it does not allow video surveillance of the place of work, with few exceptions, such as safety concerns and protection of business secrets.¹³ Especially in the context of teleworking, guidance is needed for employers and other parties with regard to respecting employees’ privacy.

Because it is practically impossible to monitor work during designated hours, teleworkers can feel increased pressure to be available at any time, which raises concerns over their inability to “disconnect”. In response to these growing concerns and legal loopholes with regard to workers’ right to disconnect from digital tools, including information and communication technology (ICT), the European Parliament passed a resolution in January 2021.¹⁴ The document particularly acknowledges the results of a Eurofound survey that reports that 27 per cent of respondents working from home stated that they had worked in their free time to meet work demands and that people who regularly work from home are more than twice as likely to work in excess of the maximum 48 hours per week and are at risk of resting for less than the requisite 11 hours between working days.¹⁵ According to the Resolution, “disconnect” means not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time. It recommends that legal protection and anti-discrimination measures are taken up with the aim of protecting employees exercising their right to disconnect from less favourable treatment. The Resolution further underlines that on-call time is working time, or in other words, that “time during which a worker is available or reachable for the employer is working time”.¹⁶

“The workload and performance standards of the teleworker are equivalent to those of comparable workers at the employers premises”.

- Framework Agreement on Telework

11 Andersen Global, European Guide to Support Employers: Teleworking in Europe, October 2020.

12 Eurofound, Employee monitoring and surveillance: The challenges of digitalization (Luxembourg, Publications Office of the European Union, 2020).

13 Zakon o zaštiti podataka o ličnosti, “Službeni list Crne Gore”, br. 079/08 od 23.12.2008, 070/09 od 21.10.2009, 044/12 od 09.08.2012, 022/17 od 03.04.2017.

14 European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

15 Eurofound, COVID-19 unleashed the potential for telework – How are workers coping?, June 2020, available at: <https://www.eurofound.europa.eu/de/publications/blog/covid-19-unleashed-the-potential-for-telework-how-are-workers-coping>

16 European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

In 2020, the EU Social Partners also signed an Agreement on Digitalization, which notes that the use of digital devices may “create risks and challenges around the delineation of work and of personal time both during and beyond working time”. The agreement lists a number of measures that should be considered when tackling these challenges, including: training and awareness, being clear about the policies and/or the agreed rules on the use of digital tools for private purposes during working time, a management commitment to create a culture that avoids out-of-hours contacts, regular exchanges between managers and workers and or their representatives on the workload and work processes.¹⁷ From a positive standpoint, teleworking should encourage a shift from process-oriented and traditional monitoring of work (whether someone is physically present at the employer’s premises or is physically engaged in a certain task) to a results-oriented approach towards employee performance (with a caveat on meeting predefined work objectives). In line with this approach, the Montenegrin Employers Federation advised employers to focus on the concrete results and achievements of remote workers, including clear communication of objectives and deadlines and a shift of performance indicators from hours spent working to the quality and quantity of executed tasks.¹⁸ In general, it is advisable that employees submit regular progress reports in order to enable better tracking of their performance. Article 97 of the Labour Code stipulates that collective agreements or general acts of an employer may define benchmarks and norms for performance appraisal. The increased importance of teleworkers’ achievements instead of the number of hours spent at the employer’s premises, and the need to ensure proper monitoring mechanisms that are focused on predefined work objectives, prompt a need to define performance appraisal procedures for teleworkers more closely.

Teleworkers’ occupational health and safety

The Framework Agreement stipulates that teleworkers should enjoy same rights as their colleagues at the employer’s premises: in general, this should also encompass their occupational health and safety. Still, the practice of teleworking is much more demanding in this respect. As the ILO notes, the two most commonly recognized challenges connected to teleworking are psychosocial risks and ergonomics, including “technology addiction” and overload, prolonged sedentary behaviour, and the sub-optimal ergonomics of home furniture.¹⁹ At the same time, the application of health and safety legislation may pose challenges for employers, who have no real control over employees’ homes, and even less so in situations in which employees have discretion in determining the place of work (for example, hotels or cafés).

The Law on Safety and Health at Work does not specifically mention remote working, teleworking or working from home. The general rules and liability of employers should be the same for any type of work, and the law clearly stipulates that employees cannot be charged with expenses for protection measures. In the case of changes of working environment, the employer is obliged to implement protection measures and choose work and production methods that ensure a higher

17 European Social Partners Framework Agreement on Digitalization, June 2020, available at: https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf

18 Vodič za poslodavce: Rad od kuće kao odgovor na pandemiju COVID-19, Unija poslodavaca, International Labour Organization, 2020.

19 Teleworking during the COVID-19 pandemic and beyond: A practical guide, Geneva: International Labour Office, July 2020.

level of protection and occupational health.²⁰ The Law further prescribes that the employer is obliged to insure employees against work injuries, occupational diseases and related diseases with work. In general, as stated by interviewees from the Government, trade unions and the Employers Federation, there have been no particular problems with the collective insurance of employees during the pandemic. Nonetheless, problems may arise, such as when an employee has to prove that work-related injuries occurred during the performance of work and not because of other home-related activities. Such situations are difficult to subsume under legal norms, and the practice of other European countries suggests that they are handled on a case-by-case basis. On the other hand, these situations highlight the need for telework to be defined as precisely as possible in the employment contract, especially with regard to working hours. When possible, it is also advisable for the contract to specify a particular “home” or “remote office”, as the specific working environment for teleworking.²¹

Because there is no specific mention of teleworking, remote working or working from home, the Law on Safety and Health at Work does not specify an employer’s obligation to ensure proper equipment, means of work or furniture in these cases. Article 42 of the Labour Code recognizes only a possibility for employees to use their own equipment, while employers are supposed to reimburse expenses.

the Law on Safety and Health at Work does not address specific situations pertaining to the safety of teleworkers’ working environment. In general, inspections performed at a teleworker’s place of work should be specifically addressed in the legislation because of the challenges attached to it, including privacy protection and the inviolability of the home. Practice from other European countries suggests that, when possible, inspection oversight at an employee’s home can be performed only following prior notification and with the consent of the employee.²²

At the same time, assessing the health risks associated with teleworking can be impractical and costly for employers, especially in situations in which many employees are involved in teleworking. Employers could thus be allowed to rely in their risk assessment on information specifically obtained from employees for this purpose (for example, checklists for self-evaluation, a statement from an employee that the place where remote work is performed is ready, safe and equipped with all the elements required by the employer in their risk assessment).²³ Health and safety authorities could provide guidance for employers on these issues to reduce any uncertainties that may arise.

Given employers’ limited control over the home work environment, employees’ duty to cooperate with the employer in meeting health and safety obligations (Convention No. 155) also becomes crucial. This includes (Recommendation No. 164): taking reasonable care for their own safety and

20 Zakon o zaštiti i zdravlju na radu, “Službeni list Crne Gore”, br. 034/14 od 08.08.2014, 044/18 od 06.07.2018).

21 In some countries, there are specific exclusions from certain health and safety obligations when it comes to telework (for example, when it comes to the provision of hygienic and sanitary facilities, cleaning, building conditions, emergency exits, first aid).

22 Andersen Global, European Guide to Support Employers: Teleworking in Europe, October

23 For example, in Germany, because an employer’s ability to perform a risk assessment in a remote working environment is naturally limited, it is widely accepted that for the risk assessment they can rely on information specifically obtained from the employee for this purpose. In the United Kingdom, employers are advised to provide remote workers with a workstation checklist, with the aim of conducting their own assessment at home (See: <https://www.hse.gov.uk/toolbox/workers/home.htm>).

health; complying with safety and health instructions and procedures; using safety devices and protective equipment correctly; reporting to their supervisor any situation which could present a hazard and which they cannot themselves correct.²⁴

Equipment for teleworking and reimbursement of expenses

The Framework Agreement stresses that all questions concerning work equipment, liability and costs should be clearly defined before starting telework. The document states that, as a general rule, the employer is responsible for providing, installing and maintaining the equipment necessary for regular teleworking, unless the teleworker uses their own equipment. Also, it is an obligation of the employer to cover other costs directly caused by work, especially communication expenses if telework is performed on a regular basis.

The Labour Code is not fully aligned with these requirements, because it recognizes only expenses arising from the use of an employee’s personal equipment; it does not specify any obligation to provide, install and maintain it or to reimburse the purchase of equipment or other work-related expenses. Some sectors during the pandemic have not faced particular problems, because employees already had the necessary equipment provided by the employer. However, in areas in which employees usually have not used specific IT equipment, such as education, this has proved to be a particular challenge, as explained in the box describing challenges faced by teleworking teachers in the context of the Covid-19 crisis.

24 For example, in Germany, because an employer’s ability to perform a risk assessment in a remote working environment is naturally limited, it is widely accepted that for the risk assessment they can rely on information specifically obtained from the employee for this purpose. In the United Kingdom, employers are advised to provide remote workers with a workstation checklist, with the aim of conducting their own assessment at home (See: <https://www.hse.gov.uk/toolbox/workers/home.htm>).

Data handling concerns in the context of teleworking

Respect for privacy is intertwined with many aspects of teleworking. As already explained, it imposes limits on work supervision and inspection oversight, but it is also relevant for overall communication and use of IT equipment during teleworking. The use of virtual private networks (VPNs), specific software, or private communication channels for teleworking may make it difficult to clearly delineate the use of these tools for private and for professional purposes. The handling of sensitive or confidential data in certain occupations adds to the complexity of the challenge. That is why some countries, such as Germany, subject the use of such networks and channels to appropriate technical-organizational measures and strict rules to ensure the inviolability and confidentiality of data in accordance with the legislation on personal data protection.

Because the legal framework does not recognize teleworking as such, it fails to address potential information security issues arising from it. On the other hand, the Law on Information Security and relevant by-laws prescribe measures for the protection of data and information systems for all entities engaged in data handling.²⁵ Telework should not be exempt from these provisions. In general, an overview of regulations and practices in EU member states demonstrates that employers must ensure appropriate data security, including secure transmission channels and appropriate data protection-compliant handling, especially in cases in which employees use private means of telecommunication.²⁶ It is advisable that these issues be included in the employment contract. Employers should receive adequate guidance on the issue of data protection and cyber-security to support compliance.

► Case study: Teleworking teachers in Montenegro

Many of the issues discussed in the analysis have been amplified during the Covid-19 crisis, especially in education. Home or online schooling pose novel challenges for education workers, and it also demonstrates specific needs in the sector.

Working time spent in online schooling stands out as a particular challenge because education law defines specific norms for classes. Provisions on working time are thus not applicable in these cases. The education trade union stresses that, as a result, teachers have not been properly paid for working overtime and adjusting their teaching methods to the new circumstances. There has been no system of monitoring of teachers’ work during online schooling either.

The competent ministry opted for the use of a specific platform, Microsoft Teams, for online schooling. Training in how to use this platform

has been organized and teachers were re-assured that the system is properly protected. Because education law forbids video recording in classrooms, teachers asked to hold online classes within enclosed groups with no access to outsiders. The key online tools and protection mechanisms were properly explained to them.

The main shortcoming concerns the reimbursement of expenses incurred in organizing online schooling. Teachers may use their own equipment but not be reimbursed. Especially in cases where teachers used equipment jointly with other family members this posed additional challenges for work organization. The failure to reimburse and properly plan expenses for teleworking teachers’ equipment may have been exacerbated by the fact that there are approximately 12,000 teachers in the country. Nonetheless, the situation is not aligned with the current provisions of the Labour Code.

25 *Zakon o informacionoj bezbjednosti*, “Službeni list Crne Gore”, br. 014/10 od 17.03.2010, 040/16 od 30.06.2016, 074/20 od 23.07.2020.

26 Andersen Global, *European Guide to Support Employers: Teleworking in Europe*, October 2020.

► Conclusion

Teleworking practices and related legal challenges demonstrate the need to ensure a trade-off between flexibility arising from unforeseen situations and the protection of employees’ rights. In Montenegro, teleworking during the Covid-19 pandemic has mainly been organized ad hoc. It is evident that this area requires more urgent attention over the forthcoming period to see whether additional regulation would be desirable.

Prompted by the new needs arising from the pandemic and the extraordinary circumstances in which work has been organized over recent months, certain actors, including the Employers Federation, has advocated the adoption of a special law to regulate labour relations in emergency situations. On the other hand, the pending finalization of the new General Collective Agreement also provides an opportunity to more closely define issues arising from teleworking and other non-standard forms of work. In order to better use this opportunity, however, it would be a good idea to review the Labour Code to see whether it sufficiently addresses the regulatory needs of employers and teleworkers.

First and foremost, the law does not define teleworking as such, especially in terms of use of information technology. Consequently, issues associated with the use of the internet, virtual private networks, data security and privacy are not specifically addressed. The Law also fails to mention other important aspects, which are defined by the Framework Agreement. It does not state that the employment conditions of teleworkers should be the same as those of comparable workers at the employer’s premises. It does not stress the specific need to protect teleworkers’ occupational health and safety, as well as other rights, including access to training and career development opportunities and collective rights. The employer’s liability in these cases is also not clearly regulated. Inspection oversight is mentioned only in terms of notifications to the labour inspectorate about the remote or teleworkers. The procedures for inspecting working environments and other aspects of teleworking or remote work are not defined. Hence, there is room for the relevant articles of the Labour Code to be amended to encompass all the important aspects of teleworking and then to be further elaborated within the General Collective Agreement.

Given the complexity of the topic and many interrelated challenges, it is advisable to address more urgent needs arising from teleworking by amending existing labour law and further elaborating certain aspects in the General Collective Agreement. A distinction may also be made between teleworking/ remote working and working from home as such, and working during emergency or extraordinary situations. The latter could be addressed separately by following a multi-sectoral approach and with relevant data collection. Such an approach could also help to ease the tension between the general principle of voluntary teleworking and the practical necessity of teleworking in specific circumstances.

Policy recommendations:

- The Labour Code should define teleworking in a specific article, or by expanding the existing Article 32, and align the definition of this type of work with the relevant EU Framework Agreement to include use of information technology as a defining feature.
- These provisions should specify the responsibility of the employer during telework, including general principles regarding equipment and reimbursing costs directly caused by work.
- The Labour Code should explicitly state that the working conditions of teleworkers/remote workers are the same as or comparable to those of other comparable employees, including working time, workload, performance, occupational health and safety, training and career development opportunities, and collective rights. Specific adaptations regarding working time (for example, rest periods) and health and safety could be considered to take into account the specificities of telework.
- Provisions on the need to respect an employee’s privacy during telework and a ban on the use of intrusive equipment and software should be explicitly transposed in the law or general collective agreement.
- Especially with regard to the inspection oversight related to teleworking, the Labour Code should state that inspection oversight can be performed only with the prior consent and notification of employees.
- The right to disconnect should be further specified in the General Collective Agreement, by stipulating the right of employees not to be available outside predefined working hours.
- The General Collective Agreement should also reiterate the voluntary nature of telework and ensure proper implementation of the Framework Agreement by specifying that an employee’s refusal to agree to telework may not be a reason for terminating the employment relationship or changing the terms and conditions of employment of that worker, unless the introduction of telework is part of the restructuring of the company or in response to the emergency situation. On the other hand, the relevant provisions of the Labour Code, which leave too much discretion to the employer to terminate employment if an employee refuses to sign an annex to the contract due to the needs of work organization and processes, should be amended to reduce the employer’s discretion in these circumstances.
- In light of the practical impediments to the effective monitoring of working hours during telework/remote work, the General Collective Agreement should clarify that an employee has to be available and is considered working during the predefined working hours specified in the labour contract.
- It is advisable that the General Collective Agreement introduce general benchmarks and criteria for performance appraisal of teleworkers, ensuring that performance standards are no more demanding than those for comparable employees at the employer’s premises.
- For employees who are teleworking for pre-scheduled longer periods of time and on a

regular basis, the General Collective Agreement could provide for an obligation of the employer to enable appropriate furniture which meets ergonomic standards.

- In the long term, proper regulation of teleworking, and other trends towards the increased use of digital tools, pose a need for a multi-sectoral approach, and policy changes in the areas of personal data protection, protection and health at work, anti-discrimination, information and cyber security, and education.

Recommendations for better teleworking practices and implementation of Framework Agreement on Teleworking:

- Employers, especially in sectors conducive for teleworking, should foresee the possibility of introducing teleworking in certain circumstances in the initial employment contract with the employee. This approach would allow more flexibility in work organization with the advent of unforeseen circumstances, while ensuring that telework is voluntary and the protection of employees' rights.
- It is advisable for employers to ensure that a home or remote office be set up as a working environment for teleworkers, in order to clearly delineate working space and avoid challenges arising from blurred lines between private and professional space and activities.
- Employers should introduce practices such as the more frequent submission of performance reports or more frequent conversations with teleworkers, along with the previously defined work objectives and benchmarks.
- Employers should organize specific training for teleworkers, covering organization of work, data handling, use of virtual private networks, and other relevant aspects of telework.
- Employers and trade unions should provide adequate psychological support for teleworkers, especially to address issues of techno-stress, technology addiction and ability to "disconnect".
- In line with the Framework Agreement, the employer should implement measures to prevent the teleworker from being isolated from the rest of the working community in the company, such as giving them the opportunity to meet with colleagues on a regular basis;
- Appropriate data protection-compliant handling should be specified in employment contracts, especially in specific sectors, which involve the processing of confidential or sensitive data.

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