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Parliamentary Institute
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Teleworking: Legal Solutions in Several European Countries

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INTRODUCTION

The rapid development of information and communication technologies has enabled work outside of the traditional on-site work that is known as *teleworking*, or *work from home*. For the first time, this concept was used at the beginning of the seventies of the last century.¹ Nowadays, the teleworking has a growing number of supporters taking into account that it, *inter alia*, reduces the costs of using office space, abolishes geographical limitations in the context of hiring the quality staff and provides a better balance between private and professional life of employees.

The Labour Law of Montenegro (Official Gazette of Montenegro, No. 049/08, 026/09, 088/09, 026/10, 059/11, 066/12, 031/14, 053/14) stipulates that an employer may organize work from home if it is allowed by the nature of work. The jobs which may be performed from home are those that are a part of employer's activity scope or are in close relation to that activity. Employer's collective agreement defines requirements and methods of working from home. An employee who performs a job from home shall have the same rights and obligations as an employee who performs a job in the employer's premises. Employer's collective agreement shall regulate the conditions for exercising the rights and obligations. Working hours for performance of jobs from home may be established based on the predetermined quality of work per time unit. An employer is obliged to keep records on this work and inform the competent labour inspection body. The competent labour inspection body may prohibit work from home for a particular employer whenever there is a direct threat to life and health of the employees and if it poses a threat to the environment.

According to the Sixth European Working Conditions Survey,² the most workers – 62% of men and 78% of women – have a single main place of work where they work almost all of the time, generally their employer's business premises or their own if self-employed. Nearly a third of workers (30%) divide their working time across multiple locations. Despite the popular image of 'mobile workers' as young knowledge workers typing away on their laptops in a park or café, having more than one regular place of work is most common in the construction (57%), transport (49%) and agriculture (50%) sectors.

The following text provides an overview of the main advantages and disadvantages of teleworking, as well as the main problems related to definition of this phenomenon and its categories. The second part of the paper is devoted to international and European regulations in this area, including Home Work Convention and Home Work Recommendation of the International Labour Organisation, as well as EU Framework Agreement on Telework.

The last part of the paper is dedicated to the legal solutions related to teleworking in twenty EU Member States: Denmark, Estonia, Finland, Greece, Netherlands, Croatia, Ireland, Latvia, Lithuania, Luxembourg, Hungary, Germany, Poland, Portugal, Czech Republic, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Information covered by the paper are based on the replies of parliaments of mentioned countries to the questionnaire of the European Centre for

¹ Andrijana Bilić, *Rad na daljinu prema međunarodnom, europskom i hrvatskom radnom zakonodavstvu*, Zbornik radova Pravnog fakulteta u Splitu, god. 48, 3/2011, pp. 631.

² *Sixth European Working Conditions Survey was carried in 2015 in 35 countries. First findings: Sixth European Working Conditions Survey*, pp 7-8.

http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1568en.pdf

Parliamentary Research and Documentation (ECPRD) No. 3187 named „*Legislation on alternating teleworking* ".³

MAIN RESEARCH FINDINGS

The main research findings are based on the analysis of the replies of countries covered by research to the ECPRD questionnaire. In accordance with information covered by the replies, it is evident that the issue of telework, in most countries, is governed by the provisions of labour law, whereby in certain countries, it represents the question of agreement between the employee and the employer (**Luxembourg, Sweden**), or it is determined by the collective agreement (**Finland**).

Legislation of the most countries (e.g. **Croatia, Latvia, Hungary, Slovenia**) provides that the employment contract must contain a precise definition of the place of work. Additionally, a worker who performs work in his/her own home or at other premises has the same rights as a worker who works at the premises of the employer, including the right to participate in management and in union organising (e.g. **Slovenia, Portugal, Spain**). Also, the legislation stipulates the obligation of the employer regarding undertaking protection measures related to health and safety in place of work (e.g. **Croatia, Hungary, Poland, Slovenia, Spain**), and providing, installing and maintaining the equipment that is necessary for the employee's work (e.g. **Croatia, Poland, Slovakia**).

In addition, the legal solutions envisage the possibility of telework termination. For instance, in **Greece**, any of the parties, after a fifteen days' notice, may terminate the telework. Also, in **Poland**, if it begins during the employment, within 3 months each of the parties may submit a binding request to stop working in the form of telework and to reintroduce the previous conditions of work. In **Ireland**, in some cases, however, it may not be possible to reverse the decision to telework. For example, accommodation at the employer's premises may have been reduced as a consequence of the fact that employees are now teleworking. Similarly, the costs of reversal may be too high. Consequently, the circumstances in which a decision to telework cannot be reversed should be spelled out at the beginning in the individual's agreement (e.g. where the initial job description was for a home worker).

According to legal solutions, in **Lithuania**, an employer must allow teleworking for at least 1/5 of all working time at the request of a pregnant woman or breastfeeding woman, or an employee who raises a child up to 3 years of age, or an employee who alone takes care of children up to 14 years of age or disabled children up to 18 years of age. In **Portugal**, in line with the Law, workers who are victims of domestic violence can, at their request, provide their service under a telework regime, and as well as the workers with a child under 3 years of age are entitled to work under a telework regime as long as this is compatible with their activity and the employer has the resources and means available for the purpose of such work. Also, the provision of Law prohibits employers from opposing a worker's request. In **Slovakia**, an employee shall not be considered to

³ ECPRD Request No. 3187 „*Legislation on alternating teleworking*“, 27.09.2016 Information covered by replies to ECPRD questionnaire do not present the official position of the parliaments and can be used only after the approval of the author.

perform home work or telework if he/she works at home or at another agreed workplace than usual only occasionally or in exceptional circumstances with the consent of employer or under an agreement with him/her subject to the condition that the type of work that the employee performs under the employment contract allows this.

In line with the Labour Law of **Croatia**, the violation of provisions of employment at alternative workplace is considered as one of the most serious offences by employers. A fine in an amount ranging from 8.040€ to 13.181€ shall be imposed on the employer who is a legal person, for concluding a contract of employment at alternative workplace for works that may not be subject to such agreement.

In the **United Kingdom** and **Netherlands**, in line with the Employment Rights Act, i.e. the Flexible Work Act, the qualified employee with at least 26 weeks of continuous service may apply to his employer for a change in his terms and conditions of employment if the change relates to the working hours, place of work and/or work times. Employer may refuse the application because of the financial or organizational reasons.

The complete document in Montenegrin language is available at:

<http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/2017/11.pdf>