

The Role of the State in Regulating Work from Home: The Cases of Croatia and Estonia



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Ever since the first lockdown in 2020, the world has been going through some radical changes. Social distancing became a rule. Everyday life, in general, has changed and people focused on the prevention of the spread of the virus. While governments were buying time, an inevitable change in the economy happened. Hastened by the COVID-19 pandemic, the workplace has changed – and that change is here to stay¹.

Due to lockdown and, at that point, an unprecedented set of rules and regulations, a vast number of companies have to now resort to working from home. Simply doing your work, which was for many originally intended for work from the office, from home. But the change itself has not been unexpected. Many companies had already anticipated that the change was coming, but not quite so suddenly. Virtually overnight, the concept of working from home has impacted almost everybody.

Naturally, there are jobs that simply cannot move *online* like essential and production line workers. Still, some governments, like the one in Croatia, were unprepared to recognize this new way of doing business. Hence, in their attempts to define what work is and regulate everything pertaining to such work, they have left the companies with vague descriptions of new working arrangements and poorly defined terms and conditions of such work. Such legislation and regulation further emphasizes that government should leave the vast majority of such arrangements to the parties involved.

¹ Fox, J. (2020) "The New Battles to Come Over Working from Home", [in]: *Bloomberg*. Available [online]: <https://www.bloomberg.com/opinion/articles/2020-12-17/the-new-battles-to-come-over-working-from-home?sref=QNwK5RQe>

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WHILE GOVERNMENTS WERE BUYING TIME, AN INEVITABLE CHANGE IN THE ECONOMY HAPPENED. HASTENED BY THE COVID-19 PANDEMIC, THE WORKPLACE HAS CHANGED – AND THAT CHANGE IS HERE TO STAY

Moreover, existing problems in the job market, like lack of general flexibility to hire and fire employees, has further slowed down and it can play a role in preventing more robust economic growth. There are two factors that can help any nation to get out of the economic downturn faster, less government involvement and more digitalization. Finally, after the article explores the issues currently shaping the Croatian labor market, a limited comparison is made with the Baltic state of Estonia, a pioneer in digitalization and an example of how work is best regulated, in which Croatia may learn some lessons.



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The COVID-19 pandemic has changed the way we work. More precisely, it has accelerated the processes that were already underway. Working from home is now preferred and, in many ways, the only way to earn your paycheck. For many, it all began in March of 2020 when COVID-19 cases started rising all across Europe. Many countries did the only thing that seemed sensible at the time: lockdown.

Lockdown was a way to simply *buy time*, and hardly anyone can argue that a different course of action would be more successful. Why? Back in 2020, the COVID-19 virus was in many ways an unknown. We

had no information on it, except for a few indications of what symptoms might be. Further, we only had the numbers of infected individuals and those who died from COVID-19 in China. Reasonably, one could have suspected back then that China was not fully forthcoming when it comes to the spread and contagion of the disease. Many cases were not reported initially, doctors were silenced, and many facts were *altered* in the process, further undermining our effort to fight the upcoming pandemic². Hence, during the first months of 2020, Europe virtually had no choice but to choose public health above the economy, and almost every country followed that.

Urgently and primarily, it was necessary to address the capacity and needs of the healthcare system, as well as to inform the public of the severity of this virus, and most importantly, to make sure that even though the vaccine trials were months away the healthcare system was not overwhelmed. Ultimately lockdown was the only measure we could take at that time that not only sent a clear signal to everyone how dangerous this virus is, but also buy us some time before vaccines arrived.

This is the point where society reached the first crossroad. While lockdowns happened in many countries around the world, the strength of each individual lockdown was different. In almost every country in order to stop the spread of the virus, the hospitality sector was hit hard. Some countries closed even more sectors and also schools. It is 2021, many governments still see the lockdown as the best and only way to fight the COVID-19 pandemic. The COVID-19 virus remains to

² Porčnik, T. (2020) "Access to Information in Times of Crisis.", [in]: *DisinforNation: Disinformation Practices in CEE*, 4liberty.eu Review, No. 13, p. 45.

this day something we still have to decode, no doubt, but we are ahead in many ways. Multiple vaccines work.

But no matter where you live and work, no matter how tough the lockdown is, many had to adapt to the new reality of working from home. In many countries, the idea of working from home was a mere curiosity, nothing more than a possibility or a letter on a piece of paper nobody adhered to. 2020 and the pandemic changed all that.

Working from home has become the only way to keep companies afloat and to follow the government's restrictions on social distancing. No more a curiosity, but a way the economy runs. Work from home now requires many companies to adapt and to shift their business to the online world. As it always is with the private sector, companies shifted almost overnight to ZOOM meetings, Google Meetings, MS Teams,

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and others, accompanied with their own intranets and other solutions they found along the way. What was once considered impossible, the monumental shift from office to work from home was done with remarkable success. Of course, most of the companies had their internal processes and flexibility tested, but most of them passed the test.

WORKING FROM HOME, TELEWORKING, AND TELECOMMUTING

Terms like remote working, telecommuting, and working from home are used interchangeably. Hence, their definition could prove useful for clarity of the discussion. According to the International Labor Organization (ILO), and their guidelines, working from home (WFH) is defined as:

“a working arrangement in which a worker fulfills the essential responsibilities of his/her job while remaining at home, using information and communications technology (ICT). For the purpose of this guide and in the context of the COVID-19 pandemic, the term “working from home” is used to refer uniquely to home-based teleworking as a temporary, alternative working arrangement. It requires shared responsibility and commitment by both employers and workers to ensure business continuity and employment.”³

In an additional explanation, all terms are very similar and some “may imply a temporary arrangement while others may imply a long-term arrangement.”⁴ It goes further in explaining the difference between WFH

³ International Labor Organization, (2020) *An Employers' Guide on Working From Home in Response to the Outbreak of COVID-19*, p.5. Available Online: https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--act_emp/documents/publication/wcms_745024.pdf

⁴ Ibid.

and telework. By their definition, WFH is considered a “home-based telework”, while telecommuting and telework refer to substituting telecommunications for commuter travel. There are some differences between the terms teleworking and telecommuting, mainly because telework is broader and may not always be a substitute for commuting, but they are relatively minor.

To summarize, working from home is a temporary arrangement and the difference is that teleworking can imply working from other premises other than a primary one (mobile working). As much as it was a great change, there is a myriad of issues that accompany WFH. Both good and bad, as well as implications for the future.

THE GOOD, THE BAD, AND THE UGLY

One advantage of working from home is definitely a better balance between work and personal life. More flexibility in one’s life is a step forward and may lead to not just more productivity, but also better results all around. For many employers who feel distrustful toward this kind of work, it is time to adapt to the new reality and to include this possibility into their organization, because work from home is here to stay⁵.

Good balance between work and personal life is most certainly going to help reduce stress and encourage individuals to deal with everyday challenges they are facing on a day-to-day basis⁶, plus a couple

⁵ Barrero, J. M. , N. Bloom, and S.J. Davis (2020) *Why Working from Home Will Stick*, University of Chicago, Becker Friedman Institute for Economics Working Paper, No. 2020(174).

⁶ Mauer, R. (2020) “Study Finds Productivity Not Deterred by Shift to Remote Work”, [in]: *SHRM*. Available [online]: <https://www.shrm.org/hr-today/news/hr-news/pages/study-productivity-shift-remote-work-covid-coronavirus.aspx>



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more during these difficult times. Also, if their employer decided to give them that option, working from home does provide a certain amount of security, job-wise.

One of the big changes that came with more work from home is definitely lower or no commuting time. Therefore, not only are the employees saving time, but also they are saving money both for them and for the employer. Further, a side benefit is a reduction of the carbon footprint⁷. Moreover, less commuting means less traffic - for those who cannot work from home or have already come back to their offices, which means less time spent on

⁷ Newburger, E. (2020) “COVID Pandemic Drove a Record Drop in Global Carbon Emissions”, [in]: *CNBC*. Available [online]: <https://www.cnbc.com/2020/12/11/covid-record-drop-global-carbon-emissions-2020.html>

commuting. A win-win situation for everybody, including the planet? Not really. Well, not for long.

We have, indeed, seen a significant drop in CO2 levels and emissions since the beginning of the COVID-19 pandemic. According to new research from the University of East Anglia, the University of Exeter, and the Global Carbon Project, global greenhouse emissions plunged by roughly 2.4 billion tonnes in 2020, a 7% drop from 2019 and the largest on record, of course, caused by COVID – 19 restrictions. The United States dropped 12% in carbon emissions, the European Union 11%, India 9%, and China just 1.7%. While everything here looks good and it seems that this drop will be permanent, it is quite clear that it is a temporary one and the carbon levels will quickly rebound the moment world economy gets back on its feet. The same thing happened during the 2007-2008 world financial crisis, after which carbon levels rebounded higher than ever before. That is why scientists are urging a green transition to renewable sources of energy and new technological innovation.

An additional point in favor of the work from home is flexibility. As it has always been, the private sector is very resilient and strong when given room to grow and innovate. Working from home allows for greater flexibility in finding a new workforce, the ability to grow employee satisfaction, and to be more prepared for the next major crisis which will hit. For employers, this flexibility comes in the form of hiring more individuals from all around the world, without any need to go through the long process of helping the employee move into the country (or city) where the company is located. Employers can thus expand their efforts across the continent and the world and reach the very best talent they can.



WORKING FROM HOME DOES PROVIDE A CERTAIN AMOUNT OF SECURITY, JOB-WISE

For employees, this means more inclusivity and a better chance of getting a job in the work market if no geographical obstacles are lying in front of them. Furthermore, this removes any obstacles of a financial nature that young people might be facing when moving into another country or city. For many young and talented people, this way of work will be their first and they will appreciate it for the most part. Flexibility may, therefore, be the only way to survive this pandemic and the crises companies will face going into the future.

When it comes to the negative aspects of working from home, there are not any problems with working from home that might relate to the very nature of such work. However, there are many circumstantial events that are already in place or will prove to be an insurmountable obstacle for some companies – be that solely because they lack the flexibility. In such a case, it is for the market to resolve and for the government not to meddle in the private sector beyond the absolute minimum.

In any event, work from home opens up a whole different set of issues that must be addressed. First, while work from home



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does offer a good balance between personal life and work, for some employees and their families this means an increased possibility for cases of domestic violence. It is a problem that is growing and it is the complete opposite of *stay home, stay safe* catchphrase. While many of us seek safety in our homes and feel safe there, this might not be the case for everybody.

Second, the distractions, which are abundant within your own home, can prove to be quite detrimental for someone's professional results. That point can lead to some other negative consequences, like a lack of motivation⁸, which can impact productivity because of the lack of working environment and lack of social contact

with coworkers. It is very difficult to casually chat with them over video calls. The last and most important point would be a lack of clarity in the national legislation as to what constitutes work from home.

A law may fail to specify what the obligations and commitments are for both employer and employee. It is bad enough that the government tries to regulate anything when it comes to the employer-employee relationship, but it is even worse when it tries and fails. In such a situation, which may be considered the absolute worst, economic entities are forced to rely on a set of rules, which raise more questions than answers and are accompanied with an additional lack of flexibility already present on the job market, which does not allow the economy to achieve the best results possible. Below, the article will illustrate what has just been said on the case of Croatia – how the Croatian government approached working from home during the COVID-19 pandemic and what the solutions to the situation at hand are.

CROATIA: NATIONAL LEGISLATION

The current situation in Croatia regarding working from home from a legal perspective is defined by the Labor Law⁹, which was enacted in 2014 and saw only minor changes since. The aim of the new Labor Law was to give more flexibility to the ailing economy after the economic and financial crisis, and to provide the private sector an easier access to the job market to exit the deep recession Croatia has found itself in.

Favorable labor legislation may lead to greater flexibility on the market when, in terms of the process of employment termination and hiring becomes less

⁸ Fox, M. (2020) "Remote Work Burnout Is Growing as Coronavirus Pandemic Stretches On", [in]: CNBC. Available [online]: <https://www.cnbc.com/2020/07/28/remote-work-burnout-is-growing-as-coronavirus-pandemic-stretches-on.html>

⁹ Zakon.hr (2014) *Zakon o radu*. Available [online]: <https://www.zakon.hr/z/307/Zakon-o-radu> [in Croatian]



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complicated, both having positive effects on the recovery of the economy¹⁰. The favorable labor legislation would simply mean that no excess of regulation stands in the way between the company and the talent, while flexibility on the market would imply greater flow of workforce. However, the flexibility also depends on the structure of the workforce and the levels of education, as well as having appropriate talents available. What is needed is that companies have better access to the job market and vice versa. The dynamic job market is the best guarantee for the nation that the recession will end at the earliest point, and that not a single extra job will be lost, besides the ones that have fallen as a result of the inevitable rules of the economy in a downturn.

In Croatian labor legislation, there is a single article with the intention of regulating remote work. Many questions, which were justly raised in this article, found no answer

or the answer was not good enough. Article 17 of the law mandates that the contract between the employer and an employee which regulates remote work must contain, besides the usual information, the following extra details: work hours, tools and equipment that the employer must obtain, set up and maintain, usage of employees own tools and equipment and compensation as a result of that use, compensation of other expenses to the employee that might arise from doing work, and various details on professional education of the employee during such work. After that, what follows are a couple of more paragraphs pertaining to the employee's compensation: it should not be lower than the pay of an employee working from the office, the employer is obliged to provide safe working conditions and cannot deny the employee a right to a daily break, as well as weekly and annual vacation.

The current Croatian labor legislature is unclear¹¹, even though there is an abundance of rules and regulation defining and regulating job's market. The situation can be described as rigid labor laws that are colliding with a very nimble and flexible concept of work from home¹². The reality (now) of working from home is that employers and companies are in a situation where they do not know how to deal with the scenarios that will most likely come up.

¹⁰ Lider Media (2020) *Rad od kuće: Što žele Vlada, sindikati i poslodavci, a što je sada moguće napraviti*. Available [online]: <https://lider.media/sto-i-kako/rad-od-kuce-sto-zele-vlada-sindikati-i-poslodavci-a-sto-je-sada-moguće-napraviti-134272> [in Croatian]

¹¹ Lider Media (2020) *Rad od kuće: Površna zakonska regulative otvorila mnogo pitanja na koja se traže hitni odgovori*. Available [online]: <https://lider.media/sto-i-kako/rad-od-kuce-povrsna-zakonska-regulativa-otvorila-mnogo-pitanja-na-koja-se-traze-hitni-odgovori-134983> [in Croatian]

¹² Milovan, A. 2020. "HUP traži da u ZoR uđu izvanredne situacije te definiranje rada od kuće, sindikati protiv", [in]: *Jutarnji list*. Available [online]: <https://novac.jutarnji.hr/novac/hup-trazi-da-u-zor-udu-izvanredne-situacije-te-definiranje-rada-od-kuce-sindikati-protiv-10252915> [in Croatian]

When it comes to work hours, the law only mentions them and that they must be addressed. However, are they going to be more flexible, is the employee going to work from nine to five every day? If not, how is anybody going to know? Furthermore, because the worker is staying at home, is the company going to be responsible for compensating them for the utility bills? What about the travel compensation, is that going to be necessary? What about the equipment the employer must provide for the employee? Do they have an Internet connection at home? Do they have laptops? And what about work-related injuries? How does one address those issues? Simply put, the reality of the current situation is that things are much more flexible and less susceptible to regulation from the state than ever before.

It is vital for every state to create a job environment that is adaptable and quick enough to counter many negative circumstances economic reality is facing every day. However, the current flaws and lack of clarity in the most recent labor legislation highlighted some of the problems Croatia was facing for a long time now.

Croatian employment laws are quite rigid. It is very difficult to fire an employee, even more so someone with a contract for an indefinite period. Hence, both companies and employees must resort to *legal gymnastics* in order to terminate employment and achieve the only solution, a “mutually terminated contract”. This level of inflexibility on the labor market in Croatia has contributed to low GDP growth at every stage of the economic cycle.

The current public debate among lawmakers, unions and employers can be perfectly summarized in several points. First, a more detailed definition is needed when defining work from home, which is currently



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defined as “work in a separate workplace”. The details actually include whether the employer must obtain a specific kind of table and how is an employer going to make sure if the workplace is meeting all of the criteria. Second, whether the employer is going to compensate the worker for possibly higher utility bills – the Parliament in Switzerland¹³ has gone in that direction, for example. Third, the Croatian Employer Association (HUP) is looking for a clearer definition of the material rights of the employees, like travel expenses and severance packages. Finally, Croatia needs easier hiring and termination of employment, less paperwork, and bureaucracy. Examples would be a strict measurement of employee efficiency and monitoring of work hours. Unfortunately, one of the most important stakeholders in this debate are the unions, and they are opposing any kind of meaningful change and are, therefore, effectively preventing greater flexibility of the job market which will ultimately benefit everyone.

¹³ Swissinfo.ch (2020) *Court Decision: Companies Must Pay Share of Rent for Employees Working from Home*. Available [online]: <https://www.swissinfo.ch/eng/court-decision-companies-must-pay-share-of-rent-for-employees-working-from-home/45781126>

The government's role in this new reality of a more fluid and dynamic environment is to regulate as little as possible. It is apparent that the government's attempt to regulate work is stifling economic growth. To be able to exit the recession(s), the private sector needs to be given as much space as possible. Gone are the days of working for one company in the span of a person's life. Companies now look for individuals who can adapt to the new reality, learn fast and solve problems never seen before. The government simply cannot do that and it would be foolish to even



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try beyond the absolute bare minimum. Defining the basics and letting the company and the employee(s) sort out their relationship. Everything is voluntary and everything is according to one's capabilities. However, there is also one major element that will help not only the labor market become more flexible, but which also has the capability to make the government smaller and its presence to be less visible: digitalization.

COMPARATIVE ANALYSIS: ESTONIA VIS-A-VIS CROATIA

To look for ways to move forward in terms of digitalization when it comes to a large part of the public sector, it is prudent to take lessons from those that have not only achieved a greater level of digitalization, but also excel at it. There are countries in Europe that have done remarkably well when it comes to transforming the public sector into a digital oasis to make things done faster, more efficiently, and with less trouble all around. The article selects the small Baltic country of Estonia, which stands out as a trailblazer for many on digitalization and e-governance. In fact, 99% of government services and procedures have been digitalized in Estonia. In order to make the labor market more flexible, technology can be very helpful. Technology helps the government to be a little bit less intrusive and present in the lives of the citizens. The whole effort of digitalizing the government can also be seen as a continuous desire to make government govern less – eventually, with time perhaps, even in the area of legislation. In the case of Estonia, e-government has been somewhat of a generational project, however, now that is mostly complete and Estonia is trying out some new experimental solutions like e-voting and a digital embassy, we can take a look at some of the numbers summarizing Estonian progress in digitalization and compare it with Croatia.



IT IS TRUE THAT ECONOMIC GROWTH WILL RETURN IN 2021, AND THAT THE MAJORITY OF THE WORLD WILL BE BACK TO PRE-PANDEMIC ECONOMIC LEVELS IN 2022. BUT NOT EVERY COUNTRY WILL GET BACK UP WITH THE SAME SPEED

Estonia occupies third place on the UN's E-Government Development Index (EGDI), with a score 0.9473, trailing only behind Denmark (first) and the Republic of Korea (second), with a score of 0.9473. Croatia on that same list holds 51st place with a score of 0.7745. EGDI takes into account the three most important dimensions of E-government: scope and quality of online services (OSI), development status of telecommunication infrastructure (TII) and inherent human capital (HCI). This global survey is conducted on a biannual basis. Estonia saw a jump from 20th place in 2010

to third place in the newest 2020 survey. Croatia, on the other hand, had steadily declined from 35th place in 2010 to 51st place in 2020, with the biggest problems in scope and quality of online services (OSI)¹⁴.

What is the secret to Estonian success? On a more empirical side, we can mention the size of the country. With little over 1.3 million people living in the country making any nation-wide project is much easier and less complicated. But the process itself cannot really depend on the size of the country alone. The success really depends on the nation and the mentality of it. The whole process of digitalization, as I have mentioned before, can be seen as an aspiration to move the government away from all but essential duties. Probably the most important fact in this section is very clear. In Estonia, a large majority of the affairs between the employee and the employer is left to the parties involved. Apart from the basic requirements of protecting workers' rights, which resides with the government, it is up to the company to define the terms and conditions of working for it. Here are a few details of how major elements of the employment contract are defined when WFH is in question.

Work from home is a very flexible way of working and it is impossible to regulate it the old-fashioned way. As a comparison, in Estonia the decision on the contractual relationship between an employer and employee is left to the parties. Furthermore, in Estonia, it is up to the employee to note how they are going to be reachable (i.e. WhatsApp, MS Teams, ZOOM, etc.). Next, the employer covers the costs of any work equipment to some extent. However, any costs relating to the equipment must be laid out in the agreement – it is

¹⁴ See: <https://publicadministration.un.org/egovkb/en-us/Data/Compare-Countries>



NO COUNTRY CAN MOVE FAST IF IT DOES NOT DEAL WITH INTERNAL LABOR MARKETS, WHICH HELPS FACILITATE FASTER ECONOMIC GROWTH

not automatically given. Along those lines, costs of office equipment are only covered partially, as the equipment may end up being used by someone else in the household or used outside working hours. So instead of regulating even further, the company gives out a certain amount of funds and accounts for all of the taxes. While some costs are one-time payments (i.e. a chair, a table, a pair of headphones), others are given on a monthly basis – such as costs of heating and electricity. But again, such costs are agreed upon and do not cover the full amount.

At last, when it comes to occupational health and safety requirements, in Estonia, the employee signs the agreement confirming that they are fully aware of any such requirements and that their place of work is in conformity with occupational health and safety requirements. If the employer has reasonable doubt that the workplace is not up to the standards, it can inspect the working premises with prior 14-day notice.

CONCLUSIONS

2020 has been a year in which the Croatian government has entered the private sector on a scale unimaginable just a year before. Apart from bailing out companies, giving loans, and encouraging investments on a massive scale, it gave a monthly paycheck to people employed in the private sector (!). The level of government involvement is going to take years to rollback. However, the slower we are in removing that involvement, the worse it will get. The private sector is currently struggling, and while that is not the case for every industry and every company, the recession is the evidence that the economic slowdown is here.

It is true that economic growth will return in 2021, and that the majority of the world will be back to pre-pandemic economic levels in 2022. But not every country will get back up with the same speed. Some will grow faster, others slower. The growth will be determined by many external factors, as well as some internal factors. Needless to say, we have no power over external factors. Some major economies are still in lockdown, and their trading partners are heavily reliant on their economic growth. For Croatia, that would be Italy and Germany. Both countries are either in lockdown or are implementing strict measures on a city-by-city basis. The economic growth of major European economies will result in the economic growth of the entire continent. Recovery in the United States will speed up the recovery of the European Union. So, while we cannot influence external factors, we can work from within to help our own economy grow, or to become more resilient in the future.

For Croatia, one of the major reforms must be in the area of the labor market. No country can move fast if it does not deal with internal labor markets, which helps



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facilitate faster economic growth. Croatian legislature is slow, inefficient, and ineffective. It leaves companies wondering what to do. If you cannot fire an employee, or this may be very difficult, it will inevitably lead to inefficiencies. Consequently, many companies do not follow the law. The government's role is simple. Give as much power as possible to the companies themselves. Let them take charge of the provisions laid out in the contract, let them work it out with the employees, and let the majority of the process run on companies' internal regulations, manuals, and rule-books.

Work from home is definitely something that should be mostly regulated internally by the companies. Government should stay out as much as possible when it comes to the agreement an employer will have with its employee if they have chosen a work from home as a preferred way to run their business, simply because it is flexible in every aspect. Furthermore, I would

say one of its advantages is creativity and innovation it allows and encourages. Many aspects of being employed in such a way simply cannot be effectively regulated by the government. A government's heavy hand can put many employers at a disadvantage where they will simply not be able to provide for employees everything a government sees necessary, or to a required level. If the government tries to regulate aspects of WFH (employer's obligation to pay utility bills, to provide an Internet connection, office equipment, etc.) can lead to overregulation, which in return, in my opinion, largely defeats the purpose of WFH. There is a role for the government to play, but it remains within the limits of making sure that fundamental regulations are followed, which will prevent exploitation and violations of worker's rights.

A flexible labor market means a faster recovery. Most importantly, we have to start giving more freedom and flexibility to the private sector when it comes to hiring talent and letting them go. But in order to do that, we must allow technology to make the government govern more efficiently through digitalization.

A small and digital government with less bureaucracy and administration is a benefit that will be here for generations. Baltic states (with Estonia being the most notable example) have done it, and that same thing can be done in Croatia – gradually. But if we reach the point where people have a faster, leaner government, the economy will blossom, because the very best thing for the private sector is to have the government out of their business altogether.

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