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## **Expert Report on the Implementation of the Social Partner's Framework Agreement on Telework**

**Authors: Jelle Visser and Nuria Ramos Martin (\*)**  
**Amsterdam, January 2008**

(\*) We like to thank Prof. Dr. Evert Verhulp for his invaluable legal advice and Linda Goudkade for her competent assistance with the research for this report. We wish also to express our thanks to the representatives of the European social partners for their time and assistance, during the interviews and helping us to receive further information from national affiliates. Further thanks go to Christan Weltz of the European Foundation for the Improvement of Living and Working Conditions for his advice and assistance with collecting material, and to the officials of the European Commission for their assistance with information gathering, explaining details in European consultation process and critical comments. It goes without saying that the responsibility for this report, and for all errors and judgments, rests solely with its authors.

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## Executive Summary

This report examines the implementation of the first autonomous agreement signed by the European social partners. The European Framework Agreement on Telework of July 2002 is to be implemented “in accordance with the procedures and practices specific to management and labour and the Member States”, using the *first* implementation route of Article 139 (2). The report describes and examines the measures taken in the 27 Member States of the European Union as well as Iceland and Norway. For this purpose a great many sources – from the social partners themselves, the European Commission, public authorities of the Member States, and independent researchers – have been studied.

The report has six chapters. In chapter one we discuss the rise of telework as an issue for social dialogue and regulations, in conjunction with a review of the autonomous turn in the European social dialogue and the shift to new, less centralised and less standardised modes of governance and implementation in industrial relations and labour regulation in Europe. Chapter one establishes the issues at stake when evaluating the implementation of the European Framework Agreement on Telework. This is followed by chapter two on the sources, data and methodology of the research at the basis of this report. Chapter three discusses the incidence and intensity of telework, using various sources, among others the Fourth European Working Conditions Survey, of 2005, and a Database on eWork; chapter four evaluates the critical issues in the implementation process, seen against the background of the second stage consultation document of the Commission and the social partners’ Framework Agreement on Telework. Chapter 5 describes the implementation measures in each of the 29 countries. Chapter six, finally, offers conclusions and recommendations.

Our assessment of the social partners’ actions to implement the 2002 Framework Agreement on Telework is positive, in spite of several shortcomings in the implementation process and uneven coverage. The Telework Agreement itself addressed most of the issues relevant for telework and teleworkers listed in the document prepared by the European Commission for the second stage of the consultation with the social partners. In all but few Member States, the national social partners, jointly, alone or with assistance of the public authorities, have tried to fully implement the Agreement of 2002. In few Member States this process has not yet been completed or started, in some the implementation is as yet inadequate.

Positive in our judgement is the fact that the European social partners have become quite aware of the responsibility they have and that they are realising that this responsibility requires proper reporting and monitoring activities on their part, as well as assistance to national social partners in many cases. With the passing of time, they have become more recognisant of this requirement and it seems that they have learned from the implementation

history of the telework Agreement for the future. As is to be expected given the variety of practices and procedures in the European Union and the European Economic Area, national social partners have used different implementation instruments and in few cases the legislator has intervened, though usually after consultation with or agreement between the social partners. As a consequence, the results differ in terms of coverage, probably also in terms of compliance and focus on the target group. It is possible that a national law provides more coverage and that collective bargaining gives more focus, but the point is that this is not specific for the telework issue. Similar differences exist when regulating other issues, irrespective of whether they have originated in European law.

Our final conclusion is that in implementing the Telework Agreement most social partners and Member States have followed, as intended, methods “in accordance with the procedures and practices specific to management and labour and the Member States”. There were really very few surprises, though some interesting examples of renewal of the social dialogue process itself were noted, for instance in Poland and the UK. There were also problems, especially in member States where there are hardly established practices and procedures. We argue that the differences in coverage that result from this procedure are or need not be a major problem if, as in the case of telework, one seeks to promote and facilitate a particular condition or organisation of work. This is different in the case of minimum rights. We add that, as a mainstreaming process, the implementation of Telework Agreement is not a finished process and that the European social partners plan further monitoring and awareness raising actions in the future.

## Introduction

The Amsterdam Institute for Advanced Labour Studies (AIAS) at the University of Amsterdam has assumed the task of writing an expert report on the implementation of the European Social Partner's Framework Agreement on Telework (henceforth: Telework Agreement). This expert report has been written by the institute's scientific director, Professor Jelle Visser, together with Dr. Nuria Ramos Martin, a legal expert affiliated with AIAS and the Hugo Sinzheimer Institute at the University of Amsterdam. Legal advice has been given professor Evert Verhulp, of the Hugo Sinzheimer Institute, while the competent assistance of Linda Goudkade is gratefully acknowledged.

The report deals with the implementation of the first autonomous agreement signed by the European social partners. The Telework Agreement was the fourth cross-industry agreement. The three previous agreements reached by the European social partners, on parental leave, part-time work, and fixed-term work, were ratified by a decision of the Council of Ministers and are now part of EU legislation.<sup>1</sup> They used the *second* implementation route mentioned in Article 139 (2) of the EC Treaty.<sup>2</sup> In contrast, BUSINESSEUROPE (formerly UNICE), UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC), decided to implement the Telework Agreement, "in accordance with the procedures and practices specific to management and labour and the Member States", using the *first* implementation route of Art. 139 (2) ECT.<sup>3</sup> The Implementation of the Telework Agreement had to be carried out within three years after the date of the signature of the agreement. When the Telework Agreement was signed in 2002, the European Union had fifteen Member States. The social partners from countries that later joined the EU were invited to implement the agreement, like Norway and Iceland, as part of the European Economic Area.

The Telework Agreement identifies key issues requiring adaptation or particular attention when people work away from the employers' premises while using information technologies. These issues are: employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training, and collective rights. Particularly important is the *voluntary* nature of the decision to telework and the possibility to reverse such a decision at some later point in time.

The Telework Agreement is the first of the so-called 'autonomous' agreement and was later followed by European Framework Agreements on work-related stress (October 2004) and on violence and sexual harassment at work (April 2007). With these agreements, the social partners assume a greater responsibility for proper implementation.<sup>4</sup> For the

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1 Directive 96/34/EG 1996, L 145/5 19 June 1996; Directive 97/81/EG 1998, L 014 20 January 1998 and Directive 1999/70/EG 1999, L 175, 10 July 1999.

2 Article 139 (2) of the Treaty reads: "Agreements at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour in the Member States, or, in matters covered by article 137, at the joint request of the signatory parties by a Council decision on a proposal from the Commission".

3 Article 12 of the Telework agreement reads: "(...) this European framework agreement shall be implemented by the members of UNICE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) in accordance with the procedures and practices specific to management and labour in the Member States".

4 This was confirmed to us in interviews, conducted in October 2007, with representatives from the four parties that had signed the agreement.

implementation of autonomous agreements to be effective, national social partners need to be fully involved in the implementation procedure of the autonomous agreement adopted at supranational level. Member states, albeit not formally obliged to guarantee transposition of the agreement to the national level,<sup>5</sup> may still have an important role in supporting the implementation process. Implementation of autonomous agreements depends on the quality of industrial relations systems, on the representativity and administrative capacity of the national (and sectoral) members of the European organisations, as well as on the dissemination and monitoring activities of the European social partners themselves.

The four organisations that signed the Telemwork Agreement, decided to engage in dissemination and monitoring activities, to set up an ad hoc group under the responsibility of the Social Dialogue Committee and to prepare a joint report on implementation of the agreement within four years of signing the agreement.<sup>6</sup> The Commission decided to be actively involved in the process and undertake its own monitoring of the implementation of the Telemwork Agreement.<sup>7</sup> Concerning its monitoring role, the Commission acknowledges that the implementation process of autonomous social partner agreements differs from the one of implementing a Directive, mainly because of the lack of an obligation of the social partners or the Member States to notify the implementation measures adopted. However, the Commission considers it necessary to assess whether the adopted implementing measures fulfil the Community's objectives outlined in the consultation documents that preceded the decision of the social partners to negotiate their own agreement, taking into account that the Telemwork Agreement originated in a consultation process initiated by the Commission. The need to undertake this assessment is justified in democratic terms by the fact that, when reaching a framework agreement, the European social partners are substituting the European institutions in producing social regulation at EU level. In order to undertake that assessment, the Commission has asked AIAS to examine the implementation of the Framework Agreement on Telemwork in all 29 Member States of the EEA, taking into account the contribution to Community objectives and the potential for innovative social governance.

The report has six chapters. In chapter one we discuss the rise of telemwork as an issue for social dialogue and regulations, in conjunction with a review of the autonomous turn in the European social dialogue and the shift to new, less centralised and less standardised modes of governance and implementation in industrial relations and labour regulation in Europe. Chapter one establishes the issues at stake when evaluating the implementation of the European Framework Agreement on Telemwork. This is followed by chapter two on the sources, data and methodology of the research at the basis of this report. Chapter three discusses the diffusion of telemwork; chapter four evaluates the critical implementation issues, whereas chapter five offers detailed reviews of the implementation process in the 29 countries. Chapter six offers conclusions and recommendations.

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5 See Declaration no. 27 to the Article 139 (2) ECT: "this arrangement (i.e. the first implementation route in 139 (2), auth) implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, not any obligation to amend national legislation in force to facilitate their implementation.

6 Article 12 of the Telemwork Agreement

7 See European Commission, *Partnership for Change in an Enlarged Europe: Enhancing the Contribution of the European Social Dialogue*, COM (2004) 557.



# 1. Research Context and Questions

## 1.1. *Telework as a theme of the European social dialogue*

Telework is an important new form of work, still modest in size but bound to become more widespread in the future, if only to avoid traffic congestion and meet the objective of sustainable growth with lower CO2 emission. It could play a key role in attaining “smart-growth”.<sup>8</sup> Since long it was recognized by the European Commission as an innovative practice that might help to bring about a better balance between the demands of work and family, and permit more people to enter employment by working from their homes. Telework started to climb the Commission’s agenda in the 1990s and in 1999-2000 the promotion of telework opportunities became a component in the Commission’s proposals for a Strategy for Jobs in the Information Society, including a recommendation to “set up framework conditions and practical arrangements to enable telework to take place on a wider scale”.<sup>9</sup> Within the Lisbon Agenda, achieving an “Information Society for All” became an important objective. A High-Level Group report stressed the importance of telework for disadvantaged people and regions.<sup>10</sup> Separately, DG Employment and Social Affairs sponsored from 1998 pilot projects and research on equality and telework, which led to concrete proposals and guidelines.<sup>11</sup> Telework was identified, together with parental leave, part-time and fixed-term employment, as one of the modernising practices calling for proper regulation. In the context of the European Employment Strategy and the Lisbon Agenda, the European Council encouraged the social partners to negotiate agreements modernising the organisation of work, including telework, with the aim of raising employment levels, improve the quality of work and make undertakings more productive and competitive, while achieving a balance between flexibility and security. In 2001 the Commission included telework in its consultation document for the social partners.

Some Member States had also begun to promote telework. In Sweden, Finland, Ireland and Germany telework was proposed for the purpose of employment creation in remote areas; in the Netherlands it was linked to traffic congestion. In each of these countries, teleworking is seen as a promising instrument to (re-)integrate disabled workers.<sup>12</sup> In Germany, three federal ministries published in 2001 a 177-page electronic book with guidelines on telework including concrete checklists and model agreements for dealing with risks and legal issues. Most of the issues later addressed in the Telework Agreement are mentioned, including health and safety, privacy, the voluntary character of the choice for telework and reversibility.<sup>13</sup> Telecom companies and hard- and software suppliers are the

<sup>8</sup> I. Beck and A. Larsson, ‘The European Challenge. Taking world leadership in smartgrowth’, Brussels: ETUI-REHS, European Union and Employment Policy Brief, no. 1. ([http://www.etui-rehs.org/media/files/eeepb/2007/1\\_2007](http://www.etui-rehs.org/media/files/eeepb/2007/1_2007))

<sup>9</sup> See M. van Klaveren and K.G. Tijdens, *Teleworking Policies of Organisations – the Dutch experience*. Amsterdam: Amsterdam Institute for Advanced Labour Studies, AIAS Working Paper 03/07, February 2003.

<sup>10</sup> European Commission, *e-Inclusion. The Information Society’s potential for social inclusion in Europe*. Brussels, 2001.

<sup>11</sup> U. Huws, *Euro-telework: report on equality and telework in Europe*, 2000. (<http://www.telework-mirti.org/reports>)

<sup>12</sup> M. van Klaveren and K. Tijdens, *Teleworking Policies ...*, op.cit., p.4

<sup>13</sup> *Telearbeit: Leitfaden für flexibles Arbeiten in der Praxis*. (<http://www.bmbf.de/pub/telearbeit.pdf>)

other actors greeting teleworking as a new area for sales and employment. The first agreements on telework were struck in IBM Germany (1991), British Telecom (1992) and Deutsche Telekom (1995), with the works council, a staff representation and a trade union, respectively. Various agreements of this kind follow (e.g., BT France; Telecom Italia; KPN, Origin, Digital and Compaq in the Netherlands) and in February 2001, the EU Social Dialogue Committee in the telecommunications sector, made up of thirteen major companies and the European trade union secretariat UNI-Telecom, adopted a set of guidelines for telework “organised and introduced as a human and socially meaningful working method”.<sup>14</sup> Later that year European sectoral framework agreements on telework in the commerce and electricity sectors followed. In Member States like Denmark, the Netherlands and the UK, where telework had taken off most, but notably also in Austria, Germany and Italy, trade unions had become quite active with negotiating agreements on telework. Some unions began to disseminate guidelines for negotiators and draft “model” agreements for companies, works councils and employees. In particular, German, Austrian and Italian trade unions have been active in this regard.<sup>15</sup>

In sum, the Telework Agreement was not created “*ex novo*”, but there was a prior learning process on how to address risk and advantages. On the one hand, telework has an undeniable potential to facilitate the conciliation of work and family life and facilitate the re-integration of certain group of workers, especially people with disabilities. In Dutch survey research, the three dominant motives for teleworking on the employee side turned out to be: the reduction of commuting time, the gain in working-time flexibility, and the need a quiet workplace.<sup>16</sup> On the employers’ side telework can be a means to reduce costs, increase productivity and creativity, allow a more flexible work organisation, retain staff, and reduce office or travel costs. On the other hand, telework presents some drawbacks. What seems to concern the social partners most are the risk of isolation of the worker and the difficulty of managers to monitor employee performance. Others have drawn attention to the risk for employees to put too much stress on their family life by the overlap with working time.<sup>17</sup> If, on balance, telework is a positive development, its modest diffusion in most European countries suggests that there are obstacles of various kinds and that there are gains to be had from proper regulation.<sup>18</sup> Obviously, not all jobs can be done through telework and not all workers are ready for it, but the interest expressed in it by workers and those seeking work suggest that much more can be done.<sup>19</sup>

<sup>14</sup> M. van Klaveren and K. Tijdens, *Teleworking Policies ...*, op.cit., ibid.

<sup>15</sup> Information on the activities before 2002 can be found on the *sociosite*, maintained by websociologist Dr. Albert Benschop of the University of Amsterdam ([www.sociosite](http://www.sociosite)). In Austria, the Private-Sector Employees’ Union GPA was a forerunner with drafting ‘model agreements’. In Germany, the union-related Hans-Böckler-Foundation produced in 2000 a set of recommendations, see L. Kamp, L., *Betriebs- und Dienstvereinbarungen. Telearbeit. Analyse und Handlungsempfehlungen*, Düsseldorf, edition der Hans-Böckler-Stiftung 31, 2000. For Italy, a useful source, and early advocate, on telework is professor Patrizio Di Nicola, of the Sapienza University in Rome. See P. Di Nicola, *Teleslavoro domiciliare*, Rome: Ediesse, 2002.

<sup>16</sup> M. van Klaveren, K.G. Tijdens and C. Wetzels, *Telewerken: “Wie, waar, wanneer (Teleworking: Who, where, when?)”*, *Economisch-Statistische Berichten*, vol. 85, 30 November 2000, 22-26.

<sup>17</sup> L. Thibault Aranda, *El Teletrabajo*. Madrid: CES, 2000.

<sup>18</sup> This is a key argument in the Commission’s report of 2001. European Commission, *e-Inclusion*, op. cit., and figures also prominently in: European Commission, *eWork 2001 – Status Report on New Ways to Work in the Knowledge Economy*, Brussels, 2001.

<sup>19</sup> P. Peters, K.G. Tijdens and C. Wetzels, “Employees’ Opportunities, Preferences, and Practices in Telecommunicating Adoption”, *Information & Management*, 41 (2004), 469-482.

## **1.2. The Telework Agreement, its form, content and scope.**

In 2001 telework was included by the Commission in its consultation document with the social partners. The consultation process, as specified in Art. 138 of the EC Treaty, has two stages. Before submitting proposals for new social policy legislation, the Commission must consult the social partners on the possible direction of EU action. Next, if the Commission then considers EU action advisable, it must consult workers and employers on the content of its planned proposal. After the second stage, the European social partners can inform the Commission that they wish to open negotiations and start the process laid down in Art. 139 ECT. If negotiations result in agreement, the signatory parties may ask the Council to adopt a decision (in practice, this is a Directive, proposed by the Commission). Or they may, as they did in the case of the Telework Agreement, assume themselves responsibility for implementation in accordance with the procedures and practices common in Member States.

In the case of telework, the European Commission, in its second stage consultation of the social partners on modernising and improving employment relations, invited the social partners to start negotiations on telework. The consultation of the Commission covered other issues related to the modernisation of employment relationship and, in particular, the establishment of framework provisions for economically dependent workers. In their response to the Commission, the social partners expressed agreement with the modernising agenda, but decided to start negotiations exclusively on the establishment of framework provisions on telework and not address the other issues under consultation. In the Commission's view, the result of the negotiations on telework should ensure that the development of this form of work does not adversely affect workers protection. Therefore, in the second consultation document the Commission laid down a range of guidelines for the social partners and suggested some general principles that a social partners' agreement should include. These principles, as enunciated by the Commission, are addressed in this report in section 3 dealing with key issues of implementing the Telework Agreement.

On 16 July 2002 the European employers' representatives (UNICE/UEAPME and CEEP) and the trade union confederation (ETUC) signed a European Framework Agreement on Telework. The agreement aimed at ensuring greater security for teleworkers employed in the EU by establishing a general framework at EU level concerning their status and working conditions. As mentioned in the preamble, with their agreement the European social partners wished to contribute to the modernisation of the organization of work, improve the opportunities for workers to reconcile working and family life, and prepare the EU to the transition to a knowledge-based economy and society in line with the objectives of the Lisbon process. If the EU wants to meet the Lisbon targets in a context of sustainable and smart-growth, it is crucial to make the most of the information society by exploring the potential of telework as a flexible and sustainable form of work performance and work organisation.

As was already mentioned in the introduction, the real novelty of the Telework Agreement lies in it being the first autonomous agreement. The High-Level Group on Industrial Relations and Industrial Change, which examined the possibilities of the social partners to contribute to

the Lisbon Agenda, observed that there was scope for a more autonomous turn in European industrial relations and emphasized that it is important “to enhance bilateral processes, promoting the initiative and responsibility of the social partners”. The Group acknowledged that “new approaches on regulation underline the merits of co-regulation, without undermining the role and responsibilities of public authorities”. The Group further noted that “regulation can be based not only on a normative approach leading to binding rules (legal provisions or social agreement), but also on a learning process based on guidelines and benchmarks designed to improve actual behaviour” and concludes that “it is critical to strike the right balance between these two approaches”.<sup>20</sup> Around the same time, in their contribution to the Laeken European Council of December 2001, the European social partners indicated their desire to pursue a more autonomous social dialogue and in November 2002 they adopted their first-ever joint work programme for the period 2003-2005.<sup>21</sup>

With the turn to autonomous agreements, the social partners assume a new responsibility. When signing an agreement, it puts them and their national members under the obligation to do whatever they can to produce results. Our interpretation that, even if not considered strictly speaking legally binding, autonomous agreements are *binding in a contractual sense*, was confirmed in the interviews we conducted in the preparation of this report with representatives of BUSINESS EUROPE, UEAPME, CEEP and ETUC. This leaves open that *different methods of implementation* are possible and viable to meet that obligation. In some Member States the implementation of the agreement has taken place via legally binding collective agreements (either at cross-industry or sectoral level); in others national legislation or different forms of state regulation dealing with telework have been adopted; in some non-legally binding instruments like guidelines or codes of conduct have been chosen as the preferred implementation method, sometimes with the assistance of the public authorities.

The agreement defines telework as “a form of work 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.” Potentially, therefore, the new framework covers mobile workers as well as those who are home-based. The agreement concerns teleworkers with a formal employment contract or relationship, if the work is performed on a regular basis. Conversely, self-employed teleworkers are outside the scope of this agreement. The signatory parties have chosen a broad and flexible definition that covers different forms of telework the main requirements of which are the following: all or part of the work is performed away from the employer’s premises; takes place on a regular basis; and uses information technologies. Therefore, the agreement applies to the following situations: telework at home, at telecentres and telecottages (shared office facilities, used by employers of several

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<sup>20</sup> European Commission, *Report of the High Level Group on Industrial Relations and Change in the European Union*, Brussels, March 2002, p. 35.

<sup>21</sup> ETUC, UNICE and CEEP, *Joint contribution by the social partners in the Laeken European Council*, Brussels, 7 December 2001.

companies), remote office telework (a location physically distant from the office) and nomadic or mobile telework.<sup>22</sup> The situation in which telework alternates with work at the employer's premises also falls under the scope of the agreement.

The agreement covers a number of issues. It establishes that telework should be voluntary with an explicit "right to return" (reversibility) to conventional working at a worker's or employer's request, except in those cases where the initial job description specifies that the post is a teleworking one. The modalities of this reversibility are established by individual and/or collective agreement depending on the regulations in the country where the teleworker performs his or her work. According to the agreement, teleworkers should be granted the same social rights as comparable workers who carry out their activities at the employer's premises. Protection against dismissal in case of a workers' refusal to opt for telework is also granted by the agreement. In addition, employers are generally expected to provide the equipment used by teleworkers and to take responsibility for data protection safeguards. The framework agreement states that employers remain responsible for the health and safety of teleworking employees, in line with standard legislation. The agreement also covers privacy rights and related issues. Finally, it is worth mentioning that the agreement establishes that the teleworkers should have the same access to training and the same collective rights as comparable workers at the employers' premises.

### ***1.3 General considerations concerning the implementation of European autonomous agreements***

The implementation of the Telework Agreement had to be carried out within three years after the signature of the agreement, i.e. by July 2005. Clause 12 of the Agreement foresaw that a joint report on the actions of implementation taken will be prepared in the fourth year by an ad hoc working group under the responsibility of the Social Dialogue Committee. On 11 October 2006, ETUC, BUSINESS EUROPE, UEAPME, and CEEP, presented their joint implementation report on the Framework Agreement on Telework. The report showed that the implementation of the agreement was diverse across member states, using different methods varying from national agreements, recommendations, guidelines, and/or legislation.<sup>23</sup>

With the passing of time, the European social partners have become actively involved in implementing the Telework Agreement at the national level. In our interviews, their representatives agreed that the Agreement had taken them into a new terrain and that, compared to the earlier agreements implemented by Directives, they had to adopt a heavier burden of responsibility. In fact, the European social partners have organised joints seminars on social dialogue to advice their members over the implementation process, in particular in

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22 ETUC, Interpretation/Comment to the voluntary agreement on telework, ETUC publications, 2003, pp. 9-10. ETUC, See also: Second stage consultation of social partners on modernising and improving employment relations <[http://ec.europa.eu/employment\\_social/social\\_dialogue/consultations\\_en.htm](http://ec.europa.eu/employment_social/social_dialogue/consultations_en.htm)>, (consulted 18.12.07).

23 *Implementation of the European Framework Agreement on Telework*. Report by the Social Partners adopted by the Social Dialogue Committee on 28 June 2006. Brussels, September 2006.

the New Member States. In some cases, the social partners used the task of implementing the Telework Agreement as an example to practice the bipartite social dialogue at the national level. At the European level and in quite a few Member States, implementing the Telework Agreement involved *learning about doing things for the first time*. The non-contentious (non-distributive) nature of the telework issue, as a promotional rather than minimum right, may have helped.

During the implementation period, the European social partners tried to reconcile two principles: the autonomy of their national members and the subsidiarity principle on the one hand, and the wish to address the modernising agenda with the promise to cover all the EU workers under the scope of the adopted framework agreement. The European social partners agree that proper implementation, including *adequate coverage*, is important for the viability of autonomous agreements and for their own credibility. The issue of adequate coverage, which should in principle include all firms and workers that would like to use this form of work, is an important critical issue inextricably related to the representativity of the European social partner organizations. Facilitation and awareness raising is part of ensuring such adequate coverage.

*Representativity* of the social partners is a key issue in all three stages of the European social dialogue, in the consultation process on the basis of Art. 138 (2) and (3) EC Treaty, in the negotiations and for the agreements on the basis of Art. 138 (4) and 139 (1), and finally, in the implementation of those agreements on the basis of Art. 139 (2), when the first-mentioned implementation route is chosen. In several Communications<sup>24</sup>, the Commission has explicated the criteria, which employer's organisations and trade unions confederations should fulfil, in order to be considered representative for the purpose of being involved in European social dialogue. They should

- be cross industry or related to specific sector or categories and be organised at European level;
- consist of organisations which are themselves an integral and recognised part of the member states social partners structures and with the capacity to negotiate agreement and which are representative of all member states, as far as possible; and
- have adequate structures to ensure their effective participation in the consultation process.

The abovementioned criteria are connected with the capability of the actors to be involved in a process of social dialogue and not specifically defining the representativity of the organisations at Member State level, which is so critical for implementing *autonomous* agreements. The criteria listed by the Commission refer to the stage of consultation and there is no Communication dealing with representativity criteria for the purpose of implementing an autonomous agreement.

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24 COM (93) 600, COM (96) 448, COM (98) 322.

With the signing of autonomous agreements conform Art. 139 EC Treaty, the social partners adopted the responsibility to implement the agreement in the Member States.<sup>25</sup> They recognize that they thus adopt the responsibility and accept the obligation to implement the agreement signed on behalf of their national members. They can assume this obligation, because their national affiliates have *mandated* them to negotiate the Agreements at the Community level. With due respect for national differences, this justifies a strong involvement of the European social partners in the implementation process at the national level and a new and continuous monitoring function. In our view, which was confirmed in the interviews with the European social partners, the Telemwork Agreement, and other autonomous agreements of this kind, impose binding obligations not only upon the European social partners but also upon their national affiliates. However, even when assuming that European autonomous agreements should have legal effects for the national affiliates of the European social partners organisations, it is clear that these legal effects differ among the national affiliates since the legal rules on mandate and agency vary in the various EU and EEA Member States.<sup>26</sup> And if it is correct to assume that European framework agreements impose binding obligations on their signatory parties as regards to implementation, their ability to have legal effects among those parties is uncertain. Our conclusion is that, due to the differences existing among the various legal systems of the EC/EEA Member States as regards the national systems of collective bargaining, the legally enforceable nature of social partners agreements and the impact of those agreements in the individual contract of employment, an autonomous agreement resulting from the European social dialogue cannot be considered a collective agreement with *erga omnes* normative effect.<sup>27</sup>

When the “autonomous” implementation route was first included in the Social Policy Agreement annexed to the Maastricht Treaty, labour law experts doubted that what was then called the “voluntary route” would ever be used, given the huge diversity in rules and practices across Member States. They assumed that such arrangements, being a substitute for legislation, ought to have an *erga omnes* effect, which in their view would require legislation because of huge differences in coverage and enforceability of regulation across EU member states.<sup>28</sup> However, there was another legal opinion as well: “The degree to which a European agreement is directly binding will differ from one country to the next. In some countries it may be legally binding across the board; in others it may be legally binding only on affiliates to the signatory parties; while in others again it may only have contractual or ‘incorporated’ value. Of course there is always a risk that an agreement may be applied in full in some cases while in others it is hardly applied at all. But surely this risk is no different to the one that is taken with all European labour regulations when these are enshrined in Directives whose transposition is left up to Member States themselves.”<sup>29</sup> Empirical research

<sup>25</sup> C. Barnard, *EC Employment Law*, third edition, Oxford, Oxford EC Law Library, 2006, pp. 90-91.

<sup>26</sup> E. Franssen, *Legal Aspects of the European Social Dialogue*. Antwerp: Intersentia, 2002

<sup>27</sup> N.E. Ramos Martín, “El Diálogo Social en la Unión Europea”, *Actualidad Laboral*, 33 (2000): 553-571.

<sup>28</sup> An overview of these opinions is presented in A. Branch, “The Evolution of the European Social Dialogue Towards greater Autonomy: Challenges and Potential Benefits”, *The International Journal of Comparative Labour Law and Industrial Relations*, 21 (2): 341-346.

<sup>29</sup> A. Jacobs and A. Ojeda-Aviles, “The European Social Dialogue – Some legal issues”, in ETUI, *A Legal Framework for European Industrial Relations*. Brussels, 1999, p. 68.

on the transposition of six Directives, all in the area of labour, has shown large differences in implementation across the Member States of the EU15, and is likely to find even larger variations when extended to the EU27.<sup>30</sup>

#### **1.4. New modes of governance and regulation**

The view that European social policy is about establishing uniformity in labour regulation or social protection or will rapidly adjust to a common model is beside reality. Increased economic integration does not require the harmonization of labour market standards. In a fundamental sense, cross-border trade is valuable because of the absence of harmonisation and international trade occurs precisely because of differences between Member States – in endowments, labour skills, consumer tastes, legal traditions, cultural patterns – which may become the basis for specialisation.<sup>31</sup> There is however, potentially, a *dynamic harmonization* view, which projects social policy as a dynamic process in which European transnational labour standards interact with economic integration to produce an upward movement in labour standards and social-economic conditions.<sup>32</sup> This does not imply uniformity or equal speed. It does require, firstly, that social policies are designed with a view to creating greater economic welfare and guarantee everyone's participation and access to rights, and, secondly, that Member States are discouraged to regress to lower levels of provisions resulting from competitive underbidding. There is no point in having any legislation or self-regulation without paying attention to compliance and enforcement.

The autonomous Framework Agreement on Telework falls in a broad trend to attempt new modes of governance, in which public and private authorities and organisations join forces in setting the goals and guaranteeing results, and the norms for behaviour are set in a less-standardised and often non-binding fashion. Labour lawyers have noted a shift of methods in European social and labour law, characterised by an increased use of new types of legal instruction other than legally binding commands which are backed by sanctions for non-compliance.<sup>33</sup> Not only in methods of regulation, but also in the content of regulation have we witnessed a shift. Perhaps this is best summarized by the Italian labour lawyer Ichino, who has noted that recent European Community labour law does not consider workers' protection as the only value to be pursued, to the exclusion of other values, but sees also growth and competitiveness, equal access and prevention of social exclusion as justifications for regulation.<sup>34</sup> One rationale for a *capabilities enhancing* regulatory intervention in employment relations is whether that regulation contributes towards the goal

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<sup>30</sup> G. Falkner, O. Treib, M. Hartlapp, and S. Leiber, *Complying with Europe. EU harmonization and soft law*. Cambridge: Cambridge University Press, 2005

<sup>31</sup> R.C. Ehrenburg, *Labor Markets and Integrating National Economies*. Washington D.C.: The Brookings Institution, 1994

<sup>32</sup> J. Visser, "Redrawing the Boundaries of Solidarity. A New Deal for Social Europe", in T. Blom, ed., *Reviewing Europe. Missed opportunities and possible potential*. Maastricht: Presse Universitaire Maastricht, pp. 49-80.

<sup>33</sup> C. Kilpatrick, C., "Implementing the Lisbon Strategy: Policy coordination through 'open' methods", in G. de Búrca and J. Scott, editors, *New Governance and Constitutionalism in Europe and the US*. Oxford: Hart Publishing.



of maximizing the potential economic and human resources available before distribution and whether it ensures equal access to rewards and equal opportunities to participate.<sup>35</sup>

In industrial relations, the trend in recent years, already visible since the 1980s, is to combine a rather general form of cross-sectoral or national coordination and guidance with decentralisation of actual decision making to lower levels – in particular to firms and sectors. This pertains not only to wage setting but also to many other issues, including working hours, pay methods, and social policies. Collective bargaining is being reconfigured in a mixture of minimum rather than standard conditions of pay and other terms of employment, allowing variation in accordance with local conditions.<sup>36</sup> This development also characterises the post-Maastricht regulation of labour and social policy at the European level.<sup>37</sup> Besides reflecting differences in interests, institutions and principles across and within EU Member States, the new focus on flexible regulation, decentralisation and choice reflects the idea that society has become far more heterogeneous, that more people have become more competent in making choices for themselves and public policies can no longer be designed in standard packages.

In designing efficient regulation, it is now widely recognized that not all social problems require similar regulatory answers. Modes of governance can vary depending on the nature of the problem and the effects of regulation on the target groups and on third parties not involved in the design of or negotiations over the regulation. If such regulations or policies have large negative effects on others who are not represented in the negotiations, in short, when there are externalities, there is a public policy case for intervention, either by elevating negotiations at a higher (European) plane or making sure that nobody is excluded from access to negotiating rights or implementation. Another case for public intervention and centralisation is when there are clear economies of scale.

We can visualise this idea in a simple 2x2 table, presented below. Our hypothesis is that, unlike for instance an issue like monetary stability (first quadrant) or growth and jobs (second quadrant), the regulation of telework lies in between the third and fourth quadrant. Negative spill-over of inefficient policies across countries is probably minor, but there is scope for encouraging positive spill-over through joint targets, diffusion of good practices and mutual learning. We call this “reflexive” governance, in which the capacity of the private and public organizations – social partners, firms, lawmakers and monitoring agents – is enhanced so that they are better able to define and solve problems efficiently according to varying local, in the European perspective, national, sectoral and local, circumstances. Reflexive governance places its trust in the capacity and willingness for autonomous regulation of social partners, but within procedural guarantees that may have to be co-defined and co-monitored by the public authorities. Among these procedural guarantees are equal access,

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<sup>34</sup> P. Ichino “Does Labour Law Actually Produce Equality among Workers?”. Bordeaux, paper presented at International Seminar on The Effectiveness of Social Law: Under What Conditions? 4-5 July 2005.

<sup>35</sup> J. Visser, “More Holes in the Bucket: Twenty Years of European Integration and Organized Labour”, *Comparative Labour Law & Policy Journal*, 2005, vol. 26 (4): 477-521.

<sup>36</sup> See A. Booth, M. Burda, L. Calmfors, D. Checchi, R. Naylor and J. Visser, “The Future of Collective Bargaining”, in T. Boeri, A. Brugiavini and L. Calmfors, editors, *The Role of Unions in the Twenty-First Century*. Oxford: Oxford University Press, 2001, pp. 1-151. See also J. Visser, “Beneath the Surface of Stability: New and Old Modes of Governance in European industrial relations”, *European Journal of Industrial Relations*, 2005, vol. 11 (3): 287-306.

<sup>37</sup> W. Streeck, “Neo-Voluntarism: A new European social policy regime”, *European Law Journal*, 1995, vol. 1 (1): 31-59.

adequate coverage, participation, and accountability. Should such quality rules be violated or remain unattainable, lawmakers may have to step. These guarantees are important quality criteria for the assessment of the implementation of the Telework Agreement.

**Table 1: Types of problems, regulations and governance**

	<b>Problem is well understood or knowledge is general / policy or regulation can be standardized at low cost</b>	<b>Problem is not well understood or knowledge is local / policies or regulation cannot be standardized at low cost</b>
<b>Large (cross-national) spill-over effects and major risks to outsiders</b>	I. Centralisation / harmonisation	II. Open coordination (adaptive governance and steering by objectives)
<b>Small (cross-national) spill-over effects and minor risks to outsiders</b>	III. Diffusion and benchmarking (mimicking successful examples)	IV. Mutual learning (reflexive governance and steering by procedure)

Adapted from: M. van der Meer, J. Visser, and A.C.J.M. Wilthagen, "Adaptive and Reflexive Governance: The Limits of Organized Decentralization", *European Journal of Industrial Relations*, 2005, vol. 11 (3).

## 2. Sources, data and approach

This report considers the implementation of the Framework Agreement on Telework in 29 Member States of the European Union and the European Economic Area. The data come from various sources:

- the implementation report of the European social partners, interviews with their representatives and chief negotiators, and additional information provided by them, and by their affiliates, on our request;
- information provided by the European Commission;
- replies of Member States' representatives to a questionnaire established and sent by the European Commission. This questionnaire was supplemented with the joint implementation report of the social partners and contained four main questions regarding instruments regulating telework prior to the Telework Agreement; additional information on implementation and supplementary action in the Member States not mention in the social partner's implementation report; an assessment of the level of coverage; and the role of public authorities in assisting and promoting implementation of the Agreement.<sup>38</sup>
- information on telework initiatives and agreements since 1997 contained in the European Industrial Relations Observatory (EIRO, part of the European Foundation for the

<sup>38</sup> Letter of 20 March 2007 of the Director-General of the Employment, Social Affairs and Equal Opportunities DG to the Member States.

Improvement of Working and Living Conditions in Dublin) and their national correspondents, as well as research by the Foundation<sup>39</sup>; and

- collective agreements and case-law related to the question at issue.
- supplementary research, mainly through web-sites and archives using original languages, the screening of additional electronic sources, mainly through the databases on telework established by university researchers.<sup>40</sup>

In addition, we have used two databases on the incidence and intensity of telework – the Fourth European Working Conditions Survey, conducted in 2005 under responsibility of the European Foundation for the Improvement of Working and Living Conditions, published in 2007<sup>41</sup>, the ECATT and SIBIS (Statistical Indicators Benchmarking the Information Society) Database, with resulted from the “Information Society Programme” of the European Commission (IST-2000-26276) in 2001-2003.<sup>42</sup> Finally, we have presented our preliminary findings, and the database (see below) to the social partners, the Commission and national and European experts and practitioners, among others during the Social Dialogue conference in Lisbon, 29-30 November 2007 and in a meeting in Brussels on 4 December 2007. We have also conducted interviews and consultations with social partners representatives, in October 2007

The contents of all texts (agreements, laws, recommendations, guidelines, etc.) existing at national, sectoral and company level with a view to implementation of the telework agreement, including texts that precede the agreement, have been coded in a database. The database is organized by country and contains the information on the main substantive issues of the implementation of the telework agreement (voluntary nature and reversibility, working conditions, work organisation, privacy, data protection, health and safety, training, and collective rights) as well as on procedural matters (pre-existing measures, type of implementation, scope, and coverage). In addition, we have entered in the database core data on sectoral and company applications, and characteristics of the IR system (density, employer organization, and coverage). As soon as the report is published, expected in January 2008, this database will be available at the AIAS website ([www.uva-aias.net](http://www.uva-aias.net)).

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<sup>39</sup> S. Demetriades and M. Eisner, *Telework in an Enlarged European Union*, report by the European Foundation for the Improvement of Living and Working Conditions, 2007. We thank in particular Christan Welz, of the Foundation, who was part of the supervisory group for this report and has been very helpful.

<sup>40</sup> Particularly interesting is the work on e-Work and the future of labour by the *empirica* group in Bonn: [www.empirica.com](http://www.empirica.com), which also contains the EcaTT report, *Benchmarking Progress on New Ways of Working and New Forms of Business across Europe*. Final Report. Bonn, Empirica, August 2000.

<sup>41</sup> [www.eurofound.europa.eu/ewco/surveys](http://www.eurofound.europa.eu/ewco/surveys)

<sup>42</sup> [www.sibis-eu.org](http://www.sibis-eu.org).

### 3. The incidence and intensity of telework

There is considerable uncertainty about the *incidence* of telework, i.e. the headcount of who works from home with a PC or using other electronic communication devices. Since telework is seen by European policy makers as a tool towards achieving public policy goals, like job creation, access to jobs for disabled workers, workers with family obligations, and the unemployed, as well as modernizing the workplace, it is surprising that so little *comparable* data about the incidence and intensity of telework is available. Different definitions, sampling methods and base calculations produce different statistics on the incidence of telework.

To our knowledge there are two main Europe-wide data sources, both based on research sponsored by the European Commission. Both the Third and Fourth *European Working Conditions Survey* (EWCO), of 2000 and 2005, contained a question on telework. Question 11 (“Please tell me, does your main job involve ...”) in the Fourth Survey offers as one of thirteen response categories: “Teleworking from home with a PC”, with the possibility to indicate the intensity of telework in terms of working hours. EWCO relates to all persons with a job, including the self-employed, and is thus bound to produce much higher percentages than surveys targeted on wage and salary earners, especially in sectors and countries in which self-employment is wide-spread. We will see that this distortion is particular visible in the Baltic countries. It should also be noted that the EWCO survey is based on relatively small numbers in some countries, which leads to large margins for error and make the results more useful when we aggregate them for country groups. In 2005 the survey was conducted in all 27 EU member states and Norway. The SIBIS (*Statistical Indicators Benchmarking the Information Society*) database is based on an attempt to derive comparable data from the General Population Surveys of 2002-2003 in 27 EU Member States, Switzerland and the USA. SIBIS-statistics allow a calculation of home based telework without the teleworkers who are self-employed or communicate as freelancers with firms and clients with their home as the main workplace. The percentages of home-based telework will therefore be lower than in the EWCO data, and more accurate if we want to gauge the incidence of telework among employees, i.e. the target group of the Telework Agreement.

It may be that statistics on the *intensity* of telework are more telling about where telework is going than the incidence of telework, as many people work some time from their home with electronic communication devices, within or beyond official working hours, including weekends and evenings. According to the SIBIS for about three out of four home-based teleworkers telework is a *supplementary* activity; they spend *less* than a day per week working from home, more likely some hours per day, checking email or connecting to the company network, or communicating with colleagues. Only a very small number – just three percent of all home-based teleworkers - spend 75% or more of their working time at home. Finally, a sizeable minority, almost one-quarter, works at least one day per week from home,

engaging in what is called *alternating* telework.<sup>43</sup> Unfortunately, the EWCO survey could not yet be analyzed on this aspect, and no data on the time intensity of home-based telework has been published.<sup>44</sup> Given the exceptional nature of full-time home-based telework, it seems advisable to consider the intensity as well as the incidence of telework and take into account the number of hours employees are usually or regularly working from home. In view of the definition used in the Framework Agreement of 2002 – “a form of organizing and/or performing work, using IT, in the context of an employment contract/relationship, where work, which could be performed at the employers premises, is carried out away from these premises *on a regular basis* (our italics)” – this should not create problems, as the definition would also seem to cover alternating and supplementary (or any type of *part-time*) telework if performed on a regular basis. However, it might be desirable to clarify this and assure proper implementation also in the case of part-time telework.

Chart 1 offers a statistic portrait of the incidence and intensity of telework in Europe with data for all 27 EU Member states, Norway, Switzerland and the USA. We have included three indicators, two from SIBIS and one from EWCO. The SIBIS data show a series of home-based telework involving one day per week or more (alternating and permanent telework) and a series for all (including supplementary) telework. The EWCO series include all telework from home.<sup>45</sup> It should be recalled that the SIBIS series indicate the situation in 2002-3 and the EWCO the situation in 2005, and that the EWCO data include the self-employed.

The first impression from Chart 1 is the very large difference across countries, but the differences across the three series are impressive as well. Obviously, there is a considerable difference between the two SIBIS series, as they are based on two different operationalisations of telework. But the rank order between the two SIBIS dataset is highly consistent, with a Spearman's rho (indicating similarity in the rank orders) of .83, whereas there is very little consistency between the two SIBIS series and the EWCO series – with rho's of .38 and .44 respectively, indicating a very different ranking. Roughly all three series show a North-South divisions, with the highest incidence of telework in Northern Europe and the Netherlands and the lowest in Southern Europe and the New Member States, but the EWCO survey suggests also a very high incidence in the Czech Republic, compared to national sources which place the incidence at around 1 percent, in Estonia, Belgium, Germany and Austria. Instead, EWCO estimates a much lower incidence of telework in Denmark and Sweden.

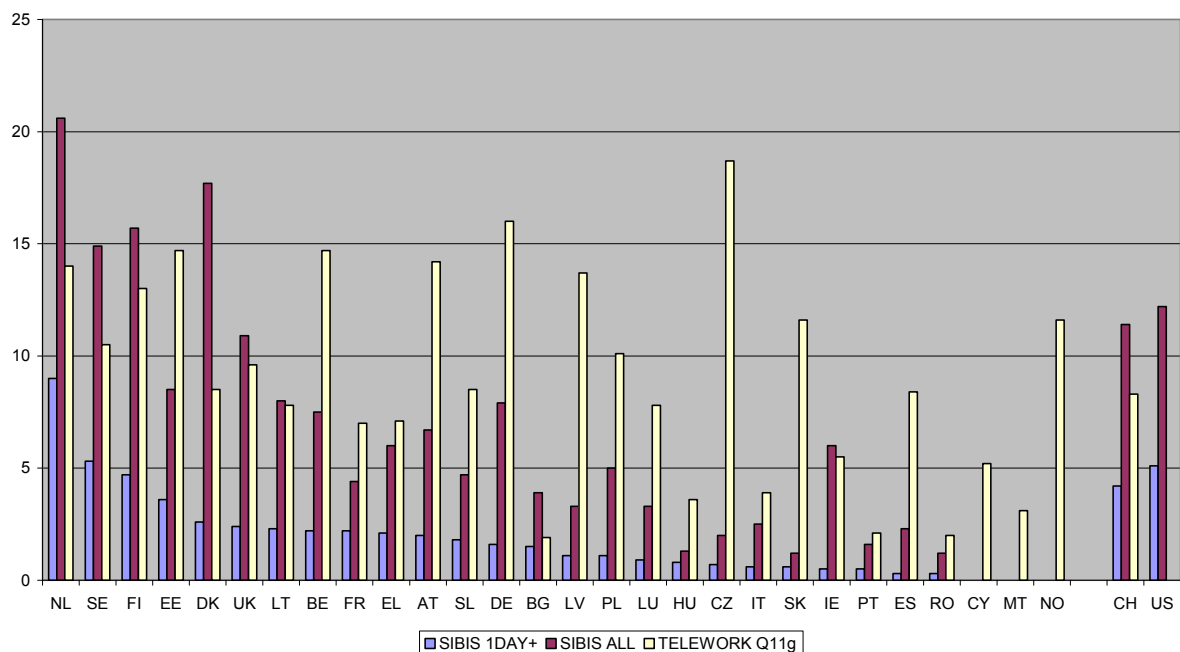
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<sup>43</sup> K. Gareis, S. Liliškis, and A. Metrup, “Mapping the Mobile eWorkforce in Europe”, in E. Andriessen and M. Vartiainen, editors, *Mobile Virtual Work – A new paradigm*, Berlin: Springer, 2006, pp. 45-70.

<sup>44</sup> The study by Andrea Broughton, *Incidence of Work away from the Workplace*, Dublin: European Foundation, 2007 (<http://www.eurofound.europa.eu/ewco/studies/tn0701029s>) does concentrate on incidence and is particularly useful in showing how different the survey results are from national surveys and studies, with the EWCO data usually suggestion a much higher incidence.

<sup>45</sup> Note that telework from telecottages or telecentres, or not home-based telework, is not included, though percentages are probably very low (work in call centres is also not included, but does not fall under the Telework Agreement either)

Chart 1: Incidence of home-based telework



We can gain a better insight in the spread of telework by comparing the incidence of telework by country groups and take into account information on a number of variables that do, by common consent, relate to telework. The following variables are being considered, for the questions we refer to the Fourth EWCO survey (the numbers are indicated in the Tables below):

1. The proportion of the employed who work with computers (COMPUTER);
2. The proportion of the employed who say that they have an influence over the choice of working patterns (CHOICE)
3. The proportion of the employed who say that their working patterns fit family / social commitments well or very well (FAMILY)
4. The national average of the time (in minutes, per day per employed person) spent on commuting (inclusive return) (COMMUTE)
5. The proportion of the employed who are on less flexible working-time schedules (NO FLEX)
6. The proportion of the employed who say that their pace of work is dependent on a boss (BOSS)

One should expect a positive association between the incidence of telework and the proportion of the employed working with computers and those who say that they have choice over their working patterns. A negative association is expected with those saying that they

are on less flexible working-time patterns and whose pace of work is, in their perception, depending on the boss. The relation with FAMILY and COMMUTE are less easy to predict. It might be that those who perceive that their working pattern fits family and social commitments well have fewer incentives to telework, or they may already have chosen telework. It is unclear what comes first and what the causal direction would be. The same is true for COMMUTE. One would think that persons with the longest daily commuting time have the strongest incentive to telework, but they may already have adjusted. Below, in Table 2 we show the differences in the mean values for each variable, using the country groupings of the EWCO, though adding a separate group for the three Baltic States.<sup>46</sup>

**Table 2: Mean values per country group**

	SIBIS	SIBIS	TELEWORK	COMPUTERS	CHOICE	FAMILY	COMMUTE	NO	BOSS
	1DAY+	ALL	Q11g	Q11k	Q25d	Q18	Q13ef	FLEX	Q21e
<b>North + Neth.</b>	5,4	17,2	11,5	66,4	32,8	84,5	43,0	47,5	17,5
<b>Baltics</b>	2,3	6,6	12,1	35,5	24,6	72,9	45,4	73,3	41,6
<b>Continental</b>	1,8	6,0	11,9	54,4	25,5	84,2	38,9	63,9	33,4
<b>Ireland + UK</b>	1,5	8,5	7,6	49,8	25,8	82,7	43,7	62,5	40,7
<b>South</b>	0,9	3,1	5,0	36,3	26,5	74,1	35,4	71,4	43,5
<b>East Central</b>	1,0	2,8	10,5	37,1	21,9	75,1	41,2	72,3	44,1
<b>South-East</b>	0,9	2,6	2,0	18,4	30,5	73,8	46,7	71,2	46,1
<b>EU27</b>	<b>1,7</b>	<b>5,5</b>	<b>8,3</b>	<b>45,5</b>	<b>24,2</b>	<b>79,4</b>	<b>41,6</b>	<b>65,3</b>	<b>35,7</b>

Table 2 brings out the different position of the Northern group very clearly: the employed are, on average, working more with computers, see themselves as having more choice in working patterns, perceive less conflict between the demands of work and family life, seem less dependent on their boss in setting the pace work, and seem to experience more flexibility in working time. On most of these variables, the differences are largest with the two Eastern groups, the Baltics and Southern Europe. In particular, with regard to the use of computers, the perception of working time flexibility, and dependence on the boss, the differences are striking. Another finding relates to the daily time spent on commuting to work, here the employed in Southern and continental Europe appear to have, on average, a slight advantage.

Table 3 presents a correlation matrix between these variables and each of the three indicators of telework, using the mean values per country. This does tell us something about the strength of the association between telework and some working conditions as perceived and experienced by the employed. Two conclusions are immediately apparent. Firstly, the

<sup>46</sup> The country groupings are as follows: Northern Europe and the Netherlands: Finland (FI); Sweden (SE); Norway (NO); Denmark (DK); the Netherlands (NL). Baltic countries: Estonia (EE); Latvia (LV); Lithuania (LT); Continental Western Europe: Austria (AT); Belgium (BE); Germany (DE); France (FR); Luxembourg (LU); Ireland and the United Kingdom: IE; UK; Southern Europe: Greece (EL); Italy (IT); Portugal (PT); Spain (ES); Cyprus (CY); and Malta (MA); East Central Europe: Czech Republic (CZ); Hungary (HU); Poland (PL); Slovakia (SK); Slovenia (SL); South-East Europe: Bulgaria (BU); Romania (RO).

coefficients for the two SIBIS variables with the variables where we expect a strong – positive or negative association – are much stronger than for the EWCO measurement of the incidence of telework. This is a strong indication that the SIBIS measurement is the better one and in fact it is the one we will generally refer to in our country assessments in section five of this report. We observe that there is, as expected, a strong and positive association between the incidence of telework and the use of computers, and a strong and negative association with the perception of not having flexibility in working time or being dependent on the boss for one's work pace. The expected association with CHOICE is also shown, but much weaker and barely significant. The second conclusion is that there is neither an association between the incidence of telework and the perception of conflict between work and family or social commitments, nor between telework and the average time spent on commuting to work. It requires further research, using individual data and preferably panel data, to establish the causal relationships between these variables.

**Table 3: Correlation coefficients between three measurements of the incidence of telework and average working conditions.**

	COMPUTERS Q11k	CHOICE Q25d	FAMILY Q18	COMMUTE Q13ef	NO FLEX Q17a	BOSS Q21e
SIBIS 1DAY+	0,660	0,437	0,298	0,275	-0,661	-0,622
SIBIS ALL	0,745	0,497	0,464	0,205	-0,756	-0,725
EWCO	0,455	-0,081	0,309	0,165	-0,263	-0,431
N=	25*	25	25	25	25	25

\* = without Cyprus and Malta (lack of data)

Still modest in size, telework is on the rise in Europe. A comparison between the Third and Fourth EWCO survey, only possible for the EU15, suggests a rise from five to a little over eight percent involved in telework from home. The prevalent occupations in which telework is predominantly found are managerial and professional jobs, which may explain why telework is more diffused among male than female workers and is associated with above average levels of education and training. From a policy point of view the most interesting piece of information, derived from the general population surveys of the SIBIS Database, is that there appears to be a large untapped desire to use more telework among employees. 40 percent of the EU workforce expresses an interest in *permanent* telework (where practically all working time is spent at home), 52 percent in *alternating* telework (with at least one working day spent at home per week) and even 55 percent in *centre-based* or *communal* telework (meaning workplaces provided by the employer in an office facility close to the employee's residence). Two in three are interested in at least one of these forms of telework. This affects also large groups of employees with more routine jobs and less education, for whom telework seems currently unavailable.

The share of persons interested in telework varies comparatively little between countries and there is not much difference between the EU15 and the New Member States.



Seen in the light of the actual low incidence of telework, the answer to the question whether people think that their current job is feasible for alternating (at least one day a week) telework is the most interesting one. Under the assumption that they would have to spend at least one full working day per week working from home or in a communal centre near home, 32 percent of all EU workers regard their job as feasible for this type of alternating telework, which is about five times the number of workers who currently engage on telework. The SIBIS researchers derive from this the conclusion “that the principal interest expressed in telework is to a considerable extent not being translated into actual telework practice, yet although jobs are regarded as being feasible for telework.”<sup>47</sup> Reasons quoted for jobs not being feasible for telework include the need for face-to-face contacts with others, access to machines or other things that cannot be accessed from home, and companies or superiors not approving of telework.

These research findings relate to 2002 and it may be that matters have improved since, possibly also as a consequence of the Telework Agreement and implementation measures since. It is to implementation of that European framework agreement that we turn now – first in Chapter four identifying and evaluating the main critical issues, followed in Chapter five with a survey of measures taken in the 29 Member States of the EU or EEA. In Chapter six, in our overall conclusions and evaluations, we will assess the overall impact of regulation, in type and coverage, in relation to the incidence and potential of telework.

## 4. Key issues

In this chapter we discuss the main issues in the implementation of the Telework Agreement, evaluated against the background of the document prepared by the Commission for the second stage consultation of the social partners on modernising and improving employment relations (henceforth referred to as the Commission’s second stage consultation document)<sup>48</sup> and the Agreement itself. Our evaluation thus follows a two-step approach, focusing first on the Telework Agreement itself and then on its implementation at national level. We follow the issues as specified in the Agreement, using more or less the same approach as in the Implementation report of the social partners. Our overall judgement and discussion of issues like coverage and compliance with “the procedures and practices specific to management and labour and the Member States” will be presented in our concluding chapter six.

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<sup>47</sup> K. Gareis et al., “Mapping the Mobile eWorkforce in Europe”, op. cit.

<sup>48</sup> See also: Second stage consultation of social partners on modernising and improving employment relations <[http://ec.europa.eu/employment\\_social/social\\_dialogue/consultations\\_en.htm](http://ec.europa.eu/employment_social/social_dialogue/consultations_en.htm)>, (consulted 18.12.07)

#### **4.1. Definition of telework.**

Under this heading we review different definitions of telework adopted at national level and the extent to which these definitions correspond with the definition included in clause 2 of the Telework Agreement.

The ETUC representatives consider that, when telework is well-regulated and used in the right context, it can lead to win-win situations both for management and labour. However, they also believe that a clear line must be drawn between employees performing their work away from the workers premises in the different contexts of an employment relationship and self-employed workers. Measures at national level need to be taken in the field of labour law to prevent any abusive use of (quasi) self-employment in the case of telework, when the elements of dependence and subordination that define the employment relationship are clearly present. This was also a concern expressed by the Commission when setting up the principles dealing with the regulation of telework at European Level in its second stage consultation document. The Commission considered that the guarantee of maintenance of the employee's status of telework should be a principle inspiring the social partners proposal: "The reorganisation associated with the introduction of telework sometimes represents an opportunity for firms to encourage employees to change their status and to become self-employed, although all that has changed is the way in which the work is performed".

One of the most controversial points in relationship with the definition of telework in some Member States is the juxtaposition of telework with homework. In Belgium, for instance, in order to avoid misunderstandings, current legislation specifies that the Act on Homework does *not* apply to workers that are covered by the collective agreement on telework. In Slovenia, in contrast, the Labour Relations Act is being amended to explicitly state that telework is considered to be homework. Romania and Lithuania also claim that their regulations on homeworking apply to telework. In some other countries (Austria, Spain) there are doubts about the possibility of applying the legislation on homework to teleworkers. Thus, there are several countries that might be relying on non-fitting or obsolete legal rules meant to regulate the labour conditions of the old pattern of homework. This tends to limit full implementation of the agreement. Interestingly, this problem seems to occur much less when telework is implemented by collective agreement, as agreements tend to be tailored to the specific conditions of employees working from home with electronic communication devices.

The European social partners agree that telework is not limited to home telework and cannot simply be assimilated to homework. In their view, the use of existing legislation covering traditional homework to address telework is questionable, though much may depend on the exact letter of the law. In some cases, there seems to have been a misunderstanding of the concept of telework contained in the Telework Agreement. For example, the cases of teleworkers working on communal centres will always be outside the

scope of a national measure dealing merely with homework. But also the modernising message of the Telework Agreement, containing provisions on equipment, privacy and training, are often missed in this case. Our conclusion is that legislation on 'homeworking' does not cover the full scope of telework as defined in the Telework Agreement and does not offer an adequate protection to teleworkers because, in most cases, it is designed for other type of workers (artisans and workers assembling garments and the like).

#### **4.2. Voluntary nature and reversibility**

Clause 3 of the Telework Agreement states that telework is voluntary both for the worker and the employer concerned. 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 the latter case, the Telework Agreement establishes that the decision to pass to telework is reversible. This reversibility principle might imply returning to work at the employer's premises at the worker's or at the employer's request. The modalities of this reversibility can be established by individual and/or collective agreement. The abovementioned clause of the Telework Agreement follows closely the general principle of voluntariness and the right to return mentioned by the Commission in its second stage consultation document.

The principle of voluntary nature of telework is reflected in all the implementation measures adopted across Europe. The issue of reversibility in the case that telework is not part of the initial job description is a more controversial one than the issue of the voluntary character of telework. Most countries that have adopted implementation measures have dealt with the reversibility issue. The majority of Member States have reproduced the wording of the Telework Agreement concerning this issue; in some the conditions under which employees opting for telework who later (want to) return to their previous form of work are more detailed. In France and Luxembourg, for instance, the interprofessional national agreements mention rules on how this principle of reversibility should apply. In both countries an adaptation period during which the worker and the employer can unilaterally end the telework arrangements is foreseen. In the Polish Act on Telework, both the worker and the employer are granted the right to present the other party to the employment relationship a proposal for ceasing to provide work in the form of telework and to reinstate the former terms of work performance. It is not entirely clear, however, what happens when there is a conflict. In Denmark, the agreement applicable to the local and regional public employees states that the teleworker has the right to return to the same job or, in the event that this is not possible, to another job with the same or similar specifications, if he or she wishes to do so. The principle of reversibility from telework to working at the employer premises is not respected in all cases, however. According to the collective agreement signed between the employers in industry and *CO-Industri*, the coalition of unions in industry, employees under the scope of this agreement in Denmark only enjoy such a right at the employers' discretion. In the

Hungarian law, the reversibility of telework has not been successfully incorporated.<sup>49</sup> It seems that the legislator has assumed that the issue of reversibility is covered by the general principles of the Labour Code concerning modification of employment contracts. Nevertheless, the bill implementing the Telework Agreement has introduced a 'soft-law' rule in the Labour Code, according to which the employee has the right to ask to continue or cease working as a teleworker. The employer is obliged to give due consideration to such requests and to inform the employee within 15 days of its decision (cp. 192/E § (3) Labour Code). In Ireland and the UK, the social partners have agreed on a code of practice and a guide on telework, respectively, which states that reversibility is subject to the agreement between the employer and the employee in the UK, or regulated by collective agreement at the outset in the Irish case. In the UK, according to the guide on telework, the circumstances in which a decision to telework cannot be reversed should be spelled out at the beginning, either in collective or individual agreements.

### **4.3. Employment conditions**

According to clause 4 of the Telework Agreement teleworkers benefit from the same rights as comparable workers at the employer's premises. These rights are guaranteed by applicable legislation and collective agreements. In order to take into account the particularities of telework, specific agreements may be necessary. The equality clause of the Telework Agreement follows the principle of guaranteeing equal treatment of teleworkers compared to workers who are permanently present on the firm's premises, conforming to the Commission's second stage consultation document. The philosophy underlying the Telework Agreement is that telework affects the organisation of work and does not create a special status.

The national implementing measures adopted follow this approach and establish the rule that teleworkers enjoy the same rights and working conditions as comparable workers who perform their work in the standard workplace. In addition, also in most countries, the transposition measures adopted establish that the particularities of telework can be taken into account in collective or individual agreements. In Germany, where there has not been one single national implementing measure or agreement, but several sectoral or company agreements deal with the issue of telework, a recommendation in the chemicals industry stipulates that the teleworkers' working place will be treated like a workplace within the establishment, insofar the nature of the telework does not dictate otherwise. The Hungarian legislation deals with a range of issues whenever the rules applicable to telework differ from the general labour law provisions, namely the scope of the employer's rights to give instructions, the scope and practical implementation of the employer's right and the obligation to provide supervision, the employer's right to enter the location where the work is

<sup>49</sup> See A. Hars and L. Neumann, EIRO Thematic Feature 2006: *Telework in an enlarged European Union – Case of Hungary* ([www.eiro.eurofound.eu.int](http://www.eiro.eurofound.eu.int)), and L. Neumann, *New Legislation Regulates Telework* ([www.eiro.eurofound.eu.int](http://www.eiro.eurofound.eu.int), publication date: 04-11-2004).

performed, the employer's obligation to provide information on the way of performing the work, defining, scheduling and registering working and resting time, the employer's right to have access to the data of the ICT equipment used by the employee for work, the employee's obligations related to the use of the ICT equipment provided by the employer, and the method of communication between the employer and the teleworker. Similarly, in the UK, the guidance on telework contains a list of particular aspects of a teleworker's contract that may need to be amended or specified in agreements, i.e. working-place, hours of work, holiday and sick leave, etcetera. In the Netherlands, the recommendation on telework of the Labour Foundation does not contain a separate non-discrimination clause for teleworkers, in line with the Telework Agreement's philosophy that telework is not a special status but a particular type of work organisation. However, in this case, as in several other countries where the social partners or the government have not adopted specific implementing measures, general rules on non-discrimination at work must be assumed to apply to teleworkers in the same way as they do to comparable workers at the employers' premises. To our knowledge, this assumption has as yet not been tested in court or, in the specific Dutch case, in the Commission on Equal Treatment.

#### **4.4. Data protection**

According to clause 5 of the Telework Agreement, the employer is responsible for taking the appropriate measures to ensure the protection of data used and processed by the teleworker for professional purposes. Besides, according to this clause, the employer should inform the teleworker in particular of any restrictions on the use of equipment and of sanctions in the case of non-compliance. The Commission mentioned this point in its second stage consultation document. In general, the Telework Agreement follows closely the principles proposed by the Commission.

In most of the examined countries, the adopted implementation measures refer to national data protection rules as they apply to teleworkers. This is the case, for example, in the French and Italian national collective agreements, in the Hungarian legislation, the guidelines in Sweden and the UK, and the Irish code of practice. In the Belgium and Luxembourg national agreements there is a provision obliging the employer to undertake measures to ensure the protection of the data used and processed by the teleworker for professional purposes. In the Netherlands, the recommendation adopted by the social partners, copies the wording of the clause of the Telework Agreement dealing with data protection. Nonetheless, it follows from the Dutch legislation on protection of personal data<sup>50</sup> and the general principles of Dutch labour law that if the employer wants to implement a control system, he is obliged to keep the employee informed about the purpose of the system and the way in which the information that has been gathered will be used. This provision of Dutch legislation conforms with the criteria on privacy and protection of personal data

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<sup>50</sup> Wet Bescherming Persoonsgegevens of 23 November 1999 (approved by the Second Chamber on 3 July 2000 - date of entering into force 1.09.2001).

established by the Commission when dealing with telework in its second stage consultation. Some national implementation measures entail further provisions. According to Polish law, for instance, teleworkers have to confirm in writing that they are aware of the rules applicable to the use of data supplied to them. Furthermore, a teleworker is obliged to comply with the rules governing the protection of data transferred to him. The policy on data protection should be specified by the employer, who must provide instructions and training on the accurate use of the data.

#### **4.5. Privacy**

According to clause 6 of the Telework Agreement, the employer should respect the teleworker's privacy. Moreover, 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/EC on visual display units. In its second stage consultation document, the Commission referred not only to the rule of respecting the principle of proportionality when putting in place any kind of control on the use of the equipment, but also to the need to get the employee's consent. This last point is not mentioned in the Telework Agreement adopted by the European social partners.

In most of the adopted national implementation measures, the provisions of the Telework Agreement concerning privacy have been copied in extenso. The Hungarian Labour Code specifies rules for the access to the data on the computer used by the teleworker and on the right to check those data, but the monitoring system itself is not specifically regulated. The employer may enter the location where the teleworker is working only as long as this does not cause disproportionate grievances for the person's family or others using the property, and only after due notification. According to the Luxembourg national agreement, the employer can only visit or monitor the workplace when the visit has been agreed with the teleworker and the inspection is limited to the place where the provided equipment is located. If a surveillance device is installed, it should be used respecting the legislation on data protection and only when its use is proportionate to the aim pursued with its installation. The Polish Act implementing the Telework Agreement mentions the need to respect the right of privacy during inspections carried out in relationship with work performance or in order to do an inventory or repair the equipment entrusted to the worker. The Act stipulates that any inspection of the working place of the teleworker working from home should be carried out on the basis of prior agreement with the teleworker. The Irish code of practice states that the rules regarding visits to the teleworker's working place for health and safety inspections or for computer maintenance, including details on prior notice for such visits, should be agreed. The guide on telework adopted in the UK states that the teleworker should be informed of the objective of any checking facility and the measures taken should be strictly proportionate to the pursued objectives. In Denmark, the collective agreements signed by FA and FTF and the one of CO-industri and Danish employers in industry (DI) contain specific rules for data protection and the right of privacy of teleworkers. These rules are also present in the

“example” agreements published by German and Austrian unions and form typically part of the company and works agreements in both countries.

#### **4.6. Equipment**

Clause 7 of the EU Telework Agreement stipulates that "all questions concerning work equipment, liability and costs are clearly defined before starting telework". As a general rule, the employer is responsible for providing, installing and maintaining the equipment necessary for regular telework, unless the teleworker uses his or her own equipment. This provision of the Telework Agreement slightly differs from the wording of the general principle of full coverage of costs by the employer mentioned by the Commission in its second stage consultation document. The Commission had suggested that there should be no exception to the rule that all costs related to equipment, installation, maintenance, insurance and telecommunication are to be met by the employer. According to clause 7, if telework is performed on a regular basis, the employer shall compensate or cover the costs directly caused by the work, in particular those relating to communication. In accordance with national legislation and collective agreements, the employer is liable for the costs due to loss or damage to the equipment and data used by the teleworker. However, the employee is responsible for handling the equipment provided to him with care. Finally, the Telework Agreement states that the employer shall provide the teleworker with an appropriate technical support facility.

The majority of the national implementation measures establish that the employer should bear the entire responsibility for the provision, installation and maintenance of the equipment. This is for example the case in the Belgian national collective agreement and in the specimen for company and works agreements agreed for local administrations and public sector companies in Germany. This is also the case in the Italian national collective agreement. The Hungarian Labour Code reads somewhat differently and stipulates that the responsibility for providing the equipment and communication facilities is subject to an agreement between the employer and the employee. Only in the case that there is no agreement shall the employer bear the abovementioned responsibilities. The Dutch recommendation and the UK guidelines more or less copy the relevant clause in the Telework Agreement. In some Member States the responsibilities of either side are further detailed. That is the case of the national collective agreements in France and Luxembourg, the Polish legislation and the Irish code of practice. In particular the Polish Act dealing with telework establishes that the employer has the obligation to provide a teleworker with the equipment necessary for telework while meeting the requirements of occupational safety and hygiene. The employer also has the obligation to insure the equipment and to cover the costs of installation, servicing, use, and maintenance of the equipment. In Denmark, the collective agreement of FA and FTF specifies that the local company agreements need to include a reference to the coverage for running costs, including rent, heat electricity, telephone, etc. According to the same sectoral agreement, individual staff agreements should deal with the

issue of the equipment at the workplace of the teleworker. In Spain, some of the collective agreements that regulate certain aspects of telework establish that the employer shall bear the costs of equipment and the Internet connection. This rule is practice in most countries. The provision establishing that the employer shall provide the teleworker with “appropriate technical support” has also been followed in most of the national implementation measures.

#### **4.7. Health and Safety**

Clause 8 of the Telework Agreement establishes that the employer is responsible for the protection of the occupational health and safety of the teleworker in accordance with Directive 89/391/EEC and relevant daughter Directives, national legislation and collective agreements. In order to verify that the relevant health and safety provisions are correctly applied, the employer, workers' representatives and/or relevant authorities have access to the telework place, within the limits of national legislation and collective agreements. If the teleworker is working at home, such access is subject to prior notification and his/her agreement. The teleworker, on the other hand, is entitled to request inspection visits. Although the actual wording differs, clause 8 of the Telework Agreement follows the propositions of the Commission concerning the protection of teleworkers in the field of health and safety set up in the second stage consultation document.

Several national implementation measures states that the general rules on health and safety at work are applicable to teleworkers. The UK guide and the Irish code of practice list the applicable national and European regulations. In these two countries employers are obliged to undertake a health and safety risk assessment to ensure that a teleworker's workstation complies with all legislation relating to that issue. The national collective agreements in several countries, for example in Belgium, France, and Italy, stipulate that the employer is responsible for assuring that health and safety rules apply to the teleworker's working place. In addition, the employer has the duty to inform the teleworkers of the rules concerning health and safety at the workplace. Finally, the employer and the health and safety prevention service are entitled to get access to the teleworker's working place. However, when the work is performed at the teleworkers home, this access is subject to prior agreement by the teleworker. Furthermore, the teleworker is entitled, if he or she wishes, to request an inspection visit. The Hungarian Labour Code stipulates that the general health and safety rules apply to teleworkers in the case that the equipment used for telework is provided by the employer. The most important new labour health and safety rule is that the employer is obliged to inspect the equipment used by teleworkers before use. The labour inspectorate may enter the premises used by the teleworker, on three days' notice. In Portugal, the law provides a specific provision regarding the safety, hygiene and health at work for teleworkers. According to this provision, teleworkers are covered by the regulations regarding safety, hygiene and health at work, as well as by the legislation regarding accidents at work and occupational diseases. Moreover, the employer is responsible for the definition and implementation of a safety, hygiene and health policy, which includes



teleworkers. In addition, teleworkers have the right to periodical medical exams and the employers should provide them with visual protection equipments. The general national collective agreement in Greece contains several rules aimed to protect teleworkers' health and safety, such as their right to be informed by the employer of the prevailing working conditions and health regulations; their right to request a survey of the conditions and hazardousness of their work; and the right of workers' representatives and the competent authorities' to get access to places of telework. Finally, in Germany the works agreements in the metal industry stipulate that the telework place must meet proven ergonomic requirements and health and safety standards. Representatives of the employer or works council may have access to the telework place, subject to prior notification and the employee's consent. According to the collective agreement for the telecommunications sector, a domestic workplace must be suitable from the angle of general health and safety standards, whereby inspection must be possible in the case of alternating telework, involving at least one day per week. The specimen company agreement for services provides that the employer will verify that the general requirements for a safe workplace are met, in consultation with the employee. The employer has a duty of supervision and must assure proper conditions; access for personnel representatives is possible with the employee's consent.

#### **4.8. Organisation of work**

Within the framework of applicable legislation, collective agreements, and company rules, the teleworker manages the organisation of his or her working time (clause 9 of the Telework Agreement). The Telework Agreement also states that the workload and the standards of performance of the teleworker are equivalent to those of comparable workers at the employer's premises. This clause seems to respond to the concerns of the social partners relating to the risk of overlapping professional and personal life that might affect teleworkers working from home. Furthermore, the Telework Agreement pays attention to the need of preventing the isolation of the teleworker from his or her company and colleagues. The issue of organisation of work is dealt with in the Commission's second stage consultation document under the headings of *h) working time* and *j) keeping in contact with the firm*. In contrast with the wording of the Telework Agreement, which emphasizes the freedom of the teleworker to manage the organisation of his or her working time, the Commission stressed the need to comply with all the rules dealing with working time in full, though allowing some flexibility for teleworkers to organise their working time more freely. However, despite this difference in the approach to the issue of working time, we see no real clash between the dispositions stated in clause 9 of the Telework Agreement and the Commission propositions concerning the organisation of the working time of the teleworkers. The same can be said about the issue of the measures that the employers must take in order to prevent the teleworker from being isolated from the rest of the working community in the company, such as giving him or her the opportunity to meet with colleagues on a regular basis and gain access to the company information.

The issue of working time has been explicitly dealt with in all the examined countries where national implementation measures have been adopted. Only in Portugal, in the opinion of some trade unions officials, the adopted measures do not fully assure the protection of the teleworker concerning the maximum weekly working time.<sup>51</sup> Most countries refer to the application of the existing legislation covering workers as for instance in the Italian national agreement or the Irish code of practice. Some national implementation measures contain more detailed provisions dealing with particular aspects of the teleworker's work organisation. For instance, the Irish code of practice mentions the obligation to include mechanisms to avoid unfair extra workload on those working at home or negative consequences for colleagues working from the office. The Luxembourg national collective agreement stipulates that employer and worker must agree on the way to take account of overtime. In Hungary, the legislation establishes that, as a general rule, it is up to the teleworkers to determine their working time schedule. The quantity of tasks assigned, however, must be defined by the employer with due consideration for the statutory or agreed working time and the physical and intellectual effort required for the work performed in identical or similar jobs with that employer. Finally, it is worth noting that in Germany several works agreements on home-based telework in the private sector prohibit overtime. The home-based worker, when keeping a log and working time account, has to ask for permission to work overtime. Finally, a number of national implementation measures pay attention to the need to prevent the isolation of the teleworker from his or her colleagues at the employer's premises. This is particularly the case of Belgium, France, Luxembourg, Slovakia, and the UK.

#### **4.9. Training**

According to clause 10 of the Telework Agreement, teleworkers have the same access to training and career development as comparable workers at the employer's premises and are subject to the same appraisal policies as other workers. Moreover, the Telework Agreement stipulates that the teleworkers should receive appropriate training targeted at the technical equipment at their disposal and at the characteristics of this form of work organisation. The Telework Agreement also stipulates that the teleworker's supervisor and his or her direct colleagues may be needing training for this form of work and its management. Clause 10 follows the suggestions of the Commission in its second stage consultation document. Besides, it is worth noting that this clause not only refers to specific training for teleworkers but also set up the general principle of equality of access to ordinary training and career development for teleworkers in relationship with comparable workers at the employer's premises, in line with the principle of equal treatment set up in the Commission's document.

In most countries, the implementation measures have copied the provisions of the Telework Agreement on training of teleworkers. In addition, the Hungarian legislation foresees that, in the case of telework being part of a company's strategy, teleworkers are

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<sup>51</sup> APO, CEEP, CGTP-IN, CIP and UGT-P, *Report on the Implementation of the European...*, op. cit.

more likely to have access to training programmes. Only in the UK the guide on telework adds further details to the provisions of the Telework Agreement in matters of training, by including a catalogue of examples of training courses or programmes suited for IT workers.

In Denmark, on the other hand, in the majority of collective agreements dealing with telework there is no specific clause stating that teleworkers have the same access to training as workers at the employers' premises. However, the general rules within various collective agreements seem to ensure that the access to training is guaranteed for teleworkers in a similar way as for other workers. This may also be the case elsewhere, for instance in the Netherlands, Sweden and Finland.

#### **4.10. Collective rights**

According to the Telework Agreement teleworkers have the same collective rights as workers at the employer's premises (clause 11). Thus, they should be able to participate and stand for elections to bodies representing workers in the same conditions as the workers at the employer's premises and be included in calculations for determining thresholds for bodies of worker representation in accordance with European and national law, collective agreements or practices. Moreover, no obstacles should be put to communicating with workers' representatives. Finally, the Telework Agreement includes a provision stating that 'workers representatives are informed and consulted on the introduction of telework in accordance with European and national legislations, collective agreements, and practices.' The provisions set up in clause 11 of the Telework Agreement fully respect the general principle on collective rights of teleworkers as established by the Commission in its document on the second stage consultation of the social partners.

All implementation instruments we have studied reiterate that teleworkers have the same collective rights as workers at the employer's premises and that no obstacles shall be put to communicating with workers representatives. The national implementation measures in Belgium and Italy establish that employees' representatives are informed and consulted concerning the introduction of telework in the enterprise in the same way as regarding the social consequences of the introduction of new technologies. In Poland, the conditions for using telework shall be spelled out in an agreement between the employer and the trade unions. If it is not possible to reach an agreement with all the trade unions operating at a given employer, the employer shall enter into an agreement only with the representative trade unions. If there are no trade unions at a given employer, the employer shall agree the conditions to use telework with workers' representatives selected following the usual practice for the employer. If the parties fail to reach an agreement on telework within 30 days of the employer announcing his/her intention to use telework, the employer shall set up the conditions for using telework in regulations. In laying down those regulations, the employer should take into account the agreements reached during the discussions with the workers' representatives. In France, as is the case in the Netherlands, the works council or staff

representatives should be informed and consulted if some means of supervision of telework are to be put in place.

#### **4.11. Information to be provided to the teleworker**

There is one issue in the Commission's second stage consultation document that is not separately addressed by the Telework Agreement. That is the issue of information to be provided to the teleworker by the employer. According to the Commission it would be desirable that the social partners' agreement would state the principle that, taking into account that he or she works at a distance from the employer premises factor, the teleworker should be informed as thoroughly as possible about future working conditions prior to his/her assignment or recruitment to teleworking. The Commission listed in great detail the issues about which the teleworker should receive information, i.e., particulars pertaining to his assignments, precise working conditions (...) and particulars on the establishment to which he or she is attached from the point of view of the organisation of work within the enterprise. Although the Telework Agreement did not mention the issue of information for the teleworker as a separate issue, in many clauses this is presupposed and in clause 3, dealing with the voluntary character of telework, there is in fact a specific reference to the need of the employer to provide the teleworker with relevant written information in accordance with Directive 91/533/EEC, including information on applicable collective agreements, description of the work to be performed, etc. In addition, it is acknowledged that the specificities of telework require additional information on matters such as "the department of the undertaking to which the teleworker is attached, his/her immediate superior or other persons to whom she or he can address questions of professional or personal nature, reporting agreements, etc." We see therefore no conflict between the Commission's propositions and the position taken in the Telework Agreement.

## **5. Country Reports**

In this chapter we present a description of the implementation measures taken at the national level as best as we can, based on the various sources mentioned in chapter 2. The purpose of the chapter is descriptive. The overall assessment in terms of art.139 (2) of EC Treaty – did the Member States, and the social partners in the Member States, implement the Telework Agreement "in accordance with the procedures and practices specific to management and labour and the Member States"? Did they assure adequate coverage, as defined in chapter 1? Did they support the modernisation of employment relations, as intended by the European social partners in their endorsement of the Lisbon Agenda and understood by the Commission in its second stage consultation document? This last issue is taken up in our concluding chapter six.

## 5.1. Austria

According to the data of 2001 *Statistik Austria* (Federal Ministry of Economy and Labour – BMWA), the total percentage of teleworkers goes, depending on the different definitions available, from 1.6 to 3.9 percent of the total workforce.<sup>52</sup> According to the SIBIS database<sup>53</sup>, the incidence of home-based telework among employees, including all forms of part-time telework but excluding the self-employed and some forms of mobile telework, was 6.7 percent in 2002 and is rising.

In January 1999, the Austrian Federal Ministry of Labour, Health and Welfare proposed a series of amendments to the *Labour Constitution Act* aimed to include a right for collective agreements to allow agreements between employers and works councils on telework. In the end, these amendments were not adopted. However, the current version of the *Labour Constitution Act* already seems to allow the possibility of concluding agreements between the social partners on telework. At branch level, the social partners can agree on practically everything as long as it is not in contradiction with the law. At enterprise level, the social partners are allowed to agree on certain subjects depending either on law or the respective collective agreement. Regarding telework, the section 97 (1) 9 of the Labour Constitution Act, referring to "measures for humane work organisation", might be used as a basis for a works council agreement.

In Austria, there is no statutory regulation of telework. Rather, telework is occasionally and marginally dealt with in different laws. In principle, labour law, in particular the *Employee Protection Act* (AschG), is generally applicable to teleworkers, if they are legally employed under the terms of the *Labour Constitution Act* (ArbVG). Problems may emerge in relationship with the possible applicability to teleworkers of the Homeworking Act (*Heimarbeitsgesetz*). However, the highly skilled character, along with the closer degree of dependence and subordination to an employer that characterize teleworkers, implies that they can generally be categorized as employees under the *Employee Protection Act* (AschG).<sup>54</sup> On that ground, teleworkers are deemed to be covered by the same legislation and collective agreements as regards working conditions, data protection, right of privacy, access to training, health and safety, and collective rights as applying to employees working at the employer's premises.

In contrast with the lack of specific legal measures, a vast number of Austria's sectoral *collective agreements* include provisions on telework, as they did already before 2002. In fact, several of these collective agreements provide for more comprehensive provisions compared with the voluntary 2002 framework agreement at EU level. According

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52 Source mentioned by Vogt, M., EIRO, Eurofound: Place of Work and Working Conditions – Austria, [www.eurofound.europa.eu/ewco/studies/tn0701029s/at0701029q](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/at0701029q), publication date: 2007-05-31.

53 Described in chapter 3 of this report.

54 G. Adam, EIRO Thematic Feature 2006, *Telework in an Enlarged European Union – Final Questionnaire – Version 27.01.2006*.

to a study by the Ministry of Economy and Labour, published in 2003, 80 percent of the collective agreements for branches where telework occurs contain provisions about telework.<sup>55</sup> Up to 2005, several collective agreements, which are concluded almost exclusively at sectoral or industrial level in Austria, have adopted specific provisions on telework. In July 2005, the three main employers' associations – the Austrian Economic Chamber (WKÖ), the Federation of Austrian Industry (IV), and the Association of Public Enterprises (VÖWG) – presented joint *implementation guidelines* with respect to the European Framework Agreement on Telework. These guidelines are meant to help companies, in particular those that are not covered by a collective agreement dealing with telework, to implement the framework agreement.<sup>56</sup> The main employee union involved in telework, the GPA, an affiliate of the Austrian Confederations of Unions (ÖGB) has published model agreements for alternating teleworkers on its website. As these guidelines and model agreements have been unilaterally adopted by the employers or unions, according to the joint implementation report of the European Social Partners, the implementation process has not ended in Austria yet.<sup>57</sup> Currently, the social partners in Austria are trying to agree on a common recommendation on telework to be implemented at company level.<sup>58</sup>

Summing up, in Austria, there has not yet been a joint implementation by the social partners of the EU Framework Agreement on Telework. However, many attempts have been made separately by management and labour to adopt guidelines or model agreements addressing the issues dealt with in the Framework Agreement, and there are several collective agreements in sectors and companies where the incidence of telework is relative high.

## 5.2. Belgium

Before the European Framework Agreement on Telework was concluded, the Act on Homeworking of 1996 set out guidelines for contracts for working at home covering traditional homeworking as well as newer forms, like telework. The government of Belgium expected a huge expansion of telework with the new millennium and therefore wanted to be prepared (Blanpain, 2007). According to the SIBIS database, the incidence of all home-based telework together was 7.5 percent in 2002 and rising.

With the intention of implementing the European Framework Agreement on Telework, on 9 November 2005, the social partners concluded *national collective agreement* no. 85. The agreement was adopted in the National Labour Council and, in accordance with a standard procedure in Belgium in such cases, *extended* by Royal Decree, which means that it becomes binding law for the entire private sector. A comparison between the European Framework Agreement and the Belgian agreement no. 85 shows that the latter specifies in

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55 See <<http://www.bmwa.gv.at/>>, accessed on 01.10.07.

56 Austria, Joint National Implementation Report (reply to the European Commission), 2007.

57 European social partners, Report on the Implementation of the European Framework Agreement on Telework, September 2006, <[http://ec.europa.eu/employment\\_social/social\\_dialogue/docs/telework\\_report\\_en.pdf](http://ec.europa.eu/employment_social/social_dialogue/docs/telework_report_en.pdf)>, accessed on 01.10.07.

58 Ibid.

more detail the content of the written individual agreement between the teleworker and his or her employer, the consequences of the absence of a written agreement, the method of calculation of the costs linked to equipment, and the consequences of equipment breakdowns.<sup>59</sup> According to agreement no 85, there has to be an addendum to the work contract containing written information on the following issues: the frequency of telework and, if possible, the days at which telework is done and, if needed, the days and/or hours when the worker is present in the enterprise; the periods of time during which the teleworker can be contacted and by which means; the circumstances under which teleworkers can ask for technical support; the ways in which the employer covers the costs linked to the equipment and its possible breakdown; the conditions under which a teleworker can apply to return to working at the employer premises, the notice period or the duration of the telework, and its renewal.

The Belgian social partners also asked the government to propose a number of legislative changes in order for agreement no. 85 to be harmoniously integrated in the pre-existing regulation. That request led to the adoption of an act on July 2006 stating that the *Act on Homeworking* (1996) does no longer apply to workers that are covered by the collective agreement on telework concluded in 2005. On July 9<sup>th</sup> 2006, a *sectoral agreement* in the Flemish civil service was reached for the periods 2005-2007.<sup>60</sup> This agreement pays particular attention to measures promoting active ageing and combining work with family life, including telework, in the civil service. We do not know whether similar agreements have been reached, or tried, for the civil service in the Walloon and Brussels regions

### **5.3. Bulgaria**

The 2005 survey conducted by the Bulgarian Ministry of Labour and Social Policy estimates that telework is conducted by about 3.8 percent of the working population<sup>61</sup>, a percentage that matches the findings of the SIBIS survey.

It appears that the implementation process of the European Framework Agreement on Telework seems has not started yet.<sup>62</sup> From what is known about existing laws and regulation, many issues in the Telework Agreement are not yet addressed. According to Bulgarian legislation, the employers are obliged to provide a safe and healthy working environment to all workers and employees regardless of their place of work. The law in these matters applies to employees and the self-employed, whereas the latter have to secure the equipment themselves. Before starting to work and when deemed necessary, the employer should inform the workers of all risks related to the work they perform, as well as of the measures to be implemented in order to prevent or minimise risks. The Bulgarian Labour Code allows the employer to establish flexible working times. The times during which the

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59 European Social Partners, *Report on the Implementation of the European Framework...*, cit.

60 Eurofound: New sectoral agreement in Flemish civil service, [www.eurofound.europa.eu/eiro/2006/07/articles/be0607019i.html](http://www.eurofound.europa.eu/eiro/2006/07/articles/be0607019i.html), accessed on 01.10.07.

61 Z. Gospodinova, EIRO, *Place of Work and Working Conditions*, Bulgaria, [www.eurofound.europa.eu/ewco/studies/tn0701029s/bg0701029q](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/bg0701029q), Publication date: 31-05-2007.

62 European Social Partners, *Report on the Implementation of the European Framework...*, cit.

employee must be at work in the enterprise, as well as the manner of accounting for it, shall be specified by the employer. In principle, employees working at home may determine the beginning and end of their working time themselves. These matters have not yet been subject to collective agreement.

#### **5.4. Cyprus**

The EWCO survey puts the incidence of telework in Cyprus at 5.4 percent in 2005; unfortunately, there is no comparable data from other sources. The European social partners have not yet received a final joint report on the implementation of the Framework Agreement.<sup>63</sup>

On the one hand, in their letter in response to the questionnaire of the European Commission, the Cypriot government officials state that there is no clash between national legislation and the Telework Agreement<sup>64</sup>, because Cyprus labour legislation applies to every employee who works under a valid contract of employment or maintains an employer-employee relationship, no matter where the work is performed or executed. On the other hand, there are no legal provisions dealing specifically with atypical forms of employment, such as telework, which to a certain extent discourages work outside the traditional model. Existing legislation on health and safety does not fully apply to employees that work away from the company premises and work mainly at home. Despite the fact that the Labour Inspectorate at the Ministry of Employment and Social Security claims that it is responsible for the health and safety of all teleworkers, this inspectorate lacks authority to carry out inspections away from the company's premises.<sup>65</sup> Thus, it is unlikely that the implementation of the provisions of the European Framework Agreement dealing with health and safety of teleworkers is adequately dealt with in Cyprus.

The issue of telework has been present in the bargaining agenda of the social partners in recent years.<sup>66</sup> The Cypriot affiliates of BUSINESSSEUROPE (i.e. the Cypriot Employers and Industrialists Federation) and ETUC (the Cypriot Workers Confederation) appear to be negotiating with a view to adopting measures to implement the agreement. According to the reply of the Cyprus authorities to the European Commission, the intention of the two organisations is to reach a mutually acceptable arrangement at national level and then, actively promote its actual implementation at sectoral and enterprise level.

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63 Ibid.

64 Letter from the Permanent Representation of the Republic of Cyprus to Mr. N.G. van der Pas, DG Employment, Social Affairs and Equal opportunities-European Commission, 15 June 2007.

65 Eurofound: *place of work and working conditions – Cyprus*, [www.eurofound.europa.eu/ewco/studies/tn0701029s/cy0701029q.htm](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/cy0701029q.htm), accessed on 01.10.07.

66 Eurofound: *'Place of work and working conditions' (view of the national centre)*, [www.eurofound.europa.eu/ewco/studies/tn0701029s/cy0701029q.htm](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/cy0701029q.htm), accessed on 01.10.07.



## 5.5. Czech Republic

In 2003, according to a national study “National Support of Teleworking”, elaborated by the Czech Ministry of Informatics, only around 2,25 percent employees were performing telework. The SIBIS database has a similar finding, whereas EWCO put the incidence of telework at 18.7 percent (!).<sup>67</sup> A discussion on telework was included as a main theme in the 2003-2005 National Action Plan and it was discussed with the social partners in the framework of the European Employment Strategy. In addition, the need to promote the conditions for telework contained in the Framework Agreement was mentioned as a priority in the joint agreement of the national social partners signed in November 2004.

In 2006, the social partners agreed that the essence of the Framework Agreement on Telework should be implemented through a revision of the *Labour Code*.<sup>68</sup> Subsequently, a new draft Labour Code was submitted to the parliament in order to change some provisions and to include also the specific protection of teleworkers. The *new legislation* entered into force on 1 January 2007. Article 317 stipulates that the new Labour Code also covers employees who do not work at the employers’ premises, but according to agreed conditions perform their work according to a working time organisation which they themselves decide. Such an employee enjoys all rights and all the duties as the employees working at the employers’ premises, with some exceptions only.<sup>69</sup> Article 317 of the Labour Code does not deal exclusively with telework and teleworkers and seems to target a wider set of flexible working conditions, but according to the constitutional principle that “what is not forbidden, is permitted”, all parties concerned are free to include specific contractual conditions in their collective or individual agreements, as long as they are not in contravention with the law or existing collective agreements. We do not know of existing collective agreements that deal with telework, however.

## 5.6. Denmark

Denmark is one of the EU member states with the highest incidence of telework.<sup>70</sup> According to the SIBIS data, it is one of only four European countries with 15 percent or more of the employees involved in some form of home-based telework – the other three being Finland, Sweden and the Netherlands. As shown in Chart 1 in chapter 3, In Denmark, more than in the other countries, the most diffused form of telework is *supplementary*, involving a few hours per day (but less than a full day per week, as in the case of alternating telework). In Denmark there was much collective bargaining activity on telework preceding

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67 SP, CR, and CMKOS, *Joint Report about the Implementation of the Voluntary Agreement on Telework in the Czech Republic*, [www.business-europe.eu/](http://www.business-europe.eu/), accessed on 01.10.07.

68 Ibid.

69 For further information on the issue of protection of the health and safety of workers working away from the employer’s premises: L. Dokulilov, A. Kroupa, and R. Kyzlinkov, *Place of Work and Working Conditions – Czech Republic*, <<http://www.eurofound.europa.eu/ewco/studies/tn0701029s/cz0701029q.htm>>, Publication date: 2007-05-31.

70 T. P. Larsen, EIRO Thematic Feature 2006: *Telework in an Enlarged European Union. The Case of Denmark*; R.H. Christiansen, and H.S. Pedersen, EIRO, *Place of Work and Working Conditions – Denmark*, <<http://www.eurofound.europa.eu/ewco/studies/tn0701029s/dk0701029q.htm>>, Publication date: 2007-05-31.

the 2002 Telemwork Agreement. Some of these agreements, especially in the public sector, in commerce and for employees in industry, go back to 1997. These are sectoral agreements or provisions in the normative part of existing sectoral agreements, up for renewal every three or four years. In line with current trends in Danish industrial relations, they often allow further detailing in individual agreements. It appears that many of these agreements, as they were prior to the European-level Agreement, foreshadowed many issues taken up in the negotiations in Brussels.

After the adoption of the European Framework Agreement on Telemwork, the Danish social partners signed or renewed several (sectoral) *collective agreements* in order to implement that framework agreement.<sup>71</sup> In 2005, in the state and local government, in industry, in commerce and services, the social partners adopted or renewed a spate of collective agreements on telemwork. In order to ensure a full coverage of the private sector, the Danish confederation of employers and the main trade union confederations are currently negotiating a *national 'extension' agreement* that will implement the European Framework Agreement in sectors and workplaces not yet covered, but negotiations appear not to have finished yet.<sup>72</sup> This technique was already used in other cases of European regulation, for instance with regard to the Directive on consultation and information.

## 5.7. Estonia

The incidence of telemwork in Estonia is relatively high – at least when compared with the other New Member States, though perhaps fitting a Baltic pattern. The SIBIS database put the incidence of telemwork (including supplementary telemwork) at 8.5 percent, which is above the European average. EWCO estimated the much higher figure of 14.7 percent. The statistics are rather strongly influenced by the numbers of workers who turned into self-employed workers, on a works rather than employment contract. Against this background, it is somewhat surprising that information on regulation of telemwork is rather wanting. The European social partners have not received a final joint report on the implementation of the Framework Agreement in Estonia yet.<sup>73</sup>

It appears that no work has been made of implementing the European Framework Agreement yet and that there is no specific regulation on telemwork in Estonia.<sup>74</sup> In principle, all employment contracts have to be in accordance with the Estonian Employment Contract Act, but its coverage of telemworkers is unclear. The Estonian Action Plan for growth and jobs 2005-2007<sup>75</sup> aimed to raise awareness about flexible forms of work, including telemwork, but does not spell out a path towards regulation. According to the Occupational Health and Safety Act, the employer is required to conduct regular internal controls of the working

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71 European Social Partners, Report on the Implementation of the European Framework..., cit.

72 LO, AC, FTF, CFU, KTO, DA, KL, Committee of Danish Regions, and the State Employer's Authorities, Report on the Implementation of the Telemwork Agreement in Denmark, 2006.

73 European Social Partners, Report on the Implementation of the European Framework..., cit., p. 7.

74 K. Philips & R. Eamets, Telemwork in an enlarged European Union – case of Estonia, EIRO Thematic Feature 2006, <<http://www.eurofound.europa.eu>>, accessed on 01.10.07.

75 <[http://www.riigikantselei.ee/failid/1.October\\_2005\\_Estonian\\_Action\\_Plan\\_for\\_Growth\\_and\\_Jobs.pdf](http://www.riigikantselei.ee/failid/1.October_2005_Estonian_Action_Plan_for_Growth_and_Jobs.pdf)>, p. 65.

environment, even if the employee is not working on company premises. However, the legislation does not prescribe how and how often these regular checks should be carried out and the compliance with the Act is not easy to supervise.<sup>76</sup>

However, a review of the employment contract regulations by the authorities is currently taking place. This review foresees to transpose the Framework Agreement on Telework in the Estonian legal system. In the opinion of the Estonian employers' confederation, there is no need to transpose the framework agreement into law. The confederation considers that existing legislation must become more flexible and leave more room for parties to make agreements, which would in their view also enable better implementation of the framework agreement.<sup>77</sup> The government's future actions in encouraging the spread of telework are expected to be focused primarily on information and sharing best practice.<sup>78</sup>

## 5.8. Finland

Finland is one of the countries with the highest incidence of home-based telework, involving 15.7 percent of the employees in 2002 according to the SIBIS database. After analysing the national labour legislation and existing collective agreements, the Finnish social partners concluded that no legislative amendment was necessary to comply with the requirements of the European Framework Agreement on Telework.<sup>79</sup> Instead, in May 2005, the social partners signed a framework agreement on the implementation of the European Framework Agreement. In this agreement, they recommend that, from the day of the adoption of the agreement onwards, the principles of the 2002 Framework Agreement on Telework shall be applicable to all job contracts.<sup>80</sup>

The Ministry of Labour has not found any conflict between the European and the Finnish social partners' agreements. This Ministry shares the view of the Finnish social partners that the labour legislation in force is applicable in the same way to teleworkers as to employees working on the premises of the employer.<sup>81</sup> Telework had been subject to collective bargaining prior to the European agreement, but we do not know how much of what became specified in the European Telework Agreement was already there. No changes related to telework have been reported in *sectoral agreements* in Finland. This is mainly because most sectoral agreements were valid until September 2007 and have come up for renewal only recently. There is no information available yet on whether telework will be a subject in the forthcoming new collective bargaining round. However, that will be the normal

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76 K. Philips & R. Eamets, Telework in an enlarged European Union – case of Estonia, EIRO Thematic Feature 2006, <<http://www.eurofound.europa.eu>>, accessed on 01.10.07.

77 Letter from the Permanent Representation of the Republic of Estonia to Mr. N.G. van der Pas (European Commission), 28 June 2007.

78 Letter from the Permanent Representation of the Republic of Estonia to Mr. N.G. van der Pas (European Commission), 28 June 2007.

79 Letter from the Finnish Ministry of Labour to Mr. N.G. van der Pas (European Commission), 11 June 2007.

80 Report on the implementation of the European Framework Agreement, Finland, <<http://www.buinessseurope.eu/Content/Default.asp?PagelD=467>>, accessed on 01.10.07.

81 Letter from the Finnish Ministry of Labour to Mr. N.G. van der Pas (European Commission), cit.

outcome deriving from the existence of the Finish framework agreement transposing the European framework agreement on telework.

## 5.9. France

According to a survey of the Ministry of Employment in 2004, 7.4% of the country's employees were teleworkers.<sup>82</sup> According to the comparative methodology of the SIBIS database and relating to 2002, France is lagging behind the European average, with only 4.4 percent of the employees involved in one or another form of home-based telework. The EWCO survey is putting the incidence of telework at 7 percent in 2005. Slowly, telework is however becoming more common in France as a mean for attracting more people into the labour market and offering them more flexible work solutions.<sup>83</sup>

The French authorities have recognised that existing regulations on home-working do not wholesale apply to teleworkers and provide inadequate protection.<sup>84</sup> However, several principles concerning the work performance of homeworkers might be applicable to teleworkers, as it is the case of the voluntary<sup>85</sup> and reversible<sup>86</sup> nature of home-working and the obligation of the employer to assume the costs associated with the professional activity.<sup>87</sup> Besides, it is worth noting that in France the law forbids that teleworkers work on call.<sup>88</sup> In 2004, a Report of the "Forum des Droits sur l'Internet" recommended that a few changes regarding telework were introduced in the Labour Code.

The three main French employers and five representative union confederations signed in 2005 a *national inter-professional agreement* on telework.<sup>89</sup> This agreement covers the specific aspects of telework, as addressed in the European framework agreement, and ensures equal rights for teleworkers. The agreement also includes some specific provisions on the working time of teleworkers in order to adapt it to the national regulatory framework regarding this issue.<sup>90</sup> As it is customary, rather than treating the agreement as an 'autonomous agreement' between themselves, the signatory parties asked the government to *extend* the provisions of their agreement to sectors of the economy in order to ensure complete coverage. This was done by Ministerial Decree of 30 May 2006. Under French law, the modalities of application of this national agreement may be adapted by collective

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82 Source: Ongoing Household Living Conditions Survey, 1999-2002, Enquête permanente sur les conditions de vie des ménages, 1999-2002 from the National Institute for Statistics and Economic Studies - INSEE – Ministry of Employment and Solidarity, report on company negotiations in 2004 and Ministry of Employment and Solidarity–DARES, cited by Robin, B., EIRO Thematic Feature 2006: Telework in an Enlarged European Union: France, <<http://www.eurofound.europa.eu>>, accessed on 01.10.07.

83 D. Bérard, EIRO, Social Partners Transpose European Telework Agreement, <<http://www.eurofound.europa.eu/ewco/2006/06/FR0606NU06.htm>>, publication date: 2006-07-11.

84 Réponse des autorités françaises au Lettre de la Commission européenne sur la mise en oeuvre de l'accord des partenaires sociaux européens sur le télétravail, 19-06-2007.

85 Cour de Cassation, chambre sociale, 02-10-2001, no. 99-42.727, «Abram».

86 Cour de Cassation, chambre sociale, 12-12-2000, no. 98-44.580, and Cour de Cassation, chambre sociale, 28-02-2001, no. 99-40.600.

87 Cour de Cassation, chambre sociale, 09.01.2001, no. 98-44.833.

88 Court of Appeal of Paris, 10.02.2006.

89 MEDEF, CGPME, UPA, CFDT, CFE-CGC, CFTC, CGT-FO and CGT, Accord National Interprofessionnel du 19 Juillet 2005 sur le télétravail.

90 J. E. Ray and J. Rojot, 'France' in R. Blanpain (ed.), *European Framework Agreements and Telework: Law and Practice, a European and Comparative Study*, Alphen aan den Rijn: Kluwer Law International, 2007, p. 157-169.

agreements at a lower level, taking into account the specific characteristics of the sector or undertaking. We do not know whether the issue has been taken up in company or sector agreements. There are some company agreements, for instance at Renault, where regulations go beyond the agreement in an attempt to make telework more attractive, but this may be an isolated case.

## 5.10. Germany

With an incidence of telework of 7.9 percent according to the SIBIS data, Germany is about average in this regard. Various reports, for instance by the German Ministry of Economics and Technology, but also from the Ministry of Labour and the Ministry of Family Affairs, Seniors, Women and Youth, suggest that there is still potential for growth of telework, as well as many gains for workers, employers and society at a whole.

According to the joint report of the German social partners (BDA, ZDH, VKA, and DGB) on the implementation of the European Framework Agreement on Telework, telework in Germany is covered by the protective mechanisms of German labour law.<sup>91</sup> This means that, in principle, the provisions on workers' rights and data protection, private life protection, and the rules on co-determination within the company are applicable to teleworkers, covering many of the key issues in the European Telework Agreement. The same can be said about the applicability of the principle of the voluntary nature on both sides of the employment relationship. The private-sector employers' confederation (BDA) and the Confederation of German unions (DGB) signed a rare *joint declaration* encouraging social partners at sectoral and company levels to implement the framework agreement.

In Germany telework has become, mostly, a subject for company or works agreements (*Betriebsvereinbarungen*), which are concluded between the employer and the works council, though many of these councils are advised by the unions on these matters. In fact, some of these agreements dealing with telework were already concluded before the Framework Agreement, others have been prompted by it.<sup>92</sup> The rules of the agreements on telework are developed and adapted according to the needs of the individual company. Because the agreements are made for the individual companies, they are usually more detailed than the EU Framework Agreement. Some of these works councils signed "works agreements" as long back as in 1991. Two of the DGB's unions signed, already in the mid-1990s, sectoral agreements in the telecom, chemical, and mining sectors respectively. These agreements were later expanded, again partly foreshadowing the European Telework Agreement. Various trade unions, for instance IGMetall, responsible for the engineering sector, inclusive hard- and soft-ware produces, and ÖTV, covering most of the private and public sector service employees, are active in providing 'model agreements' for their

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91 Joint report on the implementation of the European Framework Agreement on Telework, <<http://www.businessseurope.eu/Content/Default.asp?PagelId=467>>, accessed on 01.10.07.

92 The social partners in the chemicals industry have concluded a recommendation on telework. In August 2003, the German Coca-Cola AG Berlin concluded a collective agreement with the Trade Union Food, Drink, Tobacco, and Restaurants on telework. There is also a plant agreement of IBM Germany about installation of a remote working place.

members and works councils. The *Zentralverband des Deutschen Handwerks* (ZDH), which is one of the central employers' organisations, member of EUAPME and covering small and medium-sized firms and crafts, has also been more quite active and did inform its members about the text of the Telework Agreement with the advice to take it into account in their activities at regional and local level.

The German affiliates of the European social partners seem to consider this rather decentralised regulation pattern the best way to implement the Telework Agreement and address the regulation issue. There appears to be no disagreement on this, nor does the legislator seem keen to step in. Labour law experts suggest that the legislator might only wish to intervene when telework were to become a mass phenomenon and many workers would lack coverage, due to the decentralised nature of collective bargaining, but this is not the case yet.<sup>93</sup> In the public sector the union, as was mentioned before, and the local government employers have both, but separately, produced guidelines and model agreements for their members and for works councils, picking many of the issues of the Telework Agreement, and often going beyond the agreement. There is no joint agreement or recommendation in the public sector and part of the problem may be that the civil service confederation, the *Deutscher Beamtenschaft* (DBB), not being a member of the European Trade Union Confederation, sees no obligation to implement an agreement by which it is not bound.

### 5.11. Greece

With an incidence of six percent, according to the SIBIS database, telework is as yet not very popular in Greece but rising. Only ten years ago, it involved less than one percent of the employed.<sup>94</sup> This may explain why telework appeared very late on the agenda of the social partners or the government. Apart from a reference to the definition of telework as a special form of employment in Law 2639/1998 on "Regulation of labour relations, establishment of a Labour Inspectorate and other provisions", Greek law has no special statutory framework to regulate telework, which in principle is treated as a form of homeworking. Article 1 of Law 2639/1998 aims to include telework in the statutory framework for protection of other flexible forms of work, without, however, addressing the particularities of this specific form of work.

In 2002, the Greek social partners decided to implement the Framework Agreement on Telework through national and sectoral collective agreements. Originally, implementation was foreseen in the national general (cross-industry) collective agreement for 2004-2005, which was signed in 2004, but the agreement that really transposed the provisions of the European Framework Agreement on Telework with immediate effect is the *national general collective agreement* for 2006-2007, signed in April 2006 by the Greek General

<sup>93</sup> M. Weis, 'Germany' in R. Blanpain (ed.), *European Framework Agreements and Telework: Law and Practice, a European and Comparative Study*, Alphen aan den Rijn: Kluwer Law International, 2007, pp. 171-180.

<sup>94</sup> E. Soumeli, *Telework and labour relations*. EIRO report (GR98091793).

Confederation of Labour (GSEE) and the Federation of Greek Industries (SEV). A jointly agreed Greek translation of the European framework agreement on telework was attached to this agreement.<sup>95</sup> The agreement binds all enterprises of the private sector, as well as all types of employers' and employees' organizations. In addition, in September 2006 the relevant sectoral employer and union organised signed a new two-year sectoral collective agreement in the wholesale and retail trade sector. This sectoral agreement applies in a sector with relatively many teleworkers and regulates telework, among other issues.<sup>96</sup> The situation in the public sector is not clear and no specific agreements have come to our knowledge.

## 5.12. Hungary

According to the Labour Force Survey the incidence of telework in Hungary in 2004 affected just two percent of the total working population; if we follow the SIBIS survey findings it was in 2002 the country with the lowest incidence of home-based teleworking, affecting less than one percent of the employees.<sup>97</sup> The EWCO survey also indicator a percentage much below even the average for the New Member States. This is in spite of the fact that, according to the European Industrial Relations Observatory, *eWork*, which in the Hungarian context seems to be used as a term for telework as defined in the EU Framework Agreement, has since the 1990s been promoted by multinational companies and received support from the Hungarian state.<sup>98</sup> Since 1997, several governmentally sponsored programs aimed at promoting telework, especially among disadvantaged groups, have been adopted in Hungary, apparently with little effect on the actual take-up of this form of work.

In May 2004, with the agreement of the national social partners, the telework agreement was transposed into legislation. Act XXVIII of 2004 inserted a new title on telework into the Labour Code and amended other legal texts. Apart from these specific rules on telework, general labour law regulations also apply to teleworkers.<sup>99</sup> Currently, the definition of telework in the Hungarian labour law is based on the one used in the Telework Agreement. However, the word "voluntary", as such, does not seem to appear in the Hungarian legal text regulating telework. The issue of the reversibility of telework is dealt with in a 'soft-law' rule,<sup>100</sup> according to which the employee has the 'right to ask' to continue or cease working as a teleworker. This 'soft law' rule has been criticized for not fully responding to the spirit of the provision on reversibility of telework included in the Telework Agreement,

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95 EIRO, 'New national collective agreement signed for 2006-2007', <[www.eurofound.europa.eu/eiro/2006/05/articles/gr0605019i.html](http://www.eurofound.europa.eu/eiro/2006/05/articles/gr0605019i.html)>, acceded on 01.10.07.

96 EIRO, 'New agreement for employees in wholesale and retail trade', <[www.eurofound.europa.eu/eiro/2006/11/articles/gr0611029i.html](http://www.eurofound.europa.eu/eiro/2006/11/articles/gr0611029i.html)>, acceded on 01.10.07.

97 A. Hars and L. Neumann, *Telework in an Enlarged European Union – Case of Hungary*, 2006, <<http://www.eurofound.europa.eu>>, acceded on 01.10.07.

98 I. Breiner, EIRO, *Place of Work and Working Conditions – Hungary*, <<http://www.eurofound.europa.eu/ewco/studies/tn0701029s/hu0701029q.htm>>, Publication date: 2007-05-31.

99 Joint Report of the Hungarian Social Partners (National Employer's Organisations and Trade Unions) on the Implementation of Telework, 2006.

100 L. Neumann, EIRO, *New Legislation Regulates Telework*, <<http://www.eiro.eurofound.eu.int>>, Publication Date: 04-11-2004.

due to the fact that the employer's decision on the workers' request concerning telework is discretionary.<sup>101</sup>

The Hungarian Labour Code also regulates the respect for the teleworkers' privacy and his or her access to training and career development. It includes provisions regarding the equipment provided, the costs incurred by the teleworker, and the confidentiality of the data used by the teleworker. Working time of teleworkers is also regulated in the Labour Code. Finally, the most important new health and safety rule is that the employer is obliged to inspect the equipment used by teleworkers before they start to use it for teleworking purposes. The Labour Inspectorate may also enter the premises used by the teleworker, on three days' notice.

In sum, the Hungarian government considered that an amendment of the Labour Code was the most appropriate mean for implementing the European Agreement on Telework. This decision was taken mainly because the coverage of trade unions is low both at national and sectoral level.<sup>102</sup> It is worth noting that the social partners themselves agreed with this implementation method. In fact, the amendments of the labour legislation took place in consultation with the social partners and their point of view was reportedly included in the final version of the Labour Code.

### **5.13. Iceland**

We have no information on the incidence of telework in Iceland – whether the country is in the same league as the other Scandinavian countries, with a rather high use of home-based telework, we cannot say. Shortly after the European Framework Agreement on Telework was signed a trade union negotiation committee was established. This committee drafted a translation and requested the launch of negotiations on the implementation of the European agreement. Only one informal meeting of the national social partners to discuss that implementation took place in 2004. The negotiations on telework were resumed as all general collective agreements were being re-negotiated at that moment. In May 2006, the European Framework Agreement on Telework was implemented through a general framework agreement between the Icelandic Confederation of Labour and the Confederation of Icelandic employers. This agreement sets out minimum rights and obligations for all the employees and serves as binding guidelines for provisions on telework negotiated in contracts of employment. The agreement contains articles 2 to 11 of the European Framework Agreement on Telework, and stipulates the creation of a joint committee dealing with conflicts that may arise from applying the agreement. The European social partners have stated that, due to the lack of empirical studies in the subject, they are not in a position

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101 A. Hars and L. Neumann, *Telework in an Enlarged...*, cit.

102 Ministry of Social Affairs and Labour of Hungary, Letter of response to the European Commission on the Implementation of the European Framework Agreement on Telework, Budapest, June 2007.



to evaluate the impact of the EU Framework Agreement in Iceland.<sup>103</sup> We have no knowledge whether the national framework agreement was given a follow-up.

### **5.14. Ireland**

The incidence of home-based telework is rather low in Ireland. At six percent in 2002 (SIBIS) or 5.5 percent (EWCO) it is, for instance, below the EU15 average and much below the percentages for the UK (see Chart 1). Telework appears to be increasing, however, and according to the SIBIS database many other forms of mobile telework, not counting the self-employed, are found in Ireland.

There is no specific legislation in Ireland dealing with telework. However, in 2000, two years before the adoption of the European Framework Agreement, the Irish government published a *code of practice* on teleworking. In 2004, in order to implement the Framework Agreement, this code of practice was revised by the social partners in the private sector, the *Irish Congress of Trade Unions* (ICTU) and the *Irish Business and Employers Confederation* (IBEC). Their new “code of practice” takes account of the adoption of the European framework agreement and implements it. It highlights the key elements to be considered when introducing telework and advises employers to draw up a written policy, which specifies how telework arrangements will operate in the company. In order to help drawing up such a policy, concrete guidance with practical examples, a sample telework agreement, and an overview of the minimum legal entitlements for Irish employees are set out in the code.<sup>104</sup>

In the private sector, company level agreements incorporating teleworking issues are still few in all these years, although a number of trade unions have developed sets of guidelines to be used for negotiating teleworking arrangements with employers. ICTU has tried to begin negotiations with the employers in the public sector on the application of the Telework Agreement, but this has been without success so far and it would seem that successful implementation in Ireland is especially thwarted by the government as it is responsible for employment conditions in the public sector.

### **5.15. Italy**

Various sources see the country as a pioneer in the development of telework both through statutory legislation and collective bargaining, especially in the public and state-related sectors.<sup>105</sup> As early as 1996 there were already proposals for a law promoting telework.<sup>106</sup> Seen from that perspective and the high expectations nourished by these and

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103 Joint Report of the UNICE, ETUC, CEEP, on the implementation of the European Framework Agreement on Telework in Iceland, <<http://www.businessseurope.eu/Content/Default.asp?PagelD=467>>, acceded on 25.09.07.

104 Code of practice on teleworking, 15 December, <[www.businessseurope.eu/Content/Default.asp?PagelD=467](http://www.businessseurope.eu/Content/Default.asp?PagelD=467)>, acceded on 20.10.07.

<sup>105</sup> M. Coucci, ‘Italy’, in R. Blanpain (ed.), *European Framework Agreements and Telework: Law and Practice, a European and Comparative Study*, Alphen aan den Rijn: Kluwer Law International, 2007, pp. 181-190; P. Di Nicola, *Telelavoro ...*, op. cit..

<sup>106</sup> Di Nicola (1996), “Telework between Law and Contract”, Rome, resenation given Members of Parliament and social partners (<http://www.telelavoro.it>).

other authors, the actual diffusion of telework in Italy is roundly disappointing. Based on the Third European Working Conditions Survey, the EIRO estimated that in 2000 home-based telework involved a mere 2.2 percent of the total workforce<sup>107</sup>, increasing to 3.9 percent in 2005. The SIBIS estimate for 2002 was 2.5 percent of the employees, with Spain and Portugal the lowest incidence in any EU15 country.

In the public state sector telework was initially introduced by Law 191/1998, which was implemented by a set of “regulations”.<sup>108</sup> These legal provisions were broadened and made available for other public employers and employees by means of a framework agreement signed in July 1999 by Aran (the public sector bargaining agency), and the trade unions, including the three main unions affiliated with CGIL, CISL and UIL, and a number of minority unions. In the private sector, at around that same time, but starting perhaps even earlier, several company agreements concerning telework were signed, for instance in Astrazeneca, Digital Equipment, Saritel, Telecom Italia, Tim, and Zanussi.<sup>109</sup>

After the European Framework Agreement on Telework was adopted in 2002, several collective agreements on telework have been signed by the Italian social partners.<sup>110</sup> The most relevant one is the interconfederal national collective agreement signed in June 2004 by the three trade union confederations (CGIL, CISL and UIL) and 21 employers’ organisations. This interconfederal agreement addresses the main points in the European Framework Agreement, namely the voluntary nature and reversibility of telework, equal treatment of teleworkers in relationship with comparable workers at the employer’s premises, data protection, privacy, equipment, training, collective rights and health and safety of the teleworker.<sup>111</sup> Under Italian law, such national agreements are not, strictly speaking, binding on non-organised firms, but typically Italian courts have awarded similar conditions. The 2004 interconfederal agreement also stipulates that it shall not affect the already existing national agreements concluded for specific sectors. In fact, the agreement seeks to establish a general framework of reference for the regulation of telework, leaving ample freedom for collective and individual bargaining to detail conditions. However, such detailing must respect the minimum conditions for protection established at the inter-professional level. In addition, it is worth mentioning that several agreements have been reached at sectoral level after the adoption of the European Framework Agreement. One prominent example is the sectoral collective agreement in the postal sector of July 2003 applying throughout the national territory. There are also other examples as the renewed collective agreement for the metalworking sector (signed in May 2003) that provides for the establishment of a working group to analyse the possibility of introducing telework in the sector and the new national agreement for the garment and textile sector that establishes new rules on conditions and procedures for telework.

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107 EIRO, Place of Work and Working Conditions – Italy, <<http://www.eiro.eurofound.eu.int>>, accessed on 25.09.07.

108 Official Gazette of 25.03.1999.

109 L. Coletto, EIRO Thematic Feature 2006, Telework in an Enlarged European Union, The Case of Italy.

110 EIRO, Italy – National Agreements Signed on Telework, EIRO Observer, update 5/04, <<http://www.eiro.eurofound.eu.int>>, accessed on 25.09.07.

111 Rapport National Conjoint. Teletravail, Transposition en Italie de l’Accord-cadre Européen du 16 juillet 2002, 2006.

## 5.16. Latvia

Compared to its neighbour Baltic States, Lithuania and Estonia, telework is much less developed in Latvia. Following the SIBIS database, home-based telework involved just 3.5 percent of Latvian employees in 2002. The EWCO survey placed Latvia between the other two Baltic States (see Chart 1).

In June 2002, a new Labour Act entered into force in Latvia. Although that act tried to promote flexibility and adaptability of the work organisation and employment relationships, and address issues related to it, it did not include special provisions dealing with telework. Therefore, in principle, the general rules of Latvian labour law and the law on personal data apply to teleworkers as if they were employees working on the employers' premises. A telework contract can be concluded on the basis of a work contract or a commercial contract. These commercial contracts are typically concluded with self-employed persons who fall outside the scope of the European Framework Agreement on Telework.

In March 2005, the Employers' Confederation of Latvia (LDDK) and the Free Trade Union Confederation of Latvia (LBAS) agreed that the EU Framework Agreement had to be implemented by means of social partners' activities at the national level.<sup>112</sup> According to the agreement between LDDK and LBAS and in order to raise understanding and to promote the implementation of the framework agreement, the social partners, with the involvement of the Latvian Ministry of Welfare, the State Labour Inspectorate, and other institutions, have agreed to take a number of measures, in particular, to disseminate information about the Telework Agreement to the members of employers' and employee organisations, society in general and public institutions; to organise information campaigns and round table discussions at regional and local levels; and to seek the inclusion of references to telework in local and sectoral collective agreements.

According to the Latvian authorities, the Latvian labour law does not restrict the possibilities of telework. In their opinion, because telework is not widespread in Latvia at the moment, there are no pressing difficulties related to telework, but that seems to miss the point about modernising employment relations. The Latvian authorities affirm that the process of implementation of the European Framework Agreement on telework is slowly developing.<sup>113</sup>

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112 Joint report of Employers' Confederation of Latvia and Free Trade Union Confederation of Latvia on implementation of the Framework Agreement on Telework in Latvia, <<http://www.business-europe.eu/content/default.asp?PageId=467>>, accessed on 20.09.07.

113 Response of Latvia to the questionnaire of the European Commission on the implementation of the European framework agreement on telework signed by the social partners, 2007.

## 5.17. Lithuania

7.6 percent of Lithuanian employees were involved in home-based telework activities, according to SIBIS data for 2002, the second-highest percentage, after Estonia, in any new member state. Yet, according to the social partners the issue is so minor that they so far have given it little priority and did not see it necessary to adopt an agreement on the implementation of the Telework Agreement or seek a modification of the law.<sup>114</sup>

There is no agreed definition of telework in Lithuania. The social partners seem to argue that current labour legislation incorporates a definition of homeworking that covers telework as well. The Labour Code, which entered into force in January 2003, states that an employment contract with a homeworker may establish that an employee will perform the job functions agreed therein at home. The Labour Code also states that the characteristics of employment contracts with homeworkers shall be established by the government and by collective agreements. In governmental decree no. 1043, homeworking is defined as “work done by an individual at home for a wage agreed upon with the employer.”<sup>115</sup> In fact, the rules in Decree no. 1043 on homeworking are very general and do not match the European Framework Agreement in certain points, i.e., the lacking definition of telework, the absence of any reversibility clause, etcetera.

It may be that the lack of action on the part of the Lithuanian social partners has prompted the Lithuanian Ministry of Social Security and Labour to move forward. The Ministry has apparently adopted an “Order”, containing recommendations to employers and employees, and calling on them to conclude employment contracts that feature flexible forms of work organisation.<sup>116</sup> We do not know whether these recommendations have been followed and whether they cover home-based and mobile forms of telework.

## 5.18. Luxembourg

Telework in Luxembourg is not very widespread. In 2002, only 3.3 percent of its employees were involved in telework, less than half the percentage in Belgium and also significantly below France and Germany, its other neighbours (see Table 1). Compared to France and Belgium, the social partners also moved slower with regard to the 2002 Framework Agreement on Telework, although they followed the same methodology of a national agreement which is then extended and declared binding by law.

The Union of Luxembourg Enterprises (UEL) and two main union confederations, the Luxembourg Confederation of Independent Trade Unions (OGB-L) and the Christian Trade Union Confederation (LCGB), signed a national collective agreement on telework in June

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114 I. Blažienė, Telework in an enlarged European Union – case of Lithuania, EIRO Thematic Feature 2006, <<http://www.eiro.eurofound.eu.int>>, accessed on 25.09.07.

115 Ibid.

116 Respond of the Labour Relations and Remunerations Division of Lithuania to the questionnaire of the European Commission on the implementation of the European framework agreement on telework signed by the social partners, 2007.

2006.<sup>117</sup> This agreement will apply to private sector employees for a period of three years, as it has been declared by the government in November 2006 to constitute a general obligation<sup>118</sup>, thereby legally binding all over the territory. This was the first agreement to be concluded without going through the whole process of collective bargaining. This agreement on the legal framework for telework addresses the main points in the European Framework Agreement, namely, voluntary nature, reversibility, equal treatment of teleworkers in relationship with comparable workers on the employer's premises, data protection, privacy, equipment, training, collective rights and health and safety of the teleworker.

### **5.19. Malta**

There is not much known about telework in this EU member state and it seems as if telework is currently not a much-used pattern of work in Malta.<sup>119</sup> Implementation of the European Framework Agreement is not yet completed. However, ground work is currently being undertaken by the Maltese government and the social partners to review the status of teleworkers in the Labour Code and to tackle apparent obstacles to the development of telework.<sup>120</sup>

The issue of teleworking has started appearing in official governmental documents and has been a topic addressed in a number of conferences and seminars.<sup>121</sup> The government is aware of the fact that while a number of organisations in the public service are making use of e-Work (a synonym for telework), there are still no policies and procedures that govern this type of work. Thus, an eWork committee has been appointed to examine the situation. The government views telework as particularly useful to increase the activity rates of females, older workers and people with disabilities. The unions are in favour of promoting teleworking and working away from the company, but they believe that it is of crucial importance that this new work arrangement will be regulated to control abuse.<sup>122</sup> The implementation process is not yet completed.

### **5.20. The Netherlands**

The data on the percentage of employees involved in telework varies according to the definition being used and the size of telework in the Netherlands is not exactly known. The definition of the Central Statistic Office (CBS) is: 'a teleworker is someone who works outside the company establishment of his employer on a regular basis and has access to information and communication technologies of his company'. The percentage of teleworkers that fit this

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117 OGB-L, LCGB, UEL, Convention du 21 février 2006 relative au régime juridique du télétravail.

118 O. Włodarski, EIRO, Place of Work and Working Conditions – Luxembourg, <<http://www.eurofound.europa.eu/ewco/studies/tn0701029s/lu0701029q.htm>>, Publication date: 2007-05-31.

119 Joint report on telework in Malta, <<http://www.business-europe.eu/Content/Default.asp?PageId=467>>, accessed 20.09.07.

120 European Social Partners, Implementation of the European Framework Agreement on Telework, September 2006, p. 14.

121 Eurofound: Place of work and working conditions – Malta,

<<http://www.eurofound.europa.eu/ewco/studies/tn0701029s/mt0701029q.htm>>, accessed 20.09.07.

<sup>122</sup> Idem

definition, which excludes small part-time workers in general and in the case of telework in particular, is rapidly rising, from six percent in 2002 to eight percent in 2004.<sup>123</sup> On a wider definition used in the SIBIS database, including teleworkers who spend a small part of their working time working from their home with company-provided or company-connected ICT, the Netherlands is the EU country in which telework is most widespread, reaching an incidence of 20.6 percent of all employees, the only European country, with Denmark, ranking above the USA. Other and earlier research also showed the rapid rise of telework in the Netherlands, alongside part-time work and other forms of flexible work.

There is no specific legislation on telework in the Netherlands. To implement the European Framework Agreement, the Labour Foundation (STAR) was quick to issue a recommendation, which was published on 11 September 2003.<sup>124</sup> Previous European Framework Agreements, followed by directives, had been implemented by means of legislation, usually after extensive consultation with the social partners in the tripartite Social Council. In the case of the European Framework Agreement on Telework, the Dutch legislator decided that it had no task in implementing the agreement and that it could leave the issue to the social partners themselves. Recommendations by the Labour Foundation, a cooperative body of the social partners (unions and employers) themselves and used as platform to prepare and conduct national-level negotiations, have been a standard technique for promotional rights. They have been used in many areas before, for instance relating to the promotion and normalisation of part-time jobs, jobs for ethnic minorities, narrowing the male-female gap in employment, and promotion of child-care facilities. Such recommendations, of which more than hundred have been issued since the early 1980s, are directed towards negotiations of company and sector agreements, and intended to pre-empt legislation. A recommendation of the STAR is usually implemented in most of the Collective Labour Agreements where CLA cover about 80 percent of the employee's. In fact, the value of a recommendation is considerable, even if does not cover all employees and compliance may not always be assured.

In the case of telework, the recommendation of the Labour Foundation is quite general. It basically brings the framework agreement to the attention of employers and employees, without going beyond it, and addresses issues that might have been specific for the Dutch situation with its high incidence of part-time and flexible work. It falls however in the post-1993 trend, begun with the "New Course" national agreement of that year, that such issues must be settled in collective agreements at the lower level, even in agreements with the works councils. The full text of the European Framework Agreement is attached to the recommendation, together with a description of the relevant Dutch labour law with respect to

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<sup>123</sup> A.T.J.M. Jacobs, 'The Netherlands' in Blanpain, R. (ed.), *European Framework Agreements and Telework: Law and Practice, a European and Comparative Study*, Alphen aan den Rijn: Kluwer Law International, 2007, pp. 191-204.

<sup>124</sup> Stichting van de Arbeid, *aanbeveling inzake telewerk*, 11 September 2003 - publicatiennr. 8/03.

telework and some examples of provisions on telework in existing *collective agreements*, many of which date back to the 1990s.<sup>125</sup>

### 5.21. Norway

Norway is not in the SIBIS database, but there are indications that telework in Norway is quite as widespread, as in the other Scandinavian countries. Two surveys, using a different definition and methodology, suggested that in 2000 already between ten and fourteen percent of Norwegian employees were involved in part-time or full-time telework from their home. The European Working Conditions survey of 2005 placed Norway also in the top range concerning the incidence of telework.<sup>126</sup>

There is no legislation on telework as such in Norway. The most important piece of legislation regulating employment relationships in Norway is the Act relating to work environment and workers protection (AML). However, the AML is not applicable for work carried out away from the employer's premises. To cope with this regulatory vacuum, administrative provisions on home-based work were introduced in 2002, which makes parts of the AML applicable to work carried out in the homes of the employees.<sup>127</sup>

Prior to 2002, management and labour had already reached agreements on telework, for instance in the offshore sector and in the telecommunications business. After an analysis of the national labour legislation and existing collective agreements, the social partners came to the conclusion that a legislative amendment was not necessary to comply with the European Framework Agreement on Telework. Nevertheless, in June 2003 negotiations started between the Norwegian Confederation of Trade Unions (LO) and the Confederation of Norwegian Business and Industry (NHO).<sup>128</sup> The trade union side wanted a national collective agreement, whereas the employers preferred a more flexible and non-binding implementation with a wider impact area. This disagreement was not solved and the negotiations were suspended. Subsequently, the NHO started negotiations with the other main employee organisations representing professionals and white-collar employees. The outcome of that process was the development of some 'guidelines for telework'. Later, all trade unions in Norway, including the LO-unions, adopted these guidelines. The joint document containing the guidelines gives concrete recommendations to the social partners' members when introducing telework.

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125 Stichting van de Arbeid, aanbeveling inzake telewerk, 11 september 2003. The following companies have signed agreements with the social partners that contain references to telework: KPN, DSM, Danzas Nederland, Atos origin, Achmea, Utrechtse werkbedrijven, Agere (all signed in 2003).

126 A. Broughton, Incidence of Work away from Workplace, <[http://www.eurofound.europa.eu/ewco/studies/tn0701029s/tn0701029s\\_3.htm](http://www.eurofound.europa.eu/ewco/studies/tn0701029s/tn0701029s_3.htm)>, publication date 31.05.2007.

127 H. Lismoen, Telework in an enlarged European Union – Norway, EIRO Thematic Feature 2006, <<http://www.eiro.eurofound.eu.int>>, acceded on 25.09.07.

128 Report from Norway on the implementation of the European Framework Agreement on telework, <<http://www.bussinesseurope.eu/Content/Default.asp?Pagelid=467>>, acceded on 20.09.07.

## 5.22. Poland

About five percent of Polish employees were involved in home-based telework in 2002, according to the comparative data in the SIBIS database; the EWCO puts it at just over ten percent. In any case, telework seems to be on a rising trend.

The European Framework Agreement has recently been implemented in Poland through legislation. Originally the social partners had the intention to transpose the European Framework Agreement on Telework by means of a national agreement. The negotiations, which started in 2005, led to an agreed text, but which was not ratified or followed up, because of the main unions withdrew. However, with the consent of everyone involved the agreement's text was forwarded to and used by the government as a basis for the legislation on telework. The legal changes, which were adopted in August 2007, (the law came into force on 15 October),<sup>129</sup> closely follow the draft agreement of the social partners. The legal solutions in the Act amending the Labour Code have been positively assessed by the social partners as being in accordance with their draft agreement of June 2005<sup>130</sup> and reflecting their expectations as regards the regulation of telework.<sup>131</sup> These amendments to the Labour Code guarantee teleworkers no less favourable treatment than 'normal' workers at the employer's premises and follow quite closely the provisions of the European Framework Agreement on telework.<sup>132</sup>

## 5.23. Portugal

Portugal is the EU15 country with the lowest incidence of telework – just 1.6 percent of all employees were involved in homebased telework in 2002 according to SIBIS data. Other sources, too, indicate the relative absence of telework. In the European Working Conditions Survey of 2005 Portugal came last among the EU15 (see Chart 1).

The Portuguese social partners were unable to reach agreement on how to implement the Framework Agreement on Telework. They disagreed over the opportunity to implement the European Framework Agreement by means of an agreement or legislation at national level. According to the Confederation of Portuguese Industry (CIP), the existing Labour Code offers more protection to teleworkers than the European Framework Agreement on Telework and no further legislative action was needed. The government took however the initiative to revise the Portuguese Labour Code in 2003 in order to implement the European Framework Agreement on Telework.<sup>133</sup> The (new) legislation addresses several of the main points set up by the European Framework Agreement, namely, equal

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129 ACT of 24 August 2007 on amending the Act – Labour Code and some other Acts available <[http://orka.sejm.gov.pl/proc5.nsf/ustawy/1684\\_u.htm#\\_ftn1](http://orka.sejm.gov.pl/proc5.nsf/ustawy/1684_u.htm#_ftn1)> , acceded on 30.11.07.

130 Joint report on Implementation of the European Agreement on Telework in Poland, <<http://www.business-europe.eu/Content/Default.asp?PagId=467>> , acceded on 20.10.07.

131 J. Czarzasty, Telework in an enlarged European Union – the case of Poland, EIRO thematic feature 2006, <<http://www.eiro.eurofound.eu.int>> , acceded on 25.09.07.

132 EIRO, Proposal to regulate telework aims to ensure equal treatment, <[www.eurofound.europa.eu/eiro/2006/12/articles/pl0612049i.html](http://www.eurofound.europa.eu/eiro/2006/12/articles/pl0612049i.html)> , Published on December 2006.

133 Labour Code, Law 99/2003, 27 of August.



treatment of teleworkers in relationship with comparable workers at the employer's premises, data protection, privacy, training, collective rights and health and safety of the teleworker.

Trade union officials are unhappy about the outcome and consider that current Labour Code provisions do not entirely comply with the dispositions of the EU Framework Agreement on certain issues. According to them, the adopted measures do not assure the protection of teleworker concerning working time and health and safety.<sup>134</sup> Nevertheless, they see some advantages in the recent reform of the Labour Code as it fills in a gap in the national law system. In addition, trade unions in Portugal would like to enter negotiations with employers on two further issues, namely the organisation of work in call centres, and the status of self-employed teleworkers. However, employers are not in favour of doing so and they argue that these two forms of telework were not covered by the EU Framework Agreement.

## **5.24. Romania**

Telework is rare in Romania, affecting less than two percent of the working population according to the SIBIS database and just two percent in the EWCO survey. The issue has not received much attention either. The joint implementation process has not commenced in Romania yet, though the social partners have started discussions on how to proceed in this matter.<sup>135</sup>

The Romanian authorities affirm that Law no 53/2003, the Labour Code, which includes a chapter named 'homeworking', establishes the general principles applicable to telework.<sup>136</sup> According to the chapter on homeworking in the Labour Code, the individual homeworking contract shall be concluded in a written form and shall comprise, besides the general elements established by the law, the following details: the express mention that the employee shall work at home; the schedule during which the employer shall be entitled to check his employee's activity, as well as the actual manner of making such a control; and the employer's obligation to ensure transport, to and from the employee's domicile, of the raw materials and materials, which he/she uses in his/her activity, as well as the finished products made by him/her. These provisions do not seem to be relevant for the situation of ICT-based telework.

According to the Romanian authorities, the homeworker enjoys the same legal and collectively agreed rights as the employees working at the employers' premises. The Labour Code further stipulates that other particular conditions regarding homeworking can be established via collective labour agreements. The Labour Code also stipulates the possibility of negotiating and introducing particular clauses regarding homeworking in the individual employment contract.

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134 APO, CEEP, CGTP-IN, CIP and UGT-P, Report on the Implementation of the European Framework Agreement on Telework in Portugal, 2006.

135 Implementation of the social partners' agreement on telework - Romanian information, (reply to the European Commission), 2007.

136 Ibid.

## 5.25. Slovakia

Telework is little known in Slovakia, involving less than 2 percent of the working population (SIBIS data), though the EWCO does indicate a much higher figure (Chart 1). Until the beginning of 2007, Slovakian labour law contained no definition of telework. By default, telework was categorised as a type of homeworking.<sup>137</sup> Section 52 of the Labour Code regulated the employment relationship of a “domestic employee”. However, this provision was deemed inadequate, and all parties concerned agreed that it was necessary to clarify and supplement the provisions dealing with telework in order to comply with the European Framework Agreement on Telework.

As part of the process of updating the Labour Code, early in 2007 the Ministry of Labour, Social Affairs and Family drafted an amendment to Section 52 of the Labour Code regulating the employment relationship of a homeworker. This amendment covers the following areas of the EU Framework Agreement: definition and scope of teleworking, working conditions, data protection, and organisation of work in a similar way as the provisions of the European Framework Agreement. The new *legislation* was prepared in consultation with the social partners. In the Slovak Republic, telework has not been the subject of collective agreements yet.

## 5.26. Slovenia

The incidence of home-based telework in Slovenia is estimated to lie between 4 and 5 percent of the working population, not counting the self-employed (SIBIS data and national data). The Slovenian social partners concluded in 2006 that part of the European Framework Agreement on Telework is already included in the Employment Relationship Act, in the chapter on “employment contract of work away from the employer’s premises”. However, in the referred chapter there is no specific mention to information technology or any provision concerning telework specifically.

In principle, Articles 67 to 71 of the Employment Relationship Act govern Homeworking. Homeworking is considered to be work carried out at the home of the employee or on premises of his or her choice. *Legislation* amending and supplementing the existing Employment Relationship Act is currently in preparation. The amendments to article 67 include the addition of a new paragraph clarifying that “homeworking shall also include distance working performed by the employee with the aid of information technology (teleworking)”. This proposed amendment is meant to prevent ambiguities. Teleworking was previously considered to be homeworking but, with the proposed amendment, the Employment Relationship Act will explicitly state that teleworking is considered to be

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137 M. Kordošová, Telework in an enlarged European Union, EIRO Thematic Feature 2006, <<http://www.eiro.eurofound.eu.int>>, acceded on 25.09.07.

homeworking, thus choosing an application which is narrower than in the Telework Agreement.<sup>138</sup>

The requirement to conclude an employment contract means that the person carrying out work at home has the status of an employee, with the same rights and obligations as other employees. A contract for homeworking must contain specific details concerning the place where the work is performed, the definition of working areas, the use of resources, equipment, the reimbursement of resources, material and other expenses. Homeworking is in Slovenia also regulated in a number of *collective agreements*. All these agreements deal with homeworking in accordance with the provisions of the existing Employment Relationship Act, but it is unclear whether they cover the whole range of issues of the Telework Agreement.

## 5.27. Spain

Home-based and mobile telework in Spain is very limited – only 2.3 percent in the case of home-based telework and 1.9 percent in the case of mobile telework according to the SIBIS data for 2002 (the two categories are partly overlapping and the two percentages can thus not be added up). The EWCO survey indicated however a higher percentage, much above Portugal and Italy (Chart 1).

In Spain, Article 13 of the Workers' Statute (Royal Legislative Decree 1/1995 of 24 March<sup>139</sup>) regulates 'work from home'. However the need for the worker to use ICT equipment is not specifically mentioned in that provision as it was originally meant to regulate the labour conditions of the old-pattern of home workers, assembling garments and the like. Since 2003, the annual national (cross-industry) collective agreements between the central employers' and trade union organisations have incorporated references to the European Framework Agreement on Telework. They mention the commitment of the social partners to ensure the widespread implementation and diffusion of the EU Framework Agreement and also put forward some concrete priorities and issues to be taken into account by negotiators in future negotiations at the different levels.<sup>140</sup> These cross-industry agreements are meant to inform the lower level of collective bargaining and the sectoral and company level agreements are supposed to follow the guidelines set up at cross-industry level by the social partners.

In the public sector, there is a draft bill of 7 May 2007 on telework in the state sector, based on an agreement between the trade unions (CC.OO., UGT, CSI-CSIF, CIG and ELA) and the General Secretary of Public Administrations.<sup>141</sup> In the private sector, ten *collective*

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138 Respond of Slovenia to the questionnaire of the European Commission on the implementation of the European framework agreement on telework signed by the social partners, 2007.

139 BOE 29-03-1995

140 CC.OO., UGT, CEOE, CEPYME, Acuerdo Interconfederal para la Negociación Colectiva, 2007, Madrid 9 de febrero de 2007, (BOE 24-02-2007).

141 Secretaría General para la Administración Pública, CC.OO., UGT, CSI-CSIF, CIG and ELA, Acuerdo de la Mesa General de Negociación de la Administración General del Estado sobre el Proyecto de Real Decreto por el que se Regula el Teletrabajo,

*agreements* regulating certain aspects of telework have been signed in the IT sector: two at sectoral and national level, one at provincial level, and seven at company level.<sup>142</sup>

The National Agreement for Collective Bargaining in 2007 as well as the draft bill on telework in the public sector lay down, as a principle to be respected, the voluntary character of telework. In addition, that voluntary character has been recognised by a ruling of the Spanish Supreme Court of 11 April 2005.<sup>143</sup> Notwithstanding the fact that Article 13 of the Workers' Statute establishes equality of wages for 'homeworkers' compared to workers at the employer's premises and that the National Agreement for Collective Bargaining in 2007 similarly establishes the principle of equality of rights of teleworkers compared to workers at the employer's premises, further development at sectoral and company level are needed to ensure the due respect to all the provisions set up in the European Framework Agreement on Telework.

## 5.28. Sweden

Different definitions of telework make it difficult to estimate the exact number of teleworkers in Sweden. The SIBIS database, derived from population surveys, places Sweden, with an incidence of home-based telework of 14.9 percent in 2002, in the leading group of countries (see also Chart 1).

Already in May 2003, the Swedish social partners agreed on a text containing some *joint guidelines* to implement the European Framework Agreement on Telework.<sup>144</sup> This document states that the EU text should serve as a guideline when telework agreements are reached in Sweden and that due consideration should be given to the key elements highlighted by the EU Framework Agreement. Although these guidelines are not binding for the parties, all the main organisations in Sweden agreed to try and implement them.<sup>145</sup> In many sectors, employers and unions included the implementation of the European framework agreement on telework in the sectoral *collective agreements* that were renewed in 2004.<sup>146</sup> Before the Framework Agreement on Telework was reached in 2002, telework was already regulated in Sweden in some collective agreements at the local and regional level. In the private sector, currently several agreements include clauses dealing with telework. In these clauses, the parties recommend that the telework agreement serve as a model when concluding agreements in their respective bargaining areas. In some sectors, there are guidelines, brochures, and other information materials on telework. During the 2004-2005

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Madrid 07-05-2007 and Cervino, E., Draft bill opens the way for telework in the public sector - Spain, <<http://www.eurofound.eu.int>>, publication date: 03-05-2007.

142 CC.OO., UGT, CEOE, CEPYME and EUROCADRES/CEC, Informe sobre la Aplicación en España del Acuerdo Marco Europeo sobre Teletrabajo, Madrid 12 de mayo de 2006.

143 STS 2126/2005.

144 Eurofound, Social partners agree guidelines for implementation of European telework agreement, <<http://www.eurofound.europa.eu/eiro/2003/09/inbrief/se0309102n.html>>, acceded on 01.10.07.

145 B. Nyström, 'Sweden' in Blanpain, R., (ed.), European Framework Agreements and Telework: Law and Practice, a European and Comparative Study, Alphen aan den Rijn: Kluwer Law International, 2007, pp. 217-228.

146 Letter from the Swedish Ministry of Employment to the European Commission on the implementation of the European framework agreement on telework, 14 June 2007.

collective bargaining round, these provisions were amended and they have inspired the provisions on telework adopted also in some agreements at sectoral level.<sup>147</sup>

In the public sector, the social partners have included the text of the European Framework Agreement on Telework in several agreements.<sup>148</sup> At state level, a central collective agreement was signed in December 2005, stating that the EU Telework Agreement should serve as a model for provisions on telework, and that public authorities that choose to organise work in the form of telework shall have overall internal guidelines on that issue. According to the Ministry of Employment, the rules of the Swedish Labour Law do not clash with the clauses of the European Framework Agreement on Telework.<sup>149</sup>

## 5.29. United Kingdom

Of the large member states, the UK is the one with the highest incidence of telework. According to the SIBIS database, in 2002, 10.9 percent of all employees were, mostly on a part-time basis, involved in home-based telework; the EWCO survey put the figure slightly lower.

Prior to the European Framework Agreement on Telework, several attempts to include in their collective agreements an agreed definition of (first) homeworking and (later) teleworking were made by the employers and trade unions in a number of sectors.

In August 2003, the Department of Trade and Industry (DTI) published a guidance paper.<sup>150</sup> This guidance was the outcome of an agreement between the Confederation of British Industry (CBI), the Trades Union Congress (TUC) and the Employers' Organisation for Local Government (CEEP UK). The European Framework Agreement was implemented through this guidance paper. The guidelines address most of the issues dealt with in the European Framework Agreement, reproducing in many occasions the wording of that agreement. The document closely follows the Framework Agreement on Telework, with a UK specific narrative to accompany the text, pointing out implementation issues and legal implications that are specific to the UK. Management and employees' representatives are invited to use the UK guidelines on teleworking to draw up company-specific policies. The government has left the actual transposition of these guidance notes to the employers and employees and their representatives, limiting itself to an informing and facilitating role. In principle, the agreed guidance paper lacks a binding legal effect.<sup>151</sup>

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147 Respond of Sweden to the questionnaire of the European Commission on the implementation of the European framework agreement on telework signed by the social partners, 14 June 2007.

<sup>148</sup> T. P. Larsen and S. K. Andersen, (2007), 'A New Mode of European Regulation? The Implementation of the Autonomous Framework Agreement on Telework in Five Countries', *European Journal of Industrial Relations*, 13, (2), pp. 181-198.

<sup>149</sup> Letter from the Swedish Ministry of Employment to the European Commission... cit.

<sup>150</sup> CBI, TUC and CEEP/Department of Trade and Industry, Telework Guidance, <<http://www.dti.gov.uk>>, publication August 2003, accessed on 01.10.07.

<sup>151</sup> C. Neal, 'The United Kingdom' in Blanpain, R. (ed.), *European Framework Agreements and Telework: Law and Practice, a European and Comparative Study*, Alphen aan den Rijn: Kluwer Law International, 2007, pp. 229-244.

## 6. Conclusions and Overall Assessment

There are several ways in which one can assess the Telework Agreement and its implementation. In this concluding chapter, we will consider, first, the instruments used. Did the implementation happen, as intended, “in accordance with the procedures and practices specific to management and labour and the Member States”? Second, we consider whether these national instruments provide adequate coverage and protection. Third, we discuss the contribution of the Telework Agreement and its implementation process to the modernisation of employment relations, as intended in the Lisbon Agenda, and to the social dialogue process itself. Fourth, we assess the fit between the choice of instruments and the nature of the telework issue, returning to the discussion set out in chapter 1.4 and Table 1.

Table 4 shows the various instruments that have been used at the national level for the purpose of implementing the European Framework Agreement on Telework.

**Table 4: Instruments used at the national levels**

1	joint guidelines, recommendations, model agreements
2	autonomous national agreement
3	separate guidelines, model agreements by one of the social partners
4	collective agreements (sector, company, establishment, staff or works agreements)
5	national agreement turned into law
6	Law, preceded by joint consultation
7	special legislation, not based on consultation or agreement
8	implementation process not yet completed
9	other, unknown, no final report to European social partners on implementation

The first four instruments focus on implementation through collective bargaining as the main instrument of regulation. Instruments 5-7 assign a large role to the law, alone or in combination with collective bargaining. Within the first four instruments, no. 2 stands apart in so far it eschews joint regulation. We will see that guidelines and recommendations, or model agreements, whether issued jointly or separately by one or both social partners, have their influence mainly in combination with collective bargaining. It is likely that joint guidelines and recommendations carry more weight than those issued by only one of the social partners. With regard to lawmaking, it may make a difference whether the law is based on prior agreement or consultation with the social partners. One would expect that it reflects in such cases better the letter and spirit of the European Framework Agreement and may expect better compliance.

Before turning to Table 5 showing the use of these instruments in each Member State, we should mention the categories 8 and 9 for “incomplete implementation” and “unknown”. Our measurement relates to November 2007 when we completed the research

for the draft report discussed with the social partners and the Commission – it may be that in some “incomplete” cases further steps have been taken. Final judgement should therefore be postponed. In some cases there is a lack of information. Finally, in Table 5 we have added information on whether there were activities of the social partners concerning the regulation of telework, through the issuing of joint or separate guidelines, or collective agreements, *prior* to the Telework Agreement of 2002.

The pattern shown in 2002 is relatively simple and clear. There is a cluster of Member States, including as one would expect Scandinavia, the British Isles, the Netherlands, Germany and Austria, but also Italy and Spain, where guidelines and agreements have been the main instrument for implementing the Telework Agreement, and often there was much activity prior to the 2002 Agreement. Then, there is a second cluster where the law, usually based on or preceded by a national agreement or by consultations with the social partners, has seemed the preferred instrument. If we include the extension technique, which makes national agreements binding, then this cluster includes Belgium, Luxembourg, France, Greece, Portugal, Poland, the Czech Republic, Hungary and Slovakia, possibly also Slovenia. There is however some considerable overlap between the two clusters, as the legal and collective bargaining instrument do not exclude one another. This overlap is clearly present in Belgium, France, Greece and, possibly Spain and Italy (if we take into account draft legislation for the public sector in Spain and prior legislation in Italy). Finally, there are a number of countries – mainly the three Baltic States, Malta and Cyprus, and Bulgaria and Romania where the implementation process has not been completed yet, or in some cases not yet started.

**Table 5: the use of implementation instruments in Member States**

	prior actions	guidelines and agreements				Legislation			unknown, incomplete	
		1	2	3	4	5	6	7	8	9
DE	yes	x		X	X					
IE	?	x			X					
NL	yes	x			X					
NO	yes	x			X					
SE	yes	x			X					
UK	yes	x			X					
DK	yes	(x)			X					
FI	some		x		X					
IT	yes		x		X			(x)		
ES	?		x		X			(x)		
IC	?		x		(x)					x
AT	yes			X	X					
BE	?				X	x				
EL					X	x				
FR	some				X	x				
LU						x				
PL						x				
SL					(x)		(x)			
CZ							x			
HU							x			
SK							x			
PT								x		
BG									x	
CY									x	x
MT									x	
RO									x	
EE										x
LV		(x)								
LT										

(X) means that this applies only partly or it is not fully certain.

Considering the use of instruments, as shown in Table 5, there are really few surprises. By and large, in implementing the Telework Agreement the social partners at national level did what Art 139 (2) EC Treaty expected them to do, under the first of the two implementation routes: to implement the Agreement “in accordance with the procedures and practices specific to management and labour and the Member States.” In a large majority of the Member States the instruments, or combination of instruments, correspond with the “procedures and practices” used on other issues that fall within the social partners’



competence nationally, be it matters of wages, working hours, vocational training or other issues where they have engaged in modernizing employment conditions and relations. Thus in Scandinavia, the Netherlands, and Finland, we expect to find national agreements, guidelines or recommendations to lower-level bargainers (sectoral associations, firms and unions) and little involvement of the law. With the social pacts and national agreements of recent years, this pattern has also spread to Italy and Spain. Only where such techniques fail, achieve an insufficient follow-up, or leave a large chunk of the economy uncovered, there will be pressure to move to binding national agreements or there will be an appeal to the government for supporting legislation. Spain also confirms to this national pattern of “agreements to agree”: setting the agenda and the rules for lower level bargaining. Seen in the light of decentralization trends in most of these countries, especially in Scandinavia, it is also not so surprising that rather than binding national agreements the Swedish and Norwegian social partners have settled for a less binding form of joint guidelines – closer to what is common practice, since the 1980s, in the Netherlands and might also be expected for Denmark. The British and Irish cases also present little surprises, though the fact that in the UK there was a joint and in some sense tripartite guideline is, in view of the low purchase for tripartism and joint regulation in that country, a significant step. The focus on sectoral and company bargaining, found in Germany and Austria, is also characteristic for industrial relations patterns known in both Member States. The central organizations do not have a mandate for negotiating agreements, but they may issue joint statements, as happens not too often but happened in this case in Germany (but not in Austria).

Mandated law, or national agreements made binding by law is a well-established technique in Belgium, Luxembourg and Greece, and was used in this case. It is close to the French and Polish examples, of a negotiated agreement that is then replicated by law. The Polish case is remarkable insofar it has been the first time that the social partners reached such an agreement. The fact that in France the telework agreement was signed by all five representative unions is not unique – there are more recent examples, for instance on vocational training – but is to be noted. For most of the new Member States one cannot yet ascertain an established pattern of industrial relations practices and procedures (the cases of Cyprus and Malta, where there were established patterns, are difficult to judge in terms of their ability to implement EU law). Maybe the Telework Agreement sets rather than follows a pattern of industrial relations in some of the new Member States. In Poland, for instance, the social partners, encouraged by their telework agreement, are set to repeat this example for the European Framework Agreement on Work-Related Stress. However, in many cases (Hungary, the Czech Republic, Slovakia) the social partners have turned to the law, without prior agreements between themselves.

The critical cases are those where nothing has been done either by the social partners or by the government (Baltic states; Bulgaria, Romania) or where there were conflicts between them (Portugal, Slovenia). It may be that more time is needed or that the relevant actors have been overwhelmed by other priorities. In the Bulgarian and Romanian cases

more time is certainly needed. The other cases are rather disappointing; in the case of Portugal this is also expressed by European social partners.

The fact that, by and large, national unions and employers, often assisted by their governments, did as expected and followed the procedures and practices known to them, may be a finding that, as such, deserves little comment. However, combined with the monitoring process in which the European and national social partners have engaged to assure implementation of their agreements, the chosen implementation route under Article 139.2 ECT has the side effect of drawing the social partners in a process of comparing the advantages and disadvantages of such national practices and procedures, potentially triggering a process of cross-national learning and coordination. Paradoxically, such effects are more likely under autonomous agreements, when social partners are themselves responsible for implementation, than in the case of agreements implemented by a Council Directive where national governments bear responsibility. Certainly, the social partners are aware of the fact that this implementation method assigns to them heavy responsibility for assuring proper implementation and draws them deeper into the industrial relations realities of their members. When we evaluate the Framework Agreement on Telework, not in formal terms, but in terms of the actual changes it helped to produce in employment behaviour or protection, the jury is still out. The positive conclusion about this would be that the European social partners themselves, according to the interviews that we had with them, seem to be convinced that more can be done in the issue.

It is worth noting that the successes and failures of that implementation process have served as a learning experience for the monitoring of the implementation process of the Framework Agreement on Work- Related Stress that is currently taken place. The European social partners have learned from the implementation process of the Framework Agreement on Telework that active monitoring from the first stages of that process is necessary. Therefore, for the next implementation processes, the European social partners have agreed to set up an obligation of their national members to report annually on the activities that are being pursued in the fields where there are European Framework Agreements.

The analysis of the different sources has led us to the conclusion that the implementation situation is not equal in all countries and that the impact of the Telework Agreement differs between Member States. The European social partners see this as a logical outcome, taking into account the differences in practices and procedure of industrial relations in the Member States. They acknowledge that adequate implementation of their 'autonomous agreement' is crucial for this agreement as well as future ones, that this assigns to them a heavy responsibility and that coverage and enforcement are key aspects of the implementation process. There is no denial that full coverage has not been and probably cannot be assured by means of autonomous agreement, using the first implementation route under Art. 139 (2) of the EC Treaty. The relevant question is whether or not adequate coverage has been assured.

It may be argued that in the case of *fundamental social rights* full and equal coverage of EU citizens and workers is a *conditio sine qua non*. This cannot, at the present state of affairs, be guaranteed through ‘the procedures and practices specific to management and labour in the Member States’. Like the membership density of unions and employers’ associations, bargaining coverage varies massively across Member States<sup>152</sup>, as does the social partners’ capacity for negotiating and implementing agreements. In our interviews with representatives of the European social partners, both sides admit that full coverage cannot be achieved by means of autonomous agreements. This tends to make such agreement unfit for the defence of fundamental social rights. However, in the case of what may be called “*promotional rights*”, which concern additional terms and conditions of employment meant to normalise new conditions and forms of work, full coverage may seem less important than defining *adequate* coverage and protection for a particular target group of interested workers. The aim of the social partners with the adoption of the Telework Agreement was not to create a new employment status, but to fit, or mainstream, telework into the existing employment relationship in order to remove the obstacles for the expansion of this type of work. In view of the statistics shown in chapter 3 of our report, revealing that the overwhelming majority of teleworkers work from home only on a supplementary or alternating basis, this position seems fully warranted. Following “the procedures and practices specific to management and labour in the Member States” may be adequate as long as certain conditions are met: telework is “mainstreamed” in the commonly applied labour law (health and safety conditions, non-discrimination principles, etc.), social partners undertake awareness raising measures and engage in expanding coverage as far as possible, in particular to interested firms and employees, and if the requirement is met that results are monitored.

These quality requirements refer back to distinctions made in chapter one of the rapport (see Table 1) between problems that require general or specific solutions or regulations, and policies or rules that potentially carry large or small spill-over effects for others not represented in making these policies or rules. We have argued, and our study has further convinced us, that telework lies in the quadrant in which subsidiarity principles and reflexive law can or must play a large role. Experimenting with solutions within different national contexts and learning from each other within a commonly defined framework, against the background of a basis of minimum rights, appears a promising strategy. Full coverage is less important, as long as the relevant workers are reached. In our view, adequate coverage is provided in most countries. Only the few countries, shown at the bottom right corner of Table 5, in which the implementation process has not yet started or been completed, are clearly providing inadequate coverage. More can be done in these cases. Awareness raising and proper monitoring, and feedback, are other essential tools in the implementation of autonomous agreements. This is, above all, a task for the European social partners themselves, as the guardians of their own agreement.

It is not evident that proper regulation (or the lack of it) of the working conditions for teleworkers, or inadequate implementation of the 2002 agreement, is at the root of the cross-

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<sup>152</sup> See European Commission, *Industrial Relations in Europe*, reports for 2004 and 2006.

national differences in the incidence and intensity of telework discussed in chapter three. It is probably the other way around: in some Member States the low incidence of telework may have given the telework issue a low priority. In our interviews with the social partners, this was seen as one of the three causes – the others being the fragile state of the social dialogue and the unfamiliarity with the subject – of the slow and in some cases inadequate implementation of the agreement in some of the new Member States. Clearly, there were other urgent matters to attend to. But one might also argue the other way around: a relative “innocent” and mostly “non-distributive” issue like telework can be an excellent issue for learning and trust building in the development of the social dialogue and Poland has shown an excellent example of this.

In conclusion, our assessment of the social partners’ actions to implement the 2002 Framework Agreement on Telework is positive, in spite of several shortcomings in the implementation process and uneven coverage. The Telework Agreement itself addressed most of the issues relevant for telework and teleworkers listed in the document prepared by the European Commission for the second stage of the consultation with the social partners. In all but few Member States, the national social partners, jointly, alone or with assistance of the public authorities, have tried to fully implement the Agreement of 2002. In few Member States this process has not yet been completed or started, in some the implementation is as yet inadequate.

Positive in our judgement is the fact that the European social partners have become quite aware of the responsibility they have and that they are realising that this responsibility requires proper reporting and monitoring activities on their part, as well as assistance to national social partners in many cases. With the passing of time, they have become more recognisant of this requirement and it seems that they have learned from the implementation history of the telework Agreement for the future. As is to be expected given the variety of practices and procedures in the European Union and the European Economic Area, national social partners have used different implementation instruments and in few cases the legislator has intervened, though usually after consultation with or agreement between the social partners. As a consequence, the results differ in terms of coverage, probably also in terms of compliance and focus on the target group. It is possible that a national law provides more coverage and that collective bargaining gives more focus, but the point is that this is not specific for the telework issue. Similar differences exist when regulating other issues, irrespective of whether they have originated in European law.

Our final conclusion is that in implementing the Telework Agreement most social partners and Member States have followed, as intended, methods “in accordance with the procedures and practices specific to management and labour and the Member States”. There were really very few surprises, though some interesting examples of renewal of the social dialogue process itself were noted, for instance in Poland and in the UK. There were also problems, especially in member States where there are hardly established practices and procedures. We argue that the differences in coverage that results from this procedure are or

need not be a major problem if, as in the case of telework, one seeks to promote and facilitate a particular condition or organisation of work. This is different in the case of minimum rights. We add that, as a mainstreaming process, the implementation of Telework Agreement is not a finished process and that the European social partners plan further monitoring and awareness raising actions in the future.