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**COMMISSION STAFF WORKING PAPER**

**Report on the implementation of the European social partners'  
Framework Agreement on Telework**

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## 1. INTRODUCTION

The Framework Agreement on Telework is the first *autonomous* agreement negotiated by the European social partners and as such it represents a landmark in EU industrial relations. For the first time, the European social partners and their member organisations at national level directly addressed the emerging challenge posed by new forms of work organisation by defining a set of principles and rules and by undertaking to ensure their timely implementation across the Member States of the European Union and the countries of the European Economic Area (EEA). The Agreement set an important precedent, which has subsequently been followed in three other cases<sup>1</sup>.

This Report assesses the extent to which the implementation of the European Social Partners' Framework Agreement on Telework has contributed to achieving the Community's objectives and whether there is scope for improvement. Respecting the principle of autonomy of the social partners and giving priority to monitoring undertaken by them, it examines in detail the implementing measures taken by the social partners and public authorities in all EU Member States and the EEA countries whose social partners participate in the European social dialogue, i.e. Iceland and Norway. It takes account of the views expressed by the European social partners.

While there is scope for improvement in several Member States in terms of the implementation process, the following-up of implementing measures and/or the content of instruments, the implementation of the Framework Agreement may be considered a success. It has achieved the specific objectives set by the Commission (and shared by the social partners) and has clearly contributed to the Lisbon goals of modernising labour markets and achieving a more dynamic knowledge-based economy, to the i2010 Strategy, which emphasises information and communication technologies as a driver of inclusion and quality of life, and to the EU's Sustainable Development Strategy.

The information contained in this Report is based on the following sources:

- the European social partners' joint implementation report of October 2006 and the joint reports by national social partners;
- the replies from the Member States' authorities to a questionnaire sent by the Commission in March 2007;
- information from the European Industrial Relations Observatory (EIRO)<sup>2</sup>;
- a report prepared for the Commission by an independent expert<sup>3</sup>;
- information publicly available on the Internet, e.g. on social partners' websites.

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<sup>1</sup> Framework Agreements on Work-Related Stress (2004) and Harassment and Violence at Work (2007), both negotiated by the social partners at EU cross-industry level, and the Agreement on Workers' Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it (2006), the first multi-sector agreement negotiated by the social partners.

<sup>2</sup> Based at the European Foundation for the Improvement of Living and Working Conditions, Dublin; website: <http://www.eurofound.europa.eu/eiro/>

<sup>3</sup> Prof. Jelle Visser, Amsterdam Institute for Advanced Labour Studies (AIAS), University of Amsterdam.

This Report is part of the package of initiatives adopted together with the Commission's Communication *A Renewed Social Agenda: Opportunities, access and solidarity in 21<sup>st</sup> century Europe*<sup>4</sup>. It is an illustration of the important role of the European Social Dialogue in EU policy-making and of its capacity to provide responses to new social realities.

## **1.1. Background to the Framework Agreement on Telework**

### *1.1.1. Summary of history and content of the Framework Agreement*

On 16 July 2002 the European cross-industry social partners concluded a Framework Agreement on Telework. It was signed by the European Trade Union Confederation (ETUC), also representing the EUROCADRES/CEC Liaison Committee, the Confederation of European Business (BUSINESSEUROPE, then called UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME).

Telework is recognised by both sides of industry as a means of modernising work organisation by introducing flexible work arrangements and greater autonomy and of achieving better reconciliation of work, private and family life. Regular telework also reduces carbon emissions from commuting to work and therefore has a positive impact on the environment. The Framework Agreement was designed by the social partners as a key contribution to achieving the objectives of the Lisbon Strategy for growth and jobs, and in particular to the modernisation of labour markets and the development of the information society in a knowledge-based economy.

The Framework Agreement establishes a general framework of rules on telework. It aims to promote the development of this new form of work while safeguarding the protection of workers and the interests of employers. The social partners wanted to ensure that no new employment status would result from telework's expansion. While the Agreement stresses that teleworkers enjoy the same legal protection as employees working permanently at the employer's premises, it also identifies the aspects that are specific to distance working and which call for adaptation or special attention, such as employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training and collective rights.

The negotiation process followed a two-stage consultation of the social partners on modernising and improving industrial relations initiated by the Commission under Article 138 of the EC Treaty. The consultation document proposed a number of key criteria and principles which should constitute the basis of any provisions on telework at Community level.

Contrary to previous framework agreements between the social partners, and in particular those on parental leave, part-time work and fixed-term work (implemented through Council directives), the social partners decided to implement this Agreement through the members of the signatory parties in accordance with the procedures and practices specific to management and labour and the Member States, as provided for in Article 139(2) of the EC Treaty. An implementation period of three years from the date of signature was set. After four years, the European Social Partners adopted a joint report on the implementation of the Agreement, which was published on 11 October 2006.

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<sup>4</sup> COM(2008) 412

### 1.1.2. Commission consultation

On 20 June 2000 the Commission launched a first-stage consultation of the social partners on modernising and improving employment relations<sup>5</sup>. In accordance with Article 138(2) of the EC Treaty, the social partners were asked to give their opinion on the possible direction of Community action in this field and in particular to express their views on four points: the development of a set of principles to modernise employment relations; the establishment of a review mechanism for existing legislative and contractual rules; the establishment of framework provisions on telework; and the establishment of framework provisions on economically dependent workers.

In view of the response from the social partners, the Commission decided to focus the second-stage consultation<sup>6</sup>, launched on 16 March 2001, on telework. Since telework had increased considerably as a direct result of new information and communication technologies and in particular the development of the Internet, the Commission considered that it was necessary to formalise the practice of telework without hindering its development.

Telework was recognised as a form of work organisation offering numerous advantages to both workers (better reconciliation of work and family life, working time flexibility and greater autonomy) and employers (more flexible work organisation, modern results-based management, and higher job satisfaction increasing workers' sense of responsibility and productivity). Nevertheless, ensuring that the development of telework did not adversely affect worker protection or reconciliation of work, family and private life was deemed necessary.

The Commission therefore made it an objective to establish general framework provisions at Community level on telework, which would facilitate the further expansion of this new form of work organisation in a way that was beneficial to both enterprises and workers. Recognising that the most innovative ideas for adapting the employment framework to telework, in particular in the form of branch and firm-specific agreements and codes of practice, trade union guidelines and individual employment contracts, have come from collective bargaining, the Commission considered it desirable to approximate such practices by establishing a Community framework.

To that end the Commission proposed: (a) defining the concept of telework to cover a variety of new forms of work; and (b) laying down a number of general principles to be observed by employers and workers performing telework. These principles would need to cover:

- the voluntary nature of telework and the right to return;
- a guarantee of maintenance of employee status;
- guarantees of equal treatment;
- information to be provided to the teleworker;
- coverage of costs by the employer;

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<sup>5</sup> Available at: [http://ec.europa.eu/employment\\_social/social\\_dialogue/docs/modernisation1\\_fr.pdf](http://ec.europa.eu/employment_social/social_dialogue/docs/modernisation1_fr.pdf)

<sup>6</sup> Available at: [http://ec.europa.eu/employment\\_social/social\\_dialogue/docs/modernisation\\_II\\_en.pdf](http://ec.europa.eu/employment_social/social_dialogue/docs/modernisation_II_en.pdf)

- a guarantee of specific training;
- protection in the field of health and safety;
- working time;
- protection of privacy and protection of personal data;
- keeping in contact with the firm;
- collective rights of teleworkers;
- access to telework.

The consultation document called on the European social partners to forward an opinion or recommendation to the Commission on the content of the proposal under consideration in accordance with Article 138(3) of the EC Treaty, or to inform it of their wish to start negotiations in accordance with Articles 138(4) and 139 of the EC Treaty.

### *1.1.3. Negotiation by the social partners*

On 20 September 2001, ETUC (and the EUROCADRES/CEC Liaison Committee), UNICE<sup>7</sup>/UEAPME and CEEP announced their intention of starting negotiations with a view to reaching an autonomous agreement to be implemented by the members of the signatory parties in the EU Member States and the EEA countries. The negotiations lasted eight months and led to the conclusion of a draft agreement, which was then approved by the signatory parties' internal decision-making bodies. The Framework Agreement on Telework, the first autonomous agreement of the European social partners, was officially signed on 16 July 2002.

The social partners' aim was to establish a general framework on telework at European level which would *"encourage this new form of work organisation in such a way that flexibility and security go together and the quality of jobs is enhanced, and that the chances of disabled people on the labour market are increased."* Telework is seen by the social partners as a way of modernising work organisation for companies and public service organisations and of reconciling work, private and family life for workers and of giving them greater autonomy in accomplishing their tasks. The Framework Agreement therefore aims to promote the development of telework in Europe while providing teleworkers and employers with the necessary protection and safeguards.

The Agreement stipulates that teleworkers are to benefit from the same legal protection as employees working at the employer's premises and lays down a general framework for telework in a way that corresponds to employers' and workers' needs. Telework is defined as:

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

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<sup>7</sup> Now called BUSINESSEUROPE.

The Framework Agreement makes it clear that telework must be voluntary for both parties and concentrates on the aspects which are specific to working at a distance from the traditional workplace. It identifies the key areas requiring adaptation or specific attention, such as employment conditions, data protection, privacy, equipment, health and safety, organisation of work, training and collective rights. The full text is set out in the Annex to this Report.

## **1.2. The implementation process**

### *1.2.1. Responsibility for implementation*

Clause 12 of the Framework Agreement lays down the process for implementing the autonomous Agreement and defines the responsibilities for implementation and reporting:

*"In the context of article 139 of the Treaty, 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.*

*This implementation will be carried out within three years after the date of signature of this agreement.*

*Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement."*

By this formula and the direct reference to the implementation method covered by the first alternative in Article 139(2) of the EC Treaty, the autonomous Agreement confers the main responsibility for implementation on the signatory parties' member organisations at both national and sectoral levels within the different industrial relations systems. By virtue of the Agreement's approval by the European organisations' internal decision-making bodies, the member organisations have accepted this responsibility.

The Agreement was concluded in 2002 when the European Union consisted of just 15 Member States and only the social partners from those countries participated fully in European social dialogue. However, the social partners from the former candidate countries were already involved to some extent in the negotiation process and the signatory parties invited *"their member organisations in candidate countries to implement this agreement"* (Clause 1). All of these former candidate countries except Turkey are now all EU Member States. Furthermore, as stated above, the member organisations in the EEA countries participating in European social dialogue (Iceland and Norway) also committed themselves to implementing the Framework Agreement.

There was agreement among the social partners that the implementation process should be adapted to the procedures and instruments applicable under the national industrial relations systems. Traditional approaches to employer-worker relations and collective bargaining at all levels and to the role of legislation and contractual arrangements in each country had to be respected when implementing the Framework Agreement. Implementation of the Agreement was therefore expected to vary from country to country.



## *1.2.2. Action taken by the social partners at European level*

### *Cross-industry social partners*

The signatories to the Framework Agreement, i.e. the European cross-industry social partners, have assisted and advised their member organisations throughout the implementation process. The Framework Agreement has been disseminated, presented and explained by the European organisations to their members on various occasions, in particular under their integrated programme for technical assistance in the new Member States and candidate countries, which involved national seminars aimed at improving those members' participation in the European social dialogue. The ETUC drafted an interpretation guide to make the Agreement easier to understand and help members in the implementation process.

The European social partners also facilitated reporting. In March 2006 they sent a request to their members to report on implementation measures taken at national level. The ad hoc group met on 16 May 2006 to discuss the national joint reports received and the structure and content of the joint implementation report that was due for July 2006. The European social partners' report on the implementation of the Framework Agreement on Telework was adopted, subject to minor amendments, by the Social Dialogue Committee on 28 June 2006. A final version<sup>8</sup> was presented to the press and the wider public on 11 October 2006.

The social partners' implementation report is based on joint national reports from member organisations in 21 EU Member States, Iceland and Norway. Final joint reports had not been received from Cyprus, Estonia, Lithuania and Slovakia. The implementation process had not yet started in Bulgaria and Romania because the social partners in those two countries joined the European social dialogue only in 2007.

The social partners' EU-level implementation report considers that implementation had been achieved or was in the process of being finalised in all the countries covered. It looks at action taken to translate the agreement into the national languages and to disseminate it amongst members. It also analyses the choice of instruments adopted in each country to implement the text. Lastly, it examines the way in which the provisions of the Framework Agreement have been implemented, looking at each individual clause. This part does not contain a systematic analysis of implementation in each country, but gives examples of certain details agreed by national social partners that go beyond the requirements of the EU text.

The report's conclusions stress the wide range of implementation activities. They point out that this is the first instance where an autonomous agreement is implemented by national social partners and stress the capacity of the member organisations to follow up their commitments at European level. The question of what will be done in those countries or sectors where implementation has been lacking or insufficient (or not reported yet) is not addressed.

While both sides of industry expressed their satisfaction with the report, the ETUC has repeatedly stated that, while the current report covers the process of implementation, the actual impact of the Framework Agreement still needs to be assessed.

### *Sectoral social partners*

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<sup>8</sup> Available at: [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)

As follow-up to the Framework Agreement on Telework, the social partners in the electricity sector (Eurelectric, EPSU and EMCEF) adopted a joint declaration in November 2002 in which they welcomed the cross-industry agreement as relevant to their sector and called on their member organisations to implement the agreement in accordance with their national procedures and practice. Although the text provides for monitoring, the sectoral social dialogue committee has not carried out any evaluation to date.

Prior to the Framework Agreement, the social partners in the telecommunications (ETNO and UNI-Europa) and commerce (Eurocommerce and UNI-Europa Commerce) sectors had adopted joint guidelines for telework (on 7 February and 26 April 2001 respectively). Both texts are very similar in content to the cross-industry agreement as they address most of the same aspects (voluntary basis, equal treatment, equal access to training, health and safety, provision of equipment, data protection, prevention of isolation, collective rights, etc.). No follow-up activities have been reported so far.

## **2. IMPLEMENTATION IN THE EU MEMBER STATES, ICELAND AND NORWAY**

This chapter analyses the implementation measures taken by the national social partners and/or public authorities in the 27 EU Member States and the EEA countries, Iceland and Norway, whose social partners participate in European social dialogue.

### **2.1. Austria**

With a view to implementing the Framework Agreement on Telework, the Austrian social partners wanted to draft a joint recommendation which could be implemented at enterprise level. However, according to the Austrian government, the discussions on a common national procedure for implementation, which took place between the Austrian Trade Union Confederation (ÖGB) on the one hand, and the Austrian Economic Chamber (WKÖ), the Federation of Austrian Industry (IV) and the Austrian Association for Public and Social Economy (VÖWG) on the other hand, did not succeed.

The three Austrian employers' organisations (WKÖ, IV and VÖWG) had unilaterally published guidelines (*Leitfaden*) previously (15 July 2005) on implementing the Framework Agreement in Austria. The guidelines, which are addressed to employers and workers and are non-binding, contain a German version of the European Agreement and refer to existing Austrian legislation on various aspects of telework. Their aim is to give enterprises guidance on how to introduce telework at the workplace. The document has been published on the organisations' websites. However, it is difficult to evaluate to what extent they were taken into account when company or individual agreements on telework were concluded.

The Austrian labour contract law does not contain any specific regulation of telework. However, according to the Austrian government, general labour legislation and both collective (*Kollektivverträge*) and company agreements (*Betriebsvereinbarungen*) apply in full to teleworkers. The voluntary character of telework and equal rights for teleworkers as regards employment conditions are guaranteed. Provisions on health and safety, in particular as regards work with visual display units, are applicable as long as they are not linked to the workplace as such. However, access to the teleworker's home by labour inspectors, health and safety services and the employer is only allowed at the request of the teleworker.

A large number of sectoral collective agreements, most of which were concluded prior to the Framework Agreement, contain provisions on telework. Some are rather general, and only

stipulate the voluntary character and the need for a written agreement, leaving the details to be regulated by company agreements. Others contain more detailed provisions on working time, equipment and costs, prevention of isolation, information and training, rights of the works council, reversibility and data protection. According to the Austrian government, even though all issues are not regulated in a comprehensive manner, none of the collective agreements seems to contradict the Framework Agreement. It is not clear whether there are any specific provisions for the public sector.

## **2.2. Belgium**

In order to implement the Framework Agreement on Telework, the Belgian social partners adopted a cross-industry collective labour agreement (*convention collective de travail/collectieve arbeidsovereenkomst*) within the National Labour Council (*Conseil National du Travail/Nationale Arbeidsraad*). Collective Labour Agreement No 85 on telework was signed on 9 November 2005 by the members of the National Labour Council, i.e. the Federation of Enterprises in Belgium (FEB-VBO), the "middle classes" (i.e. SME) organisations (UCM and UNIZO), the federations of agriculture (FWA and *Boerenbond*) on the employers' side, and the Belgian Confederation of Christian Trade Unions (CSC-ACV), the Belgian General Federation of Labour (FGTB-ABVV) and the Belgian Federation of Liberal Trade Unions (CGSLB-ACLVB) on the workers' side.

The stated purpose of the collective agreement is to establish the principles governing telework. The way it is to be applied can be determined by collective agreements at sectoral or company level to take account of the particularities of branches or enterprises. The Belgian text follows the structure and wording of most provisions in the Framework Agreement very closely (definition, voluntary character, employment conditions, organisation of work, equipment, data protection, health and safety, training and career development, collective rights). As regards workers' privacy, it refers to the relevant Belgian collective agreement on the subject. It leaves out a few passages regarding Belgian labour law that seem self-evident, such as the responsibility of the employer for the teleworker's occupational health and safety and the inclusion of teleworkers in the calculation of the threshold for worker representation bodies.

On some aspects the Belgian agreement goes beyond the requirements of the European text. It requires a prior written agreement between the employer and the teleworker or an addendum to the work contract on the practical details of telework covering at least the following: the frequency (days and hours) of telework, the periods and the means by which the teleworker can be contacted, access to technical support, rules on costs and conditions for returning to work on the employer's premises. While it recognises that telework can be performed from the teleworker's home or any other place chosen by him/her, the Belgian agreement explicitly excludes mobile telework and work in the employer's satellite offices from its scope. It also specifies in greater detail the method for calculating the costs linked to the equipment and the consequences of equipment breakdown.

Collective Labour Agreement No 85 was extended by the Royal Decree of 13 June 2006. In accordance with Belgian law, collective agreements concluded by the National Labour Council and extended by the Government are binding on all workers and employers in the private sector. Employers disregarding a collective labour agreement are liable to penalties under criminal law.

Alongside the collective agreement, the National Labour Council also adopted Opinion (*avis/advies*) No 1528 of 9 November 2005, in which the social partners commented on the main points in the new agreement. It also addressed proposals to the Government on issues requiring the adaptation of several Belgian laws and regulations to bring them into line with the Framework Agreement and the national agreement. The requested amendments to the Belgian labour law were introduced by the Act of 20 July 2006.

Prior to the Framework Agreement, specific provisions on homeworking already existed in Belgian labour law (Title VI of the Act of 3 July 1978 on work contracts), and had been introduced in 1996 to cover both traditional homeworking and newer forms such as telework. At the request of the social partners, the law was amended so that it no longer applied to teleworkers working from home, thereby bringing all telework carried out at home or elsewhere within the scope of National Labour Agreement No 85. As regards matters not regulated by the collective agreement, the general Belgian labour law continues to apply to teleworkers.

It is not clear to what extent the Framework Agreement has been implemented to cover the public sector. A sectoral collective agreement for the Flemish civil service covering 2005-07 and concluded on 6 July 2006 contains some provisions regulating telework which seem to be in line with the European Agreement, in particular as regards its voluntary character and the provision of equipment and the coverage of costs by the employer.

### **2.3. Bulgaria**

The Bulgarian social partners which joined the European social dialogue at the beginning of 2007, i.e. the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB), the Confederation of Labour Podkrepa, the Bulgarian Industrial Association (BSK/BIA) and the Union for Private Economic Enterprise (SSI/UPEE), have not yet started to implement the Framework Agreement on Telework. However, it seems that informal discussions are currently taking place between the Government and the social partners concerning the adoption of an agreement on telework.

Telework is currently not regulated by the Bulgarian Labour Code, and the Government sees no need for an overhaul of the existing legal framework. In its view the Framework Agreement needs to be implemented through collective bargaining at sectoral or undertaking levels and there are no legal obstacles to its implementation. No collective agreements governing telework are known so far.

Teleworkers are, however, protected by the Labour Code, the Health and Safety Act and other employment regulations. Equal treatment of teleworkers compared with other employees seems to be guaranteed in terms of working conditions, health and safety, access to training, collective rights and the voluntary character of telework. General regulations on privacy and data protection are also applicable.

### **2.4. Cyprus**

The Cypriot social partners affiliated to the European social partners, i.e. the Cyprus Employers and Industrialists Federation (OEB), the Cyprus Chamber of Commerce and Industry (CCCI), the Cyprus Workers' Confederation (SEK) and the Democratic Labour Federation of Cyprus (DEOK), have not reported any action to implement the European Framework Agreement on Telework. However, the OEB and the SEK seem to be currently conducting negotiations with a view to adopting measures to implement the European

Agreement. The intention of both organisations is to reach a mutually acceptable arrangement at national level and then promote its implementation at sectoral and enterprise level.

Specific regulation of telework does not exist in Cyprus. According to the Cypriot Government, however, existing labour legislation and in particular all provisions governing health and safety at work are applicable to teleworkers. Therefore the Government is not aware of any conflict between national legislation and the Framework Agreement. The Cypriot Government has not taken any initiative of its own to promote the Agreement.

## **2.5. Czech Republic**

The Czech social partners, the Confederation of Industry of the Czech Republic (SP ČR) and the Czech-Moravian Confederation of Trade Unions (ČMKOS), welcomed the Framework Agreement on Telework. A Czech translation was distributed as a jointly agreed text to all their member organisations and published in internal bulletins. After several rounds of negotiations, they decided that the Framework Agreement should be implemented through the new Labour Code being prepared.

With a view to modernising the country's labour law, in May 2006 the Czech Parliament approved an overhaul of the Labour Code, which dates back to 1965. The new Labour Code (*Zákoník práce*, Act No 262/2006 Coll.), which entered into force on 1 January 2007, made it possible to agree on a workplace outside the employer's premises, thus making telework possible. The extent to which the Czech social partners influenced this change was not clear.

The new Article 317 stipulates that the Labour Code also covers the employment relationship of an employee who does not work at the employer's premises, but carries out work for the employer on agreed conditions while organising his/her own working time. Teleworkers (who are covered by this definition) therefore enjoy the same rights and duties as employees working on the employer's premises, with certain exceptions. These derogations from the general regulations are listed in Article 317 and stipulate that arrangements on working time scheduling and delays or breaks caused by adverse weather conditions are not applicable, and that the employee is entitled neither to compensation for loss of wages in the event of significant personal obstacles to work, nor to wages or compensatory leave for overtime and work on public holidays. These rules are legally binding and subject to monitoring by labour inspectorates.

Compared to the previous version of the Labour Code, the new labour legislation allows more contractual freedom between employers and workers. Collective and individual agreements can therefore arrange the conditions and specificities of telework. It is not clear whether any collective agreements have made use of this possibility.

The Czech legislation does not deal specifically with telework as its definition does not cover the use of information technology or the fact that the work can also be performed at the employer's premises. It makes no provision for alternating telework whereby working time is divided between the employer's premises and the teleworker's own chosen workplace. Most of the provisions of the Framework Agreement are not addressed in this legislation (voluntary character, reversibility, data protection, privacy, equipment, health and safety, training and collective rights). The Czech Government nevertheless considers that the Framework Agreement has been fully implemented in Czech law, as the new legislation provides sufficient scope for the social partners to apply the rules set out in the European agreement.

## 2.6. Denmark

The Danish social partners implemented the Framework Agreement on Telework through collective agreements (*overenkomster/aftaler*) at sectoral level, thereby respecting the structure of their industrial relations system. Telework in Denmark, unlike many European countries, was regulated prior to 2002 by many specific collective agreements. These agreements have been revised or updated in several cases to take account of the European text and are often accompanied by guidelines (*vejledning*). They generally allow for more specific agreements at local/company level or individual agreements.

In the private sector, two main agreements were struck in the manufacturing industry and the commercial services branches. The Confederation of Danish Industry (DI) and the bargaining cartel of industry trade unions (CO-industri) concluded an agreement (*protokollat*) on telework, distance work and homework which entered into force on 16 July 2005 and was also annexed to the three-year collective framework agreement for the industry (*Industriens overenkomst 2007-2010*, Annex No 20). This replaces an earlier agreement on telework from 1998, which was updated in the light of the European text, while guidelines drawn up by the same social partners in January 2002 are still applicable. The industry's agreement follows the provisions of the Framework Agreement very closely in all areas, but introduces slightly different rules on equipment and is more specific on issues such as working time.

Another private-sector agreement (*rammeaftale*) was concluded in April 2006 by the social partners in the commerce and services sector, the Danish Commerce and Service (DHS, now the Danish Chamber of Commerce) and the Union of Commercial and Clerical Employees (HK). It also replaces an earlier agreement of 1998 and is accompanied by comprehensive guidelines and a model agreement. The agreement itself, however, touches only on a few aspects of the Framework Agreement, i.e. equal rights and obligations for the teleworker, the employer's responsibility for equipment and the protection of privacy.

While those two agreements cover large sections of the private sector, the Framework Agreement has not been implemented in other branches. In order to broaden coverage, the cross-industry social partners, the Danish Confederation of Trade Unions (LO) and the Confederation of Danish Employers (DA), concluded a supplementary agreement on telework on 27 October 2006, which entered into force on 1 January 2007 and is annexed to the organisations' general Cooperation Agreement (*Samarbejdsaftalen 2006*) together with a Danish translation of the European text. According to this agreement, the principles for carrying out telework are to be discussed locally by each company works council, taking the various aspects of the Framework Agreement into consideration.

In the public sector, two major agreements were concluded or renewed with a view to implementing the European Agreement. The Finance Ministry acting in its capacity as the State Employer's authority for the central government sector, and the trade union cartel for the State sector (CFU) concluded an agreement (*rammeaftale*) on telework on 6 July 2005 covering civil servants and public employees, which renewed an agreement signed in 2002. Although the agreement states that both parties consider that it thus implements the Framework Agreement, it contains only two of its main principles, i.e. equality of employment conditions for teleworkers and the employer's responsibility for providing equipment. To supplement the agreement, in March 2006 the signatories issued joint guidelines on telework which cover most of the other issues (voluntary character, reversibility, work organisation, equipment, health and safety, privacy and data protection).

For the local and regional government sector, the trade union negotiating body for local government employees (KTO), Local Government Denmark (KL) and the Danish Regions agreed in a protocol of 30 November 2005 to introduce an article into the earlier framework agreement on telework and homework of 30 April 1997. The article states that the European agreement is to be considered as implemented by the 1997 agreement, which however, like the other early agreements, covers some provisions only (voluntary character, equal employment conditions and employer's responsibility for equipment). Again, comprehensive joint guidelines also touch on more aspects and indicate relevant legislation.

In both the private and the public sectors, coverage of telework by the Danish sectoral agreements seems to be quite extensive, although research suggests that not all branches of the private labour market have actually implemented the Framework Agreement. The subsidiary agreement by LO and DA, which covers those sectors only, seems to relegate responsibility for local agreements on telework to works councils. Apart from the agreement for the manufacturing industry, neither existing nor new telework agreements take account of all the main provisions of the European text, although the accompanying guidelines are often more comprehensive.

The Danish social partners consider that the Framework Agreement has been successfully implemented in Denmark, but that its effects are limited as a result of many pre-existing collective agreements. No specific legislation on telework exists in Denmark, as labour market regulation is largely left to the social partners without any interference by the Government or Parliament.

## **2.7. Estonia**

The Estonian social partners, the Association of Estonian Trade Unions (EAKL), the Estonian Employees' Unions' Association (TALO) and the Estonian Employers' Confederation (ETTK), have not reported any steps to implement the Framework Agreement on Telework.

So far, no specific regulatory framework for telework has been developed in Estonia. However, according to the Estonian Government, no provisions of the legislation in force prevent telework. General labour regulations seem to apply to teleworkers and equal treatment of teleworkers in terms of employment conditions and the voluntary character of telework seem to be ensured.

In the current review of the Employment Contracts Act, the Government intends to analyse the applicability of the Framework Agreement on Telework in the Estonian legal system and the need to transpose it into national law. The employers have announced their intention of translating and publishing the Framework Agreement.

## **2.8. Finland**

On 23 May 2005 the Finnish social partners concluded an "Agreement on implementation of the Framework Agreement on Telework" (*Sopimus Etätyötä Koskevan Puitesopimuksen Täytäntöönpanosta*). This text was signed by those organisations regularly involved in collective bargaining in Finland and which are representative of both the private and public sector, i.e. the Confederation of Finnish Industries (EK), the Commission for State Employers, the Commission for Local Authority Employers and the Church of Finland Negotiating Commission for the employers, and the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals (AKAVA) for the trade unions.

The text states that the signatory parties undertake to implement the Framework Agreement in Finland and recommend that its principles should form the basis for any telework arrangements both in collective agreements and in individual employment contracts. At all events the terms and conditions of telework should be agreed in writing. In accordance with the agreement, the principles of the Framework Agreement should be applicable to all personnel groups and also to public-law employment relationships. Lastly, the Finnish social partners commit themselves to promoting awareness and providing information on these principles, urge their member associations to pay attention to questions relating to telework in collective bargaining and draw up a list of issues to be taken into account when telework is agreed at collective or individual level.

These guidelines, which are annexed to the agreement, contain most of the provisions of the Framework Agreement, but also refer to the relevant Finnish labour legislation, for instance on occupational health and safety and collective rights. The guidelines' definition of telework quotes examples of some types of telework and explicitly excludes other forms of work from its scope (traditional home work and work in call centres). The guidelines are more specific on issues that need to be agreed before telework is started and on the applicable legislation with regard to employment conditions. They also address some issues not covered by the Framework Agreement, in particular travel costs, taxation and insurance coverage. The guidelines are sometimes less precise than the Framework Agreement and do not address certain issues, e.g. liability for equipment. Their aim is to help local actors to draft agreements on telework.

The Finnish social partners' agreement does not have the legal status of a collective agreement, i.e. its provisions are not legally binding. However, the Finnish industrial relations system is strongly structured and the general coverage level of collective bargaining is high (up to 90%), so that relatively good take-up of the recommendations can be expected. All Finnish social partner organisations have informed their member associations as well as employers and employees of the European and Finnish agreements through newsletters, the Internet and training activities. The effect of the agreement and the guidelines cannot yet be measured. At sectoral level, no changes based on the Framework Agreement have yet been reported, in particular owing to the fact that most sectoral collective agreements were valid until the end of September 2007 (i.e. after the information was collected). The Finnish social partners expected that telework could be on the agenda in subsequent sectoral bargaining rounds, since sectoral agreements are important instruments for setting employment terms and conditions.

Both the Finnish social partners and the Government consider that the legislation in force and the Finnish agreement cover all aspects of the Framework Agreement. No conflicts between the Framework Agreement and Finnish legislation are reported. Before starting their negotiations, the Finnish social partners conducted a thorough analysis of the national labour legislation and collective agreements and concluded that no legislative amendments were necessary. On the contrary, many of the principles of the Framework Agreement are already enshrined in Finnish labour legislation. Few specific telework-related provisions existed in Finnish collective agreements at sectoral level prior to the Framework Agreement.

## **2.9. France**

The French social partners negotiated and concluded a cross-industry national agreement (*accord national interprofessionnel*) on telework on 19 July 2005. The agreement was signed by the main employers' organisations (MEDEF, CGPME and UPA) and the main trade union



confederations (CFDT, CFE-CGT, CFTC, CGT-FO and CGT). At the request of the signatory parties, the agreement was extended to all employers and workers by a Government Decree of 30 May 2006, published in the French official journal on 9 June 2006. This procedure is used regularly in France to ensure complete coverage by collective agreements.

The French agreement incorporates all provisions of the European Framework Agreement, though it is specific and goes beyond its requirements in certain aspects. The French definition explicitly includes mobile teleworkers ("*télétravailleurs nomades*"). In the case of a switch to telework an addendum to the work contract is required: in addition to an "adaptation period", it must specify the conditions for a move to work at the employer's premises by employees recruited as teleworkers. The French text stipulates the need to draw up a schedule of times when the employer can contact the teleworker; it is more demanding in terms of the employer's responsibility to provide equipment and bear communication costs. It highlights the obligation to respect legal requirements on maximum working time and rest periods.

As a result of the decree extending its coverage, the national agreement is legally binding on all employers and workers within its professional and territorial scope. Sector-wide and company-specific collective agreements can supplement and adapt the rules for applying the cross-industry agreement to take account of the specificities and needs of certain branches and undertakings. However, most of its articles are mandatory and permit no derogations (definition, voluntary character, principle of reversibility, employment conditions, privacy, health and safety, work organisation, training and collective rights). Collective agreements at lower levels can be more specific about issues regarding equipment, rules on reversibility, and data protection. A first sectoral agreement was concluded on 6 October 2006 in the telecommunications industry, and a request has been made for its extension by decree. Several companies have also made use of the possibility of adapting the cross-industry agreement to their needs.

The French social partners' decision to implement the Framework Agreement through collective bargaining has the backing of the authorities. The French Government considers that the national agreement addresses the main issues involving telework and that further legislation is unnecessary for the time being. Prior to the Framework Agreement, no specific regulations existed on telework and it was felt that the existing legislation on traditional homework did not adequately cover this new form of work. Case law already established the voluntary character and reversibility of homework and the employer's responsibility for bearing the material costs. Relatively few sectoral (banking and telecommunications) or company agreements referred to telework prior to the European text.

## **2.10. Germany**

To implement the Framework Agreement on Telework, the Confederation of German Employers' Associations (BDA) and the German Trade Union Confederation (DGB) adopted a joint declaration on 16 July 2002 (day of signing). The declaration welcomed the European text and encouraged the social partners at sectoral and company level to devise rules for introducing the Framework Agreement into national practice. The German cross-industry social partner organisations, including the German Confederation of Skilled Crafts (ZDH) and the Confederation of Local Public Employers (VKA), informed their members of the Framework Agreement via newsletters, circulars and information material and the associated advisory services. DGB and BDA also organised a transnational conference in 2003 to disseminate the Agreement and exchange views on company teleworking practice.

The direct role of the German cross-industry social partners in labour regulation and collective bargaining is rather limited and they have therefore confined themselves to providing information and dissemination. The social partners' involvement at sectoral and regional level, where most collective bargaining occurs, also seems to be limited, except in some cases, including a recommendation by the social partners in the chemical industry, which seems to be in line with the Framework Agreement. The implementation by sectoral social partners might improve over time with the renegotiation of medium-term master collective agreements (*Manteltarifverträge*), which determine labour standards and working conditions outside wage issues.

Typically, the issue of telework is regulated through company agreements (*Betriebsvereinbarungen, Firmentarifverträge*) in Germany. Several agreements dealing with telework are known, some of which were concluded prior to the Framework Agreement, while others have been prompted by it. These texts generally abide by the provisions of the European text, but are often more specific and go beyond its protective standards while adapting to the needs of the individual company. Various trade unions and the local public employer organisation VKA have drawn up model agreements which are being used as a basis when the employer and worker representatives launch negotiations. Company agreements are legally binding on the signatory parties.

The social partners consider that the highly decentralised approach to regulating telework in Germany is the best way to deal with problems arising in this context. Neither the legislator nor the social partners seem to envisage changing this situation. This method of implementation may be appropriate, given its low cost of adaptation and the rather uncontroversial nature of telework, but the incomplete coverage does not ensure that there is sufficient protection in the most important sectors and professions.

On the other hand, both the German social partners and the Federal Government consider that teleworkers are covered by the general protective mechanisms of German labour law. Worker protection provisions on working conditions, working time and health and safety apply. Privacy and data protection are guaranteed through general laws. Co-determination within companies is applicable to teleworkers. It is not clear whether the provisions of the Framework Agreement on the voluntary nature of telework, its reversibility and on equipment are in line with general German labour law. The social partners state that they are not aware of any obstacles to implementation and the Government does not intend to propose any specific legislation.

## **2.11. Greece**

The Greek cross-industry social partners implemented the Framework Agreement on Telework via the National General Collective Labour Agreement (*Εθνική Γενική Συλλογική Σύμβαση Εργασίας*) for 2006-07, which was signed on 12 April 2006 by the Greek General Confederation of Labour (GSEE) for the trade unions, and the Hellenic Federation of Enterprises (SEV), the National Confederation of Hellenic Commerce (ESEE) and the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE) for the employers. Article 4 of the national agreement states the signatory parties' intention of implementing the Framework Agreement and refers to Annex B, which contains the jointly agreed Greek translation of the European text. In addition, the relevant sectoral employer and trade union organisations in the wholesale and retail trade sector signed a new two-year national collective agreement on 7 September 2006 undertaking *inter alia* to implement the European agreement.

Since Annex B to the Greek national agreement is an almost literal translation of the European text, all aspects of the Framework Agreement are covered by the implementing measure. In accordance with Greek law, the National General Collective Labour Agreement is binding on all workers and employers in Greece. It is not clear, however, to what extent it applies to the public sector too.

Prior to the Framework Agreement, Greek labour law did not specifically regulate telework. The only existing legal instrument is Article 1 of Act 2639/1998, which includes telework in the statutory framework for the protection of certain forms of work (together with piecework and homework) but does not address its particularities. The Greek Government does not, however, rule out the modernisation of Greek labour law to bring it into line with the needs of the economy and the labour market, including telework.

## **2.12. Hungary**

In Hungary, the Framework Agreement on Telework was implemented through legislation. Act XXVIII of 2004 amended the Labour Code (*a Munka Törvénykönyve*, Act XXII of 1992, Chapter X/A) as well as the Occupational Safety Act (Act XCIII of 1993, Chapter VII/A), thereby introducing provisions on telework into the Hungarian labour law. Penalties for non-observance of those regulations were included in the law on labour inspection (Act LXXXV, Article 1). The labour law regulations on telework also cover civil servants and public employees. The new rules entered into force on 1 May 2004.

The justifications for the amendments make it clear that the legislator took the goals and content of the Framework Agreement into consideration. The Hungarian Government gave two reasons for proposing legislation in this field: first, with the take-up of telework since the late 1990s, more detailed legislation was already on the agenda; second, given the lack of a strong tradition of collective bargaining and low representativeness of the social partners in the Hungarian industrial relations system, it considered that any implementation of the Framework Agreement through a collective or other bipartite agreement by the Hungarian social partners at cross-industry or sectoral level could not ensure sufficient coverage and binding force.

Although it was initiated by the Government, this method of implementation was accepted by the social partners. Their involvement in the regulatory process was similar to their role in preparing other employment-related laws, i.e. through consultations in the tripartite National Interest Reconciliation Council (OÉT) on a Government proposal before the bill is adopted by Parliament. The debate in the latter body was based on a Hungarian translation of the Framework Agreement and lasted about three months, focusing on the definition of telework, coverage of costs, compensation and working time. According to the Hungarian Government, the amendment submitted to Parliament had the agreement and support of the social partners.

The regulation of telework in the new Chapter X/A of the Labour Code (Articles 192/C-193/A) and other laws seems to be in accordance with the aims and content of the European Agreement on most issues, although there are some discrepancies. Teleworkers essentially have the same rights and responsibilities as other workers and the provisions of general labour law apply to them in full. However, owing to the particular nature of telework, some general employment regulations were adapted. The new chapter on telework sets out those points where derogations apply to teleworkers.

The Hungarian definition of "teleworker" differs from that in the European text, since it seems to be geared solely to permanent telework and therefore excludes alternating telework. Moreover, it does not state that the work involved could also be performed at the employer's premises. The voluntary character of telework is guaranteed by the requirement for a written agreement to start telework. The reversibility of the decision to engage in telework is contained in a "soft-law" rule, according to which the employee has the right to ask to continue or cease working as a teleworker and the employer is obliged to give due consideration to such requests. The employer's obligation to provide written information is stipulated in detail.

The Hungarian law seems to respect the main provisions of the Framework Agreement on data protection, equipment, health and safety and work organisation, but does not cover all aspects. On privacy, the employer's right of access to the private workplace subject to prior notification is regulated in detail, as is his/her access to data on the IT equipment. However, the use of monitoring systems is not addressed. While the Hungarian law stipulates that, unless otherwise agreed, the equipment is provided by the employer, it seems to be less favourable to the teleworker than the European text on issues of costs and liability. In contrast to the Framework Agreement, the Labour Code states that coverage of or compensation for costs is subject to an agreement between the parties and it increases the teleworker's liability for damage to the equipment. While general health and safety regulations apply to teleworkers and some specific rules are laid down (e.g. the employer's duty to inspect equipment before telework is started), there is no specific mention of work with visual display units (although Hungary has implemented the relevant EU Directive). The legislator took the view that existing rules on training and collective rights were sufficient and saw no need for specific provisions with regard to telework. The Hungarian law does, however, stipulate the employer's duty to inform the works council and trade unions of the number and positions of teleworkers employed. Some rules go further than the Framework Agreement, such as those on the employer's rights and duties to give instructions and carry out monitoring, the definition, scheduling and recording of working time and the method of communication.

The Hungarian labour law therefore incorporates the main points in the Framework Agreement, although it is more detailed in certain aspects, is less explicit than or diverges slightly from the European text in others. As is the case of all legislation, full coverage and binding legal force are guaranteed. The new legislation does not limit the scope of collective bargaining on telework at sectoral or company level. Prior to the Framework Agreement, Hungary had no specific comprehensive regulation of telework.

### **2.13. Iceland**

The Framework Agreement on Telework was implemented in Iceland by a collective agreement between the Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA) signed on 5 May 2006. Under the applicable Icelandic law, the agreement sets out minimum rights and obligations for all employees within the area covered by the signatory parties and serves as "binding guidelines" when telework is introduced in work contracts.

The agreement covers all provisions of the European text. Furthermore, provision is made for a joint committee to deal with issues that may arise from the agreement. No information is available on the extent to which the agreement has been applied in companies.

## 2.14. Ireland

To implement the Framework Agreement, the Irish social partners agreed to update their Code of Practice on "e-working", published in 2000 with the support of the Irish Government. The Irish Congress of Trade Unions (ICTU) and the Irish Business and Employers Confederation (IBEC) came to an agreement on 15 December 2004 on an updated Code of Practice applicable to the private sector. However, this text was never signed, published or disseminated. ICTU considered that public-sector workers should be covered by the Irish Code, since CEEP was a party to the European agreement. Owing to the difficulty in establishing who represented the public service employers and in securing their agreement, this issue has not yet been resolved. The Irish social partners and the Government therefore consider that the Framework Agreement has still not been formally implemented in Ireland.

The 2000 Code of Practice, which contains practical advice on introducing telework, suitable jobs, the home office, communication policies, training, security, terms and conditions for employees as well as monitoring and review, is a very comprehensive tool for companies and workers who intend to begin teleworking. It includes a model agreement for telework (in the form of a checklist of issues to consider) as well as advice for self-employed teleworkers. It also gives a broad overview of the applicable Irish legislation on general and specific employee rights and obligations (e.g. written information on terms of employment, data protection, working time and holidays, dismissals, health and safety), employment agencies and self-employed workers. Lastly, the Code provides useful reference documents and contacts.

The 2004 revised version of the Code of Practice (which was never formally adopted or disseminated) contains new points drawn from the Framework Agreement. It now follows the structure of the European text and incorporates all its provisions, including the definition, and adapts them to Irish conditions and legislation. The existing practical advice has been included in a new chapter ("practical considerations"), while the model agreement and the overview of legislation are maintained. Information for self-employed workers has been taken out, in line with the Framework Agreement.

It is difficult to assess to what extent the Code of Practice has influenced company practice or collective and individual agreements. There seem to be only a few company-level agreements incorporating telework issues, but a number of trade unions have produced guidelines for use in negotiating telework arrangements with employers.

## 2.15. Italy

The Italian social partners implemented the Framework Agreement on Telework through an "interconfederal agreement" (*accordo interconfederale*) concluded on 9 June 2004 by the national employers' organisations (Confindustria, Confartigianato, Confesercenti, CNA, Confapi, Confservizi, Abi, Agci, Ania, Apla, Casartigiani, Cia, Clai, Coldiretti, Confagricoltura, Confcooperative, Confcommercio, Confinterim, Legacoop and Uinci) and the most representative trade union confederations (CGIL, CISL and UIL).

The "Interconfederal Agreement on the transposition of the European Framework Agreement on Telework concluded on 16 July 2002 by UNICE/UEAPME, CEEP and ETUC" contains all the provisions of the European text (definition and scope, voluntary character, employment conditions, data protection, right to privacy, work equipment, health and safety, organisation of work, training and collective rights) in an almost literal translation. Some adjustments were

made to allow for better interpretation and to bring the terminology into line with general practice in Italy. In addition, the Agreement establishes the teleworker's obligation to inform the employer in the event of equipment breakdown or malfunction.

The Agreement makes provision for the social partners at lower levels to enter into agreements adapting and/or supplementing the principles and criteria laid down in the cross-industry agreement in order to take account of their specific needs. It also stipulates that pre-existing collective agreements are not affected and that individual agreements can lay down supplementary rules. Conflicts involving interpretation are to be brought before the signatory parties and the member organisations are to notify collective agreements dealing with telework.

In accordance with the Italian legal order, interconfederal agreements are based on common law and are therefore not enforceable *erga omnes*. However, they are binding on the employers and workers belonging to the signatory associations. They are also binding on other workers and employers who explicitly sign the agreement or implicitly take it on board by incorporating its content into individual employment contracts. Both the Italian social partners and the Government therefore consider that the telework agreement covers almost all private companies.

A collective agreement for the textile sector was concluded on 28 May 2004, i.e. prior to the cross-industry text; however, Article 44 (telework) of this agreement follows the provisions of the European Agreement very closely. According to the Italian Government, most sectoral collective agreements (*contratti collettivi nazionali di lavoro*) concluded after the cross-industry agreement follow its provisions entirely, sometimes incorporating its articles into the body of the agreement or in an annex (e.g. agreement for retail and services sector concluded on 6 July 2004).

Prior to the Framework Agreement, no specific legislation or regulation had been issued for the private sector in Italy and telework was governed exclusively by several national sectoral collective agreements, in particular in the telecommunications, electricity, chemical, graphical/paper and ceramics industries, and small and medium-sized enterprises. According to the Government, no sectoral agreement seems to be in conflict with the Framework Agreement. In addition, some company agreements had already been signed in Italy.

In the public sector, telework was introduced by Law No 191 of 16 June 1998 and its organisation and implementation was regulated subsequently by Presidential Decree No 70 of 8 March 1999. A framework agreement signed by the Negotiating Agency for Public Administration (ARAN) and the public-sector trade unions on 23 March 2000 laid down the main points concerning the assignment of public employees to telework projects. This agreement seems to be in line with the main provisions of the Framework Agreement on the voluntary character of telework and reversibility, equal rights in particular as regards training, pay, career advancement, trade union activities and working time, costs for equipment and communication, privacy and controls.

The Italian Government is satisfied with the state of implementation. It considers that all protective measures have probably been respected and sees no need for legislation in this field. It also points out that teleworking does not reduce the level of worker protection under the Constitution, the Civil Code and specific legislation on occupational health and safety. However, there seem to be exceptions where protective legislation on working time does not apply to teleworkers (Article 17(5) of Legislative Decree No 66 of 8 April 2008).

## **2.16. Latvia**

The Latvian social partners, the Employers' Confederation of Latvia (LDDK) and the Free Trade Union Confederation of Latvia (LBAS), concluded an agreement on the implementation of the Framework Agreement on Telework on 12 April 2006. Under the agreement, which is not a collective agreement, the signatory parties undertook to facilitate the implementation process, in particular by disseminating information to the members of employers' and trade union organisations, other institutions and the general public. They also sought to ensure that collective agreements at sectoral and local level took account of the aims and provisions of the European Agreement.

A translation of the Framework Agreement into Latvian was also agreed on by the social partners and disseminated with the agreement. The Government and the labour inspectorate were informed and "guidelines on implementation of telework" were negotiated by the social partners, government representatives and members of parliament. It is not clear whether any collective agreements have incorporated provisions on telework and to what extent company practice has been influenced. According to the Government, implementation of the framework provisions is not widespread, but the process is going ahead slowly.

Latvian legislation contains no specific provisions regulating telework, but the Labour Act does not restrict its possibility. According to Article 53(1) of the latter, a worker has the duty to perform work in the undertaking unless the worker and employer agree otherwise. Article 40(2) states that information concerning the workplace(s) must be mentioned in the work contract. The general rules of Latvian labour law, e.g. on the employer's responsibility for workers' health and safety, and the law on personal data apply fully to teleworkers. However, the main provisions of the Framework Agreement cannot be considered as implemented via the national legislation. According to the Latvian Government, there is no conflict between the legal provisions and the terms of the Framework Agreement.

## **2.17. Lithuania**

The Lithuanian national social partners, i.e. the Lithuanian Trade Union Confederation (LPSK), the Lithuanian Trade Union "Solidarumas" (LPSS/LDS), the Lithuanian Labour Federation (LDF), the Lithuanian Confederation of Industrialists (LPK) and the Lithuanian Business Employers' Confederation (LVDK), have not reported any measures to implement the Framework Agreement on Telework.

Lithuanian labour law lays down no specific regulations concerning telework. However, the Lithuanian Government considers that telework is covered by the existing provisions on homework in the Labour Code, which entered into force on 1 January 2003, and Decree No 1043 of 19 August 2003. In its view, these provisions are compatible with the Framework Agreement.

Article 115 of the Labour Code provides for an "employment contract on homeworking", which is defined in Decree No 1043 as "work performed by a person at home for a wage agreed on with the employer". The regulations stipulate that work and equipment must comply with the relevant occupational health and safety rules. They set a maximum weekly working time of 40 hours, but leave its allocation and recording to the homeworker. Compensation for work-related expenditure can be agreed on in the work contract, but is not systematic. For all other matters, homeworkers are subject to the general provisions of the Labour Code, which thus ensures equal treatment. These rules are binding on all

homeworkers and employers. Details can be laid down in collective agreements, but neither the Government nor the social partners are aware of collective agreements laying down conditions governing homework/telework.

The Lithuanian legislation on homework does not cover teleworkers who do not work from home or perform alternating telework. (However, where the teleworker is employed under a work contract, the normal labour regulations seem to be fully applicable.) Furthermore, the provisions on homework do not cover several of the issues addressed by the Framework Agreement, in particular those relating to the use of information technology, e.g. privacy, data protection and equipment.

## **2.18. Luxembourg**

The Luxembourg social partners implemented the Framework Agreement through a collective agreement (*convention*) on the legal framework for telework, signed on 21 February 2006 by the Union of Luxembourg Enterprises (UEL) on a mandate from the other employer federations, the Confederation of Independent Trade Unions of Luxembourg (OGB-L) and the Luxembourg Christian Trade Union Confederation (LCGB). The agreement was extended to all workers and companies (*déclaration d'obligation générale*) by grand-ducal decree on 13 October 2006.

The Luxembourg agreement covers all provisions of the European text in full, but goes into more detail on a number of issues: it contains a list of written information on the rules for performing telework that must be agreed before it is started, covering the place of work, contact hours, description of tasks and work equipment, insurance etc. The reversibility of telework, i.e. the possibility to move (back) to work at the employer's premises, is regulated in great detail, in particular with a compulsory "adaptation period" of three to twelve months with a "right to return" for both parties. The article on privacy clarifies the employer's right of access to the workplace. The agreement also stipulates the teleworker's obligation to inform the employer in the event of equipment malfunction. In their agreement, the social partners addressed a request to the legislator to amend a certain number of legal provisions to bring the national labour law into line with the agreement.

Prior to the Framework Agreement, Luxembourg had no regulation or collective agreement dealing with telework. Under the decree extending its coverage, the agreement was made legally binding throughout Luxembourg and covers the whole private sector. However, public officials are excluded from the scope of the agreement. The agreement is valid for three years. The Luxembourg social partners have raised the issue of the implications of telework for the social security and tax regime of cross-border workers, which has not yet been resolved satisfactorily by the public authorities.

## **2.19. Malta**

The Maltese social partners affiliated to the European organisations, the General Workers' Union (GWU), the Confederation of Malta Trade Unions (CMTU) and the Malta Federation of Industry (MFOI), reported that there has been no real implementation of the Framework Agreement on Telework in Malta. They attribute this in particular to the low incidence of telework there.

As regards the public sector, however, the Collective Agreement for Employees in the Public Service, concluded on 26 October 2005 by the Government and the relevant public-sector trade unions for the period 2002-10, provides for the introduction of telework among other



flexible work arrangements (paragraph 8.1). As follow-up to that provision, a set of guidelines for an "e-work framework" has been drafted and is to be implemented in the public sector. According to the Government, these guidelines cover all aspects of the Framework Agreement and are legally binding.

Malta had no specific legal or collective framework regarding telework in place before 2002. While Malta's general regulations on health and safety apply to all workers, there seem to be some exemptions for teleworkers. Legal Notice 44 of 2002 containing the Work Place (Minimum Health and Safety Requirements) Regulations states that "a homemaker shall be considered a self-employed person" and that the Regulations do not apply to "temporary or mobile work sites". On the other hand, Legal Notice 43 of 2002 on the Minimum Health and Safety Requirements for Work with Display Screen Equipment Regulations covers employees who use "display screen equipment at a workstation provided by the employer at home".

## **2.20. The Netherlands**

The Dutch social partners decided to implement the Framework Agreement on Telework through a recommendation (*aanbeveling*) by the Labour Foundation (*Stichting van de Arbeid*), which is made up of the three leading trade union federations – the Netherlands Trade Union Confederation (FNV), the Confederation of Christian Trade Unions in the Netherlands (CNV) and the Trade Union Federation for Intermediate and Higher Employees (MHP) and the three leading employers' associations, the Confederation of Netherlands Industry and Employers (VNO-NCW), the Royal Dutch Association of Small and Medium-sized Enterprises (MKB-Nederland) and the Dutch Association for Agriculture and Horticulture (LTO). The Labour Foundation is a cooperative body of the social partners under private law and serves as a platform for preparing and conducting national-level negotiations.

The Recommendation of 11 September 2003 brings the Framework Agreement to the attention of employers and workers at both sectoral and enterprise level and calls for its implementation via collective agreements (*CAO*) and/or in dialogue with works councils and in individual agreements. To that end, it lists the main points that should be covered, namely the definition and voluntary character of telework, equal working conditions for comparable workers, compensation for equipment costs, and training and career prospects. It also recommends that such organisational aspects as working time, availability, information and instructions, contact possibilities, assessment, coaching, data protection and privacy should be discussed with the works council or individually. The Recommendation describes the development of telework in the Netherlands in qualitative and quantitative terms. The full Dutch translation of the Framework Agreement is attached to the Recommendation, together with a description of the relevant Dutch labour law relating to telework and some provisions on telework in existing collective agreements.

Recommendations by the Labour Foundation are the standard tool used by the Dutch social partners to promote dialogue and agreement on issues concerning working conditions and have been used before in many areas, such as part-time work, employment of ethnic minorities, gender gaps and childcare facilities. By definition, they are not legally binding. They encourage the negotiation of company and sector agreements and are intended to pre-empt legislation. They are a mixed success: recommendations from the centre have not always been followed on the ground and stricter legislation has sometimes been introduced. Little information is available on the Recommendation's impact on telework and on whether it has influenced collective bargaining in sectors and companies. The social partners have been

engaged in information activities, in particular through their websites, a brochure by VNO-NCW and in discussions within the so-called Telework Forum.

While there is no specific legislation regulating telework in the Netherlands, some provisions of Dutch labour law are applicable to teleworkers, such as the Working Conditions Decree (*Arbeidsomstandighedenbesluit*, Articles 5.15 and 6.30), which grants teleworkers the same protection as employees at the workplace, in particular in terms of health and safety. The Dutch Government believes that the Labour Foundation Recommendation covers all aspects of the Framework Agreement and seems to be satisfied with the method of implementation chosen.

## **2.21. Norway**

In order to implement the Framework Agreement on Telework, the Norwegian social partners adopted joint guidelines (*retningslinjer*) in December 2005. This document was approved by the four main organisations on the employers' side, the Confederation of Norwegian Enterprise (NHO), the Federation of Norwegian Commercial and Service Enterprises (HSH), the Norwegian Association of Local and Regional Authorities (KS) and the Employer Federation NAVO (now renamed Spekter), and the five main trade union organisations, the Norwegian Confederation of Trade Unions (LO), the Confederation of Vocational Trade Unions (YS), the Confederation of Unions for the Professionals (UNIO), the Federation of Norwegian Professional Associations (Akademikerne) and the Norwegian Society of Engineers and Technologists (NITO).

These guidelines are the result of national bipartite negotiations, but do not commit the social partners at lower levels. They are intended as voluntary recommendations to the members of the signatory parties, in particular employers and workers, for starting and performing telework. They contain most of the provisions of the Framework Agreement in an almost literal translation and sometimes go beyond the European text, e.g. on the need for a written agreement on telework and its content, on the fact that the equipment provided remains the property of the employer and on the employer's responsibility with regard to the teleworker's health and safety. On the other hand they do not contain any explicit reference to collective rights of teleworkers. The original English text of the Framework Agreement is annexed to the guidelines, together with references to guidelines on telework issued previously by individual social partner organisations and the regulation on work performed at the worker's home.

The Norwegian trade unions initially intended to conclude a binding national collective agreement on telework, but could not convince the employer organisations and finally accepted their proposal for non-binding guidelines. All major social partners, including those in the public sector, have signed up to the guidelines: only the Ministry of Government Administration as the State employer authority is not among the signatory parties. It is not clear to what extent any sectoral, company or individual agreements have taken up the guidelines.

There is no specific legislation on telework in Norway, but the Working Environment Act is considered to be applicable to work carried out away from the employer's premises and therefore grants teleworkers the same general rights and protection. However, the above-mentioned administrative regulations on home-based work of 5 July 2002 lay down some exemptions from this rule, in particular as regards some provisions on the working environment and working time and on monitoring and inspection. They also require home-

based telework to be carried out on the basis of an agreement between the employer and the individual worker, thereby safeguarding its voluntary character. Telework was regulated in some collective agreements prior to the European text, which, however, remain very general.

## 2.22. Poland

In Poland, the Framework Agreement on Telework was implemented by legislation amending the Labour Code drafted on the basis of a bipartite agreement between the Polish social partners. The most representative national employer and trade union organisations, i.e. the Confederation of Polish Employers (KPP), the Polish Confederation of Private Employers *Lewiatan* (PKPP *Lewiatan*), the Polish Craft Association (ZRP), the Independent and Self-Governing Trade Union *Solidarność* (NSZZ *Solidarność*), the All-Poland Alliance of Trade Unions (OPZZ) and the Trade Unions' Forum (FZZ), started negotiations in January 2005 at the Social Dialogue Roundtable for European Integration (OSDSIE) and reached a draft agreement on 10 June 2005. This text contained almost all the provisions of the European Agreement and in some cases went beyond its requirements and into more detail on certain aspects. It committed the signatory parties to ensuring the agreement was applied through their organisations. This draft agreement was, however, never formally ratified by the statutory bodies of all the organisations, because it lacked the list of legislative amendments which the signatory parties intended to request the Government to introduce. Nevertheless, informal consultations continued, including with the Government, on how to move to the legislative stage.

The Polish Ministry of Labour and Social Policy finally took the Framework Agreement as a basis when in 2006 it drafted a proposal for an Act amending the Labour Code with a view to creating a legal basis for telework. The draft Act, which is very similar to the text agreed by the social partners, was presented to the social partners in October 2006 and discussed within the Tripartite Commission for Social and Economic Affairs. Adopted by the Government in April 2007, the draft Act was approved by Parliament in August and entered into force on 15 October 2007. A new Chapter IIb entitled "Terms of employment of teleworkers" comprising 13 new articles (Article 67<sup>5</sup> to 67<sup>17</sup>) was thus inserted into Section II of the Labour Code (*Kodeks pracy*). The new legislation focuses on the specificities of telework, both as regards its introduction and the relations between the employer and the worker. In matters relating to telework not regulated by the new chapter, the other provisions of the Labour Code apply. The new provisions cover the entire workforce. Prior to the amendment of the Labour Code, no regulations specifically dealing with telework existed in Poland.

In the main the new Polish law reflects the Framework Agreement as regards the definition of telework, its voluntary character for both sides and its reversibility, equal employment conditions (in the form of a non-discrimination clause), rules on equipment (provision, maintenance, costs and technical assistance), right to privacy, data protection, health and safety, training and collective rights, in particular as regards the requirement to discuss the introduction and practical details of telework with the employee representatives. In some areas, the Polish law goes beyond the text of the Framework Agreement, in particular as regards the employer's duty to accommodate the worker's request for telework "where feasible", the teleworker's duty to share essential information with the employer, the requirement for the teleworker's prior written consent to any controls by the employer and the possibility for the employer and the teleworker to conclude a separate agreement, in particular on the rules for the use of the teleworker's own equipment, contacts and monitoring of the employee's work.

### 2.23. Portugal

In Portugal, the Framework Agreement on Telework was implemented through legislation. Provisions on telework, which were clearly inspired by the European text, have been included in the new Labour Code (*Código do trabalho*) adopted by Act No 99/2003 of 27 August, which entered into force on 1 December 2003. The Portuguese social partners did not undertake any joint initiatives of their own to implement the Framework Agreement.

Articles 233 to 243 of the Labour Code contain several of the main provisions of the Framework Agreement, in particular as regards the following: written information to be provided by the employer, equal rights and obligations for teleworkers as regards working conditions, training and promotion opportunities, privacy, installation and maintenance of equipment and coverage of costs, health and safety, work organisation and collective representation of workers. Since teleworkers are defined as employees subject to contractual subordination, in the absence of specific provisions the general employment regulations apply to teleworkers. The definition of telework as work carried out "usually" outside the employer's premises using ICT includes alternating telework, but seems to exclude arrangements whereby only a minor part of working time is spent away from the employer's premises. The Labour Code stipulates that assignment to telework involves a written agreement, which implicitly acknowledges its voluntary character. Reversibility, i.e. return to the initial form of work, is automatic after the end of the agreed period of telework. In terms of data protection, the teleworker is bound to keep the information and techniques entrusted to him/her confidential. Maximum daily and weekly working hours are applicable to teleworkers, but they can be exempted from the working time schedule.

On several points, the Portuguese law goes beyond the requirements of the Framework Agreement. It sets an initial time limit of three years for telework arrangements, unless another time frame is stipulated by collective agreement. Access by the employer to the home of the teleworker is regulated in detail. The Labour Code also provides for penalties on employers in the event of regulatory offences against general rules or specific provisions on telework. Several provisions of the Framework Agreement are not reflected in detail in the Portuguese Labour Code, in particular the more detailed rules on data protection, monitoring systems, liability in the event of loss of or damage to equipment, the right to a technical support facility, workload and information for and consultation of worker representatives on the introduction of telework.

The Portuguese social partners were consulted on the draft Labour Code within the tripartite Standing Commission for Social Dialogue (CPCS), but they did not agree fully with the Government's proposals on telework. The employers, in particular the Confederation of Portuguese Industry (CIP), were opposed to the introduction of legislation on telework and felt that some of the articles proposed were less flexible than the provisions of the Framework Agreement. The trade unions, i.e. the General Workers Union (UGT) and the General Confederation of Portuguese Workers (CGTP-IN), welcomed the initiative, but were unhappy about shortcomings in the draft bill, in particular some differences with the Framework Agreement and a lack of rules on call centres and self-employed teleworkers (which, however, are also excluded from the scope of the European Agreement).

There is scope for the social partners to conclude collective agreements with more specific rules, but collective bargaining rarely seems to address the issue of teleworking. The Government knows of only one local-level collective agreement on telework. Prior to the

Framework Agreement, no legal definition of telework existed in Portugal, and the specific scheme for homeworking did not cover non-manual work contracts.

#### **2.24. Romania**

The Romanian social partners affiliated to the European social partner organisations which joined the European social dialogue at the beginning of 2007 have not yet started implementing the Framework Agreement on Telework. Therefore the trade unions, including the National Trade Unions Block (BNS), the National Trade Union Confederation "Cartel Alfa", the National Confederation of Free Trade Unions of Romania "Fratia" (CNSLR-Fratia) and the Democratic Trade Union Confederation of Romania (CSDR), and the employer organisations, in particular the Romanian Alliance of Employers' Confederations (ACPR), have nothing to report yet. Nevertheless they have acknowledged the need for telework regulations at national level and are willing to take the Framework Agreement as a guideline.

So far Romania has not adopted any specific legislation regulating telework, and the social partners have not concluded any collective agreement covering this form of work. The Romanian Labour Code (Law No 53/2003) contains a chapter on homework (Articles 106 and 107), according to which homeworkers enjoy all the rights laid down by law and by collective agreement that are applicable to employees working at employers' premises. General provisions on data protection and the right of privacy are also applicable. However, the provisions regarding homework clearly relate to manual piecework and do not take account of work carried out using information technology.

#### **2.25. Slovakia**

The Slovak social partners, in particular the National Union of Employers (RUZ) and the Confederation of Trade Unions of the Slovak Republic (KOZ SR), have not reported any action to implement the Framework Agreement on Telework.

Slovak labour law introduced a legal status for employees not performing work at the employer's premises (treated as equivalent to homeworking) in April 2002, i.e. prior to the Framework Agreement. When the Labour Code (*Zákonník práce*) was amended by Act No 348/2007, which entered into force on 1 September 2007, the concept of "telework" and new rules were included in Article 52, which up to then had covered "work at home" only. This reform was initiated by the Slovak Government with a view to bringing its labour law into line with the Framework Agreement.

The new definition of telework in Article 52 of the Labour Code now includes the use of information technologies and is therefore closer to the European text. However, it does not state that the work can also be performed at the employer's premises and seems to exclude alternating telework. The substantial provisions of the Framework Agreement are covered by the new regulation, including the voluntary character of telework, the equal treatment of teleworkers compared with other employees and the main provisions on data protection, privacy, equipment, prevention of isolation, training and collective rights. The Slovak regulations on occupational health and safety and in particular on work with visual display units apply in full to teleworkers. By way of derogation from the principle of equal rights and since the teleworker manages his/her own working time — as provided for in the European text — the rules on the allocation of weekly working time do not apply and the teleworker is not entitled to compensation in the event of personal obstacles to work, overtime, night work

and work on public holidays (as in Czech legislation). Article 52 does not seem to address the issue of reversibility of telework.

The Slovak social partners were consulted on the new rules on telework and on the full package of proposed amendments to the Labour Code within the tripartite Economic and Social Council (HSR SR). According to the Government, the Slovak social partners welcomed its proposal to regulate telework and had no objections regarding this method of implementing the European agreement. The new telework regulation is legally binding and applies to all sectors and workers.

The Slovak Government sees the need for greater involvement of the social partners in the future and intends to support them in implementing individual sections of the Framework Agreement through the conclusion of collective agreements at sectoral and company level. Telework does not yet seem to have been the subject of collective bargaining.

## **2.26. Slovenia**

The Slovenian social partners have started discussions on the implementation of the Framework Agreement on Telework, but the process does not yet seem to have been finalised. The employers' organisations, the Association of Employers of Slovenia (ZDS), the Chamber of Crafts of Slovenia (OZS) and the Association of Employers for Craft Activities of Slovenia (ZDODS), and the Association of Free Trade Unions of Slovenia (ZSSS) informed the European social partners in May 2006 that a final version of the translation of the European text was about to be agreed and that a decision had to be taken on whether implementation should entail a proposal amending the Employment Relationship Act or one for implementation in branch collective agreements. The Slovenian social partners take the view that the Framework Agreement is already partially implemented via the regulation of homework.

In Slovenian legislation (prior to the Framework Agreement), homeworking was governed by Articles 67 to 71 of the Employment Relationship Act (*Zakon o delovnih razmerjih, ZDR*) and defined as work carried out at the home of the employee or on premises of his/her choice. In order to include teleworkers explicitly, the law was amended in 2007 to extend the scope of those Articles to "distance work performed by the employee with the aid of information technology". The Amending Act, which entered into force on 28 November 2007, also makes it clear that teleworkers (and homeworkers) enjoy the same rights as employees working at the employers' premises, including participation and trade union rights. According to the Act, the employer must ensure safe working conditions in accordance with the occupational health and safety regulations. According to the Slovenian Government, the homework/telework contract must contain specific details concerning the place of work, the tasks, the use of resources and equipment, etc. As a general rule, the employer must provide all the resources and material required to perform the work; otherwise, the employee is entitled to compensation for the use of resources and reimbursement of costs. The amount of work must be equivalent to what can be expected under normal working conditions within normal working hours.

Although many of the provisions of the Framework Agreement seem to be covered, others do not appear in the Slovenian legislation, e.g. the provisions on data protection, privacy and organisation of work. The legislation seems to provide only for permanent, not alternating, homework/telework. The Slovenian Government considers that the above-mentioned Articles of the Slovenian law implement the terms of the European agreement. It is not clear to what

extent the social partners were involved in the preparation of the Amending Act. Several sectoral collective agreements (postal services, banking, health and social insurance services) already address homeworking/teleworking.

## 2.27. Spain

With a view to implementing the Framework Agreement, the Spanish social partners have incorporated its main principles into the (bi-)annual "Interconfederal Agreements on Collective Bargaining" (*acuerdos interconfederales para la negociación colectiva – ANC*). The ANCs address the essential aspects of employment relations and wage issues and are signed by the most representative trade unions, the General Workers' Union (UGT) and the Trade Union Confederation of Workers Commissions (CC.OO.), and the employer organisations, the Spanish Confederation of Employers' Organisations (CEOE) and the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME). In Chapter 7 of their ANC for 2003 signed on 30 January 2003, the signatory parties refer to the background and the main provisions of the Framework Agreement, declare that they fully endorse its content and commit themselves to promoting its application and adaptation in Spain. A full Spanish translation is annexed to the 2003 ANC.

The following ANCs in 2005 and 2007 mention the European Agreement and reiterate its main principles (voluntary and reversible character, equal rights for teleworkers) and the need for the social partners to regulate aspects such as privacy, confidentiality, prevention of risks, equipment, training, etc. The ANCs have each been extended for the following years, i.e. 2004, 2006 and 2008. They are not legally binding, but address recommendations and priorities to the signatory parties' member organisations when they enter into collective bargaining. As such they provide guidance for collective agreements at sectoral, regional or company level.

On the basis of the cross-industry agreement, two (binding) collective agreements have been signed for the chemical industry (2004) and the daily press sector (2005), which both use the European text to regulate certain aspects of telework. Several collective agreements at enterprise level, in particular in the information and communication industry, and one at provincial level (Valencia) deal with telework; some of these refer to the European Agreement. While full coverage of all workers and companies cannot be ensured, the Framework Agreement and the ANC seem to fulfil a strong guiding function when the social partners at lower bargaining levels regulate the practical aspects of telework, in particular in branches with a high incidence of telework. This guiding function has been strengthened by the dissemination and information activities (newsletters, Internet, seminars, etc.) carried out by the Spanish social partners to promote the Framework Agreement.

Part of the public sector will be covered by a Royal Decree regulating telework in the General State Administration. According to the Spanish Government, the draft Royal Decree has been drawn up along the lines of the European Agreement and guarantees the voluntary nature of access to telework and equal conditions of employment for teleworkers. Aspects relating to equipment, costs, data protection and health and safety are also addressed. It provides for alternating telework only and will be applicable both to civil servants and to public employees at central government level. After it was discussed in the Spanish Economic and Social Committee, the draft was agreed by the relevant trade unions (CC.OO., UGT, CSI-CSIF, CIG and ELA) in May 2007.

Prior to the Framework Agreement, the only legal provision in Spain was Article 13 of the Workers' Statute (amended by Royal Legislative Decree 1/1995 of 24 March), which governs homework contracts. In the Government's view, this provision was drafted with an eye to manual work, in particular in sectors such as textiles, and is not in line with the new realities of telework, although some aspects might be transferable (equal pay and collective representation rights). While the Spanish Government considers that the preference for collective bargaining is appropriate for telework and that the field covered by the social partners' implementation instruments is sufficient, it does not rule out changes to the legislation in force, if the need arises.

A Spanish Supreme Court ruling of 11 April 2005 refers to the European Framework Agreement as interpretation criteria to confirm the voluntary nature of telework for workers and employers when the initial job description does not cover telework. The Labour Inspectorate's Operational Guide (published by the Ministry of Labour and Social Affairs) looks at various aspects of the employment contract which may be affected by telework and repeatedly quotes the Framework Agreement.

## **2.28. Sweden**

The Swedish social partners have adopted "common guidelines" (*gemensamma riktlinjer*) to implement the European Framework Agreement on Telework. These guidelines were signed on 28 May 2003 by the cross-industry social partner organisations, i.e. the Confederation of Swedish Enterprise (SN), the Swedish Association of Local Authorities, the Federation of Swedish County Councils and the Swedish Agency for Government Employers for the employers, and the Swedish Trade Union Confederation (LO), the Swedish Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO) for the trade unions.

The "common guidelines" state that the Swedish social partners back the Framework Agreement, which should serve as a reference when telework agreements are concluded on the Swedish labour market. In implementing the Agreement, due consideration should be given to the special conditions applying in different industries, sectors, companies, public authorities and individual employees. The text reaffirms the principle of equal rights for teleworkers and the other areas highlighted in the Framework Agreement which require adaptation or special attention when telework is agreed (its voluntary character, data protection, equipment, etc.). The principles set out in the European text are considered to be well balanced as guidance on telework in the Swedish context. The social partners welcome the development of autonomous agreements under the European social dialogue, which they consider well adapted to the Swedish labour market. They also undertake to report on the implementation process in Sweden. A Swedish translation of the Framework Agreement has been annexed to the "common guidelines".

Since the Swedish industrial relations system does not provide for a direct role for the cross-industry social partners in collective bargaining, it is up to the sectoral social partners to implement the "common guidelines" through their collective agreements. In the private sector, the Swedish social partners report that addenda have been annexed to collective agreements in certain branches of industry (not specified) which recommend the Framework Agreement as a model when (collective or individual) agreements are concluded on telework. In other branches, employer organisations have committed themselves, in the minutes of collective negotiations, to informing their member companies of the Framework Agreement and the "common guidelines" through circulars or in some other way. In certain branches, the subject



of telework has not been addressed in collective bargaining because it does not arise or because the social partners saw no need for regulation. Research suggests that the number of branches in the private sector where the "common guidelines" have actually been taken up in collective bargaining or other instruments is quite limited.

In the public sector, provisions on telework already existed in certain collective agreements for local and regional authorities. In the 2005 bargaining round, these were updated, so that all the main agreements for municipalities and county councils now refer to the Framework Agreement and state a number of points that should be taken into account where telework is introduced. The collective agreement concluded on 15 December 2005 for the central State authorities and implementing agencies states that the Framework Agreement should serve as a model for provisions on telework and that the authorities which choose to allow telework must have general internal guidelines for this form of work. The field covered by implementation in the public sector therefore seems fairly comprehensive.

In some branches, guidelines, brochures and other information dealing with telework already existed before the adoption of the "common guidelines". The trade unions and a Government committee had already drawn up checklists on important issues to consider before starting telework. Those documents have not been updated in the light of the Framework Agreement.

In the Swedish Government's view, all aspects dealt with by the Framework Agreement are covered by the implementation measures and national coverage is considered adequate. In accordance with the Swedish industrial relations system, the public authorities have not taken any action to facilitate the implementation process so as not to interfere with the social partners' autonomy.

Some provisions of Swedish labour legislation dealing with aspects of telework were already in place prior to the Framework Agreement. The relevant sections of the Working Time Act (SFS 1982:673) and the Employment Protection Act (SFS 1982:80) are fully in line with Chapter 4 of the Framework Agreement (employment conditions) as they guarantee equal rights for teleworkers as regards working time and job security. However, the Working Time Act and the limits on working hours do not apply if there is no IT system in place to monitor working time. General labour law, in particular on health and safety (work with visual display units and accidents at work) and privacy (protection of personal data), applies in full to teleworkers.

## **2.29. United Kingdom**

The UK social partners implemented the Framework Agreement through a brochure called "Telework Guidance". It was drafted jointly by the Confederation of British Industry (CBI), the Trades Union Congress (TUC) and the UK branch of CEEP, and published in August 2003 with the support of the Department of Trade and Industry, the government department responsible for industrial relations at the time.

The guidance brochure is a non-binding instrument which is "intended to provide a useful checklist of issues to consider when implementing teleworking". Management and employee representatives are encouraged to "use this guide to draw up company specific policies on teleworking". It follows the same structure and covers all aspects of the Framework Agreement by quoting the vast majority of the latter's provisions directly and giving practical advice on implementation and best practice guidelines. It also gives information on relevant UK legislation regarding the provision of written information to the worker, health and safety,

data protection and the right of some parents to request flexible working, including telework. Issues of taxation relevant to teleworkers are also mentioned.

The guidance brochure has been widely promoted and disseminated by all three organisations to their members (regional offices, affiliated organisations, companies, etc.) by newsletter and the Internet, through publications and at meetings, with a message to hand on copies locally, in particular to employers, trade union officials and workers engaged in or interested in telework. The Government has also published the document in both hard copy and electronic form. The UK social partners note positive feedback from their members, but there seems to be no information on the actual use of this brochure and its contents in company agreements, corporate policies or individual arrangements.

The UK industrial relations system makes no provision for formal cross-industry collective bargaining, and the CBI and TUC do not negotiate such agreements on behalf of their members. There was thus no precedent for a more robust instrument which the UK social partners could have used to implement the Framework Agreement. Informal cooperation leading to the drafting of a non-statutory guidance document was therefore seen as the most suitable way to adapt the European text to the UK labour market, particularly in view of the wide, shared appreciation and understanding of the value of telework on both sides of industry. This method of implementation may be appropriate given its low cost of adaptation and the rather uncontroversial nature of telework, but coverage is incomplete and therefore does not ensure that the most important sectors and professions are sufficiently protected.

The UK Government is satisfied with the way the Framework Agreement has been implemented by the national social partners. Previously, there were no legislative measures specific to telework in the UK, but a number of general labour regulations also apply to teleworkers.

### **3. KEY ISSUES CONCERNING THE IMPLEMENTATION PROCESS**

This chapter looks at how the Framework Agreement on Telework and implementing measures adopted at national level have addressed the issues arising in the introduction and practice of telework identified in the Commission document for the second-stage consultation. It also analyses the way these issues have been reflected in the implementation process.

#### **3.1. Defining the concept of telework**

The Commission considered two factors — the performance of work at a distance and the use information technology and electronic data transmission — as critical in defining the concept of telework. Furthermore, to be considered a teleworker, a worker had to carry out his/her activity in a stable manner, with some permanence or continuity in time. Lastly, the teleworker had to be in an employment relationship. A definition based on these factors could provide a basis for discussion, leaving the door open to adjustments later in line with technological developments that made it possible for new forms of work to be included.

The Commission therefore proposed the following definition of telework:

*"Telework is a method of organising and/or performing work which accounts for at least a considerable proportion of working time and which is done by a natural person in the framework of an employment relationship, in the following cumulative conditions:*

- *the work is done at a distance (away from the firm's premises or away from the place where the work is expected),*
- *the work is performed using information technology and technology for data transmission, in particular the internet."*

Definitions based on these factors could cover the three types of telework identified: teleworking from home, mobile teleworking (via portable communication systems) and work in telework centres (outstations, neighbourhood offices, telecottages). They could also cover both permanent and alternating telework, i.e. arrangements whereby the worker spends part of his/her working time at the employer's premises and the rest elsewhere.

The definition of telework drawn up by the European social partners in Clause 2 of the Framework Agreement was close to that proposed:

*"2. Definition and scope*

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

*This agreement covers teleworkers. A teleworker is any person carrying out telework as defined above."*

This definition comprises all four features proposed by the Commission (work at a distance, use of information technology, regularity, and employment relationship) and therefore covers all the types of telework mentioned above. However, it clearly restricts the scope of mobile telework by excluding activities that could not be performed at the employer's premises, e.g. tasks requiring access to the client's premises.

The implementing measures in many Member States adopted this or a similar definition. However, the definition and scope of the implementing measure were modified in varying degrees in some countries (for instance in the Czech Republic, where the use of information technology was omitted, and in Portugal, where the requirement that the relevant activities could also be performed within the firm was left out). In other countries, the definitions list various types of telework (e.g. Ireland), explicitly include certain forms (e.g. telework by "télétravailleurs nomades" in France) or exclude certain forms (e.g. work in call centres by Finland; mobile work by Denmark; and repair work by Austria).

The consequences of most of these variations seem to be minor and the general thrust of the definition in the Framework Agreement is followed. However, certain national implementing measures seem to cover permanent telework only (e.g. in Hungary and Slovakia), leaving out alternating telework, which concerns the largest percentage of teleworkers in most European countries. In several countries this issue requires clarification.

Another controversial point with regard to the definition of telework in the legislation of some Member States is the way telework is treated as equivalent to homework. Homework involves traditional manual work carried out at home, mostly by low-skilled workers and often paid by the piece: the way it is regulated cannot validly be applied to such modern employment relationships as those of teleworkers (who use information technology) and cannot ensure equal treatment for teleworkers as compared with workers at the employer's premises.

This feature tends to be found in the labour legislation of several Member States (e.g. Slovenia, Romania and Lithuania), which argue that the situation of teleworkers is thereby adequately addressed. It seems to apply less in countries where the social partners have been steering the implementation process, as agreements and other tools developed by social partners tend to be tailored to the specific conditions of employees working with electronic communication devices. In other countries there are doubts about the possibility of applying the legislation on traditional homework to teleworkers (e.g. Spain, Austria), while the definition has been clarified in some cases (e.g. Belgium).

Treating telework in the same way as homework also excludes types of telework not carried out at the worker's home, and thereby limits full implementation of the Framework Agreement. Legislation on homework therefore does not cover the full scope of telework as defined by the European social partners and does not offer adequate protection for teleworkers.

### **3.2. Voluntary nature of assignment to telework and the right to return**

The Commission considered that assignment to telework posts should be organised on a voluntary and reciprocal basis, with the teleworker being entitled to return to a conventional post at his/her request. Neither the employer nor the worker should have the right to impose telework unilaterally on the other party. This principle should in particular concern persons already employed by the firm and not newly recruited workers, for whom telework is simply a particular form of work requested by the employer at the time of taking up the job.

The European social partners enshrined the voluntary character of telework in Clause 3 of the Framework Agreement:

#### *"3. Voluntary character*

*Telework is voluntary for the worker and the employer concerned. Teleworking may be required as part of a worker's initial job description or it may be engaged in as a voluntary arrangement subsequently. [...]*

*If telework is not part of the initial job description, and the employer makes an offer of telework, the worker may accept or refuse this offer. If a worker expresses the wish to opt for telework, the employer may accept or refuse this request.*

*[...] A worker's refusal to opt for telework is not, as such, a reason for terminating the employment relationship or changing the terms and conditions of employment of that worker.*

*If telework is not part of the initial job description, the decision to pass to telework is reversible by individual and/or collective agreement. The reversibility could imply returning to work at the employer's premises at the worker's or at the employer's request. The modalities of this reversibility are established by individual and/or collective agreement."*

The Framework Agreement confirms the voluntary character of telework for both sides, i.e. neither the employer nor the worker has the right to impose a move to telework without the other's approval. This principle protects both the worker, who cannot be obliged by his/her employer to switch from working at the firm to working at a distance, and the employer, who has the right to oppose an employee's request to start teleworking. This provision is relevant

mainly in cases where telework is not agreed from the beginning of the employment relationship as part of the job description.

The principle of voluntariness is affirmed in all the implementing measures adopted by social partners. It is highlighted as one of the main principles in many social partner instruments (e.g. Spain, The Netherlands and Denmark). In some countries, the worker's right to request telework (under certain circumstances) and the employer's obligation to consider this request seriously is enshrined in legislation (e.g. The UK and Poland). An addendum to the work contract or a written agreement is required by several implementing measures (e.g. France, Belgium, Poland and Finland).

In legislative instruments, the voluntary character of telework is not always mentioned explicitly (e.g. Hungary and Portugal). However, these laws require a decision to switch to telework to be based on a (written) agreement between both parties, which by definition must be voluntary, in line with the spirit of the European text.

The clause whereby a worker's refusal to perform telework is not a reason for terminating the employment relationship or for changing its terms and conditions has only been taken up in those national implementing measures based on a literal translation of the Framework Agreement and has rarely been further developed at national level.

If telework is not part of the initial job description, the Framework Agreement affirms that the decision to switch to telework can be reversed by individual or collective agreement, which could imply returning to work at the employer's premises. It therefore does not envisage a unilateral right of return for the teleworker, but only the possibility of return if both sides agree. The rules governing reversibility are to be established by individual and/or collective agreement. The Framework Agreement therefore leaves much leeway for implementing this provision.

Several national implementation instruments have made use of this flexibility by clarifying the conditions for returning to the traditional workplace, while the majority simply reproduce the wording of the Framework Agreement. Only a few do not address the issue at all (e.g. Slovakia). Some of the implementing measures suggest, for instance, that the issue of reversibility and the rules for applying it, such as the period of notice, should be agreed individually or collectively between both parties before taking up telework (e.g. Finland and Ireland). Some of them also recommend the circumstances in which a decision to telework cannot be reversed should be spelt out from the beginning (e.g. The UK).

Some instruments provide for an automatic right to return to the previous form of work or a similar position at the end of the telework arrangement if it is limited in time (e.g. Portugal and Denmark – local and regional government sector). In some countries, collective agreements establish adaptation periods during which the worker or the employer can unilaterally end the telework arrangement (e.g. France, Poland and Luxembourg). After the end of this period, a return to work at the previous location is subject to an agreement between both sides.

In cases where telework is required as part of the initial job description, some collective agreements go beyond the terms of the European text by granting such teleworkers preferential treatment when they apply for traditional jobs at the employer's premises (e.g. France and Luxembourg).

### **3.3. Guarantee of maintenance of the employee's status**

The Commission expressed concern that — because the work (or part of it) was no longer performed at the company's premises and therefore less likely to be subject to inspection by labour inspectors — some employers might take advantage of the introduction of telework to reduce the rights and protection enjoyed by the workers, in particular by changing their legal status, for instance to self-employment. It therefore considered that, as long as the nature and content of work remain unchanged and only the way in which it was performed was modified, the worker's status had to be maintained.

The Framework Agreement addresses this concern in Clause 2 on the voluntary character:

*"...The passage to telework as such, because it only modifies the way in which work is performed, does not affect the teleworker's employment status. ..."*

This key provision for protecting teleworkers is very clear. Regrettably, it is only taken up in those national implementing measures developed by the social partners and based on a literal translation of the Framework Agreement. It is not addressed by any of the legislative implementation instruments. The public authorities might have considered that this protection was already guaranteed by the generally applicable labour law.

The definition of telework chosen by the European social partners clearly excludes self-employed telework, which is outside the social partners' remit. Consequently, the national implementing measures do not address the situation of self-employed teleworkers. The risk inherent in this approach is that, when agreeing on telework, former employees might be encouraged to become self-employed and thereby lose the rights and protection granted by general labour legislation and the Framework Agreement. This seems to be confirmed by the evidence of a high rate of self-employment among teleworkers in several countries.

While a clear line must be drawn between employees performing their work at a distance in the context of an employment relationship and truly self-employed workers, the social partners or the public authorities should take measures at national level to prevent any abuse in the use of (quasi) self-employment when the factors of dependence and subordination that define the employment relationship are clearly present.

### **3.4. Guarantee of equal treatment**

As additional protection against lowering of standards, the Commission considered it necessary to guarantee equal rights for teleworkers. Teleworkers should be treated in the same way as workers who are permanently present on the firm's premises, in particular as regards pay, career development, access to training, involvement in the life of the firm and termination of the employment relationship. More generally, since telework affects the organisation of work only and does not create a special employment status, all rights enshrined in the law and in contractual arrangements should be granted to teleworkers on a comparable basis.

This principle was taken up in Clause 4 of the Framework Agreement:

*"4. Employment conditions*

*Regarding employment conditions, teleworkers benefit from the same rights, guaranteed by applicable legislation and collective agreements, as comparable*

*workers at the employers premises. However, in order to take into account the particularities of telework, specific complementary collective and/or individual agreements may be necessary."*

The Framework Agreement therefore guarantees the fundamental principle of non-discrimination of teleworkers, but allows some adaptation of working conditions to take account of the specific situation of teleworkers. In addition to this horizontal clause on employment conditions, the Framework Agreement develops the principle of equal treatment in more detail in other clauses on workload and performance standards, training and career development and collective rights:

*"... The workload and performance standards of the teleworker are equivalent to those of comparable workers at the employer's premises. ..."* (9. Organisation of work)

*"Teleworkers have the same access to training and career development opportunities as comparable workers at the employer's premises and are subject to the same appraisal policies as these other workers. ..."* (10. Training)

*"Teleworkers have the same collective rights as workers at the employer's premises. ..."* (11. Collective rights issues)

This principle of equal treatment can be found in all implementing measures introduced by the social partners and public authorities, which stipulate that teleworkers enjoy the same rights and working conditions as comparable workers at the standard workplace. Most of the implementing measures also state that the particularities of telework can be taken into account in collective or individual agreements.

Equality of rights is highlighted as one of the fundamental provisions of the Framework Agreement in several social partner instruments (e.g. Spain and Sweden). Some instruments highlight employment regulations that apply in full to teleworkers (e.g. Finland, Ireland and Austria). Some measures also name those aspects of the work relationship which may need to be adapted or specified because the work is not carried out at the employer's premises (e.g. The UK) or refer to legislation which already deals with specific aspects of telework (e.g. The Netherlands).

In some cases where implementation involves legislation, the principle of equal treatment is only implicitly recognised in so far as telework is governed by the relevant Labour Code, which means general employment regulations are applicable to teleworkers (e.g. The Czech Republic). The laws therefore explicitly list a limited number of exceptions to this rule, as a result of the particular nature of telework. In one specific case, the law states that the rights, obligations and conditions which depend on the nature of telework are to be regulated by the employment contract, which means that general labour law is applicable in all other aspects (Slovenia). In most other countries where implementation took place via legislation, the principle of equal treatment of teleworkers is clearly enshrined in the law (e.g. Slovakia, Portugal and Poland). In countries where there have been no specific implementation measures, the governments often affirm that general labour law and the rules on non-discrimination at work must be assumed to apply to teleworkers, so guaranteeing their equal treatment (e.g. Germany and Cyprus).

Implementing measures in some countries, where national actors may have considered a general clause sufficient (e.g. Hungary), do not include a clear reference to equal treatment in terms of training, career development, collective rights and workload.

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

The Commission considered that teleworkers deserved special protection owing to the fact that they work at a distance from the company. They should therefore be informed as thoroughly as possible about future working conditions prior to their assignment or recruitment to teleworking. The employer should have a duty to inform the teleworker of the following:

- particulars pertaining to his/her assignments,
- exact working conditions: working hours, work sites, determination of the material conditions pertaining to the installation and use of working equipment, responsibility for insurance covering equipment and accidents,
- particulars of the establishment to which s/he is attached from the point of view of organisation of work within the enterprise (crucial for reliance on certain rights such as information/consultation and for the worker's protection, in particular in cross-border situations),
- particulars concerning monitoring of the use of information technology made available to the worker for telework purposes (such as surveillance of the websites consulted, details of telephone calls, etc.).

With regard to transnational situations, the Commission made it clear that the worker and the employer should agree beforehand on the law applicable to the employment contract.

Clause 3 and certain other clauses of the Framework Agreement provide a response to this proposal:

*"... the employer provides 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. The specificities of telework normally require additional written 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 arrangements, etc. ..."* (3. Voluntary character)

*"... The employer informs the teleworker of all relevant legislation and company rules concerning data protection. [...] The employer informs the teleworker in particular of: any restrictions on the use of IT equipment or tools such as the internet; sanctions in the case of non-compliance."* (5. Data protection)

*"The employer informs the teleworker of the company's policy on occupational health and safety, in particular requirements on visual display units."* (8. Health and safety)



*"... The establishment to which the teleworker will be attached for the purpose of exercising his/her collective rights is specified from the outset. ..."* (11. Collective rights issues)

In the Framework Agreement the European social partners included a reference to the Council Directive (91/533/EEC) which requires employers to inform employees of the conditions applicable to the employment relationship. This duty implies written information, to be supplied within two months of commencement of employment, covering the place of work, a brief description of the work, the usual working hours, applicable collective agreements, etc. The Framework Agreement indicates that some additional written information may be required because of the specificities of telework (e.g. the relevant department, the immediate superior, contact persons, reporting arrangements). Furthermore, more specific information should be given on the company's policy regarding data protection, use of equipment and health and safety as well as on the establishment to which the teleworker is attached for the purpose of exercising collective rights. The use of monitoring systems is addressed in the clause on privacy (Clause 6). The Framework Agreement thus covers the most important information duties of the employer mentioned in the Commission's proposals. It does not address the law applicable to the work contract in transnational situations.

Most of the implementation measures that are directly based on a translation of the European text require the employer to inform teleworkers in writing about the issues mentioned in the Framework Agreement. Some social partner instruments refer to provisions of national law or regulations transposing Directive 91/533/EEC which stipulate the employer's general information duty (e.g. Greece, The UK and Ireland). Some collective agreements extend the list of items about which the teleworker must be informed, e.g. the frequency of telework, contact hours, conditions for return to normal work, work equipment, cost reimbursement, insurance (e.g. Belgium, Luxembourg and France).

Most legislative implementing instruments do not impose specific information duties on employers for telework-related aspects with one exception, which requires additional information on the organisational unit and the contact person to be shared with the teleworker (Poland). However, it can be assumed that the general information obligation established by Directive 91/533/EEC is applicable to teleworkers in all countries.

### **3.6. Coverage of costs by the employer**

Given the general duty of the employer to provide the tools for working, the Commission considered that in the case of telework the costs of equipment, installation, maintenance, insurance and telecommunication have to be covered entirely by the employer.

The Framework Agreement addresses the issue of equipment in Clause 7:

#### *"7. Equipment*

*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/her own equipment.*

*If telework is performed on a regular basis, the employer compensates or covers the costs directly caused by the work, in particular those relating to communication.*

*The employer provides the teleworker with an appropriate technical support facility.*

*The employer has the liability, in accordance with national legislation and collective agreements, regarding costs for loss and damage to the equipment and data used by the teleworker.*

*The teleworker takes good care of the equipment provided to him/her and does not collect or distribute illegal material via the internet."*

As telework by definition calls for equipment using information technology, the provision and use of equipment is an important issue, in particular when telework is performed at home, where equipment can also be used for other purposes. The Framework Agreement strikes a balance between the interests of the employer and those of the teleworker. It leaves much leeway for individual agreement between the parties, but nevertheless establishes a general rule on the employer's duty to provide, install and maintain the equipment (unless the teleworker uses his/her own) and to cover or compensate for the costs, in particular for communications. Exceptions from this general rule, as proposed by the Commission, are, however, possible. On the other hand, the Framework Agreement goes further than the Commission's proposal and establishes a technical support facility for the worker and the employer's liability for loss and damage as well as the teleworker's duty of due care. It does not address the question of insurance.

The rules on equipment in the Framework Agreement have given rise to a variety of solutions in national implementing measures with regard to the obligations of employers and workers. All solutions, however, respect the general balance found in the European text, i.e. a general obligation on the employer to bear the costs of equipment and communications with some possible exceptions. Several instruments simply reproduce the provisions of the Framework Agreement (e.g. Italy and The UK) or use similar wordings (e.g. Finland and Denmark — commerce/services), while the rules are more detailed or are slightly different in others.

Some instruments state that the responsibilities of the employer and the teleworker are subject to agreement between them, and that the employer will bear the responsibility only if there is no agreement on this point (e.g. Hungary and Portugal). In other countries, the social partners or the legislator have decided that the employer should bear the full responsibility for the provision of equipment, except where the worker uses his/her own equipment (e.g. France, Slovakia and Germany – local government), in which case there may be some element of compensation (e.g. Poland and Belgium).

The remaining provisions (technical support, liability for damage and loss, and due diligence) of this clause have not been implemented everywhere, but can be found in the instruments which include a translation of the Framework Agreement and in most of those based on negotiation between the social partners. In some countries, it is deemed the responsibility of the employer to insure the equipment, although this is not required by the Framework Agreement (e.g. Poland). Some measures lay down more detailed rules in respect of equipment breakdown and the teleworker's obligation to inform the employer in such an event (e.g. Belgium and France).

### **3.7. Guarantee of specific training**

The Commission found it desirable for the teleworker to receive training in the technical equipment at his/her disposal and in the characteristics of this method of work organisation (in particular time management, the use of email and electronic archiving), where necessary. Such training for the teleworker should be accompanied by broader action targeting the supervisory staff and the teleworker's colleagues also (e.g. on the principles of management by objectives, and specific management of distant or mobile workers).

The European social partners included a reference to specific training for telework in Clause 10 of the Framework Agreement:

#### *"10. Training*

*... Teleworkers receive appropriate training targeted at the technical equipment at their disposal and at the characteristics of this form of work organisation. The teleworker's supervisor and his/her direct colleagues may also need training for this form of work and its management."*

Apart from the principle of equal treatment of teleworkers in terms of training opportunities, the Framework Agreement also recognises the potential need for specific training, both for teleworkers and for their colleagues or superiors, due to the introduction of this new form of working.

This principle is present in most implementing measures which contain a literal translation of the Framework Agreement or are directly based on it (e.g. Greece, Spain and Belgium), and to a lesser extent in social partner instruments freely inspired by the Agreement (e.g. Denmark and Finland). It is less evident, with some exceptions, where legislative measures have been adopted (Poland and Portugal). Some instruments list the core areas, both technical and management-related, in which teleworkers may need training (e.g. The UK) or make provision for special training on health and safety (e.g. Poland).

### **3.8. Protection in the field of health and safety**

The Commission considered that the provisions governing the prevention of occupational hazards and the protection of workers must apply to teleworkers, including mobile workers, and to their workplaces. The employer is responsible for the health and safety at work of his/her employees, irrespective of where this work is performed. In cases where telework is performed from home, the teleworker must authorise maintenance personnel and the firm's safety officer, as well as the State monitoring services responsible for inspection of health, safety and hygiene, to access the equipment he/she uses, in order to verify that the rules governing the teleworking post and the associated technical equipment are correctly applied. The teleworker is obliged to respect the safety rules in force and to comply with any instructions issued to him/her.

These concerns are addressed by Clause 8 of the Framework Agreement:

#### *"8. Health and safety*

*The employer is responsible for the protection of the occupational health and safety of the teleworker in accordance with Directive 89/391 and relevant daughter directives, national legislation and collective agreements.*

*The employer informs the teleworker of the company's policy on occupational health and safety, in particular requirements on visual display units. The teleworker applies these safety policies correctly.*

*In order to verify that the applicable 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 is entitled to request inspection visits."*

As this clause shows, the social partners agreed with the Commission's view regarding the employer's full responsibility for the teleworker's occupational health and safety and for the need to allow access to the workplace, including at home, to verify that health and safety policies are correctly applied.

These principles have been respected and laid down more strictly by most of the implementing measures, which make it clear that general rules on health and safety are applicable to teleworkers. Some countries have adapted their occupational health and safety legislation to implement the principle (e.g. Hungary). In several cases, the national legislation specifically states that the employer is responsible for ensuring safe working conditions at the teleworker's workplace (e.g. Slovenia and the Netherlands). Many national governments stress that health and safety regulations apply fully to teleworkers (e.g. Latvia and Sweden), including in those countries where the Agreement on Telework has not been formally implemented (e.g. Cyprus and Germany). Several instruments adopted by the social partners provide specific information by referring to relevant health and safety legislation, e.g. on the employer's duty to perform a risk assessment or on specific requirements for visual display units, or by listing possible hazards that can arise from electrical equipment (e.g. The UK and Austria).

However, in some countries, certain health and safety provisions apply to teleworking from home in a limited way only (e.g. Poland, Finland and Austria), owing to the fact that the employer cannot freely decide on the design of the workplace. There are also some exemptions for cases where the teleworker uses his/her own equipment (e.g. Hungary).

In some cases the instruments are more specific as regards the employer's duties if telework is performed from home, and entail, for instance, the obligation to check the conformity of electrical installations and other equipment before telework starts (e.g. France, Luxembourg and Hungary). Access by the employer, the health and safety officers and labour inspectors to the workplace at home with a view to inspecting the health and safety conditions is regulated in sufficient detail in most implementing measures. The legislation of some countries regulates or limits access by labour inspectors to workers' homes (e.g. Austria).

The general thrust of Clause 8 is thus reflected in all implementing measures, although not all of the secondary provisions are covered.

### **3.9. Working time**

With regard to working time of teleworkers, the Commission took the view that all laws, regulations and contractual rules (rest breaks, maximum working time, annual leave, night work, etc.) should apply in full. However, it considered that some allowance could be made for flexibility vis-à-vis the working hours of employees working at the firm's premises. While

the total working time must remain the same, some flexibility could be granted in order to allow teleworkers to organise their working time more freely outside fixed slots when they have to be on call.

The Framework Agreement deals with working time in Clause 9:

*"9. Organisation of work*

*Within the framework of applicable legislation, collective agreements and company rules, the teleworker manages the organisation of his/her working time. ..."*

The European social partners followed the Commission's proposal and recognised the general applicability of working time regulations to telework, while at the same time allowing the teleworker some flexibility to arrange his/her own working schedules.

The issue of working time has been explicitly dealt with in the great majority of implementing measures. The solution set out in the Framework Agreement has been followed in most cases. Many instruments simply reproduce the wording of the European text (e.g. Belgium, Italy and Greece) and/or refer to the fact that legislation and collective agreements on maximum working time are applicable to teleworkers (e.g. Austria, Ireland and Portugal). Some legal instruments do not contain any specific rules on working time, which means general regulations are implicitly applicable (e.g. Poland and Slovenia). In one case, national legislation provides for an exemption from general working time regulations for "unmonitored" work (Sweden).

Several instruments lay down specific rules as regards certain aspects of working time, sometimes with exemptions from the general regulations: overtime (Luxembourg and Germany - company agreements), time registration (Hungary), compensation for overtime or work on public holidays (The Czech Republic and Slovakia), and bonuses for night work (Slovakia). Other instruments allow working time to be determined by either the employer or the teleworker; the collective rules on working time being applicable only in the first case (e.g. Denmark - industry). Some stipulate that working time should be determined not by the number of hours, but on the basis of the amount of work to be performed, taking into consideration the performance of employees in similar positions (e.g. Hungary).

### **3.10. Protection of privacy and of personal data**

With a view to protecting teleworkers, in particular where telework is performed from home, the Commission considered that employers must respect their employees' privacy, when they use the PC, the Internet, the telephone or other communication tools. Employers must inform their workers about the exact nature of the restrictions they impose on the use of such tools, in particular as regards use for private purposes, and of the penalties applicable in the event of non-compliance. If any type of controls is put in place, it has to be proportionate and accepted by the employees concerned.

The questions of privacy and data protection are addressed in Clauses 5 and 6 of the Framework Agreement:

*"5. Data protection*

*The employer is responsible for taking the appropriate measures, notably with regard to software, to ensure the protection of data used and processed by the teleworker for professional purposes.*

*The employer informs the teleworker of all relevant legislation and company rules concerning data protection. It is the teleworker's responsibility to comply with these rules.*

*The employer informs the teleworker in particular of:*

- any restrictions on the use of IT equipment or tools such as the internet,*
- sanctions in the case of non-compliance.*

## *6. Privacy*

*The employer respects the privacy of the teleworker. If any kind of monitoring system is put in place, it needs to be proportionate to the objective and introduced in accordance with Directive 90/270 on visual display units."*

The provisions agreed by the European social partners follow the Commission proposal closely as regards protection of the teleworker's personal data and privacy and points relating to private use of equipment and controls by the employer. The Framework Agreement addresses the issue of protection of professional data and it makes a clear distinction between data protection in the interest of the employer (Clause 5) and the teleworker's privacy (Clause 6). As regards systems to monitor the activity of the teleworker, it includes a reference to Council Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment, which states that "no quantitative or qualitative checking facility may be used without the knowledge of the workers" (Annex 3b) and that workers and/or their representatives must be consulted.

Most implementing measures follow the Framework Agreement's provisions on data protection, in many cases referring to the application to teleworkers of national data protection rules (e.g. France, Ireland, The Netherlands, Slovakia and The UK). Some instruments entail further provisions, e.g. on private use of equipment (Finland), the employer's access to the data used by the teleworker (Hungary), and written confirmation by the teleworker that s/he is aware of data protection rules (Poland). Some social partner tools list a number of risks and issues related to data protection (document disposal, virus checking, data back-up, etc.) that should be addressed jointly by both sides (e.g. Ireland).

The Framework Agreement's provisions on privacy have been taken over in most implementing measures, either in literal translation or through other references to the employer's duty to respect the teleworker's privacy. Reference is sometimes made to specific collective agreements or regulations to protect the privacy of employees (e.g. Belgium). Some instruments require both sides to agree on hours during which the employer can contact the teleworker (e.g. The UK, France and Luxembourg).

The question of the employer's right to access to the workplace, subject to prior notification and approval by the teleworker, in the case of home-based telework is dealt with under the provisions on health and safety at work in most implementing provisions. However, some countries have introduced more detailed rules on this issue and other privacy issues (e.g. Hungary, Luxembourg, Poland and Portugal).

Many instruments reproduce the provisions of the Framework Agreement on monitoring systems, including a reference to Council Directive 90/270/EEC or the corresponding legal instrument transposing that Directive (e.g. Denmark — industry, Finland and Italy). It must be assumed that the Directive is applied correctly in all Member States on this point.

Some national instruments do not tackle issues of data protection and privacy (e.g. The Czech Republic and Slovenia). In several cases, the Governments and the social partners stress that constitutional or legal provisions on privacy and data protection apply to teleworkers (e.g. Sweden and Germany).

### **3.11. Keeping in contact with the firm**

The Commission considered it necessary to prevent the occurrence of certain forms of social isolation associated with telework (lack of communication and informal information, lack of contact and exchanges with colleagues, etc.). Where possible, teleworkers should therefore be invited to attend meetings held at the firm's premises. Teleworkers should also have access to information communicated by the employer to other workers, in particular via access to the internal mail service and/or the Intranet. Lastly, workers' representatives must be able to communicate with teleworkers. Employers must take all the measures necessary to establish these links.

The social partners addressed the issue of preventing isolation of teleworkers in two clauses of the Framework Agreement:

*"... The employer ensures that measures are taken preventing the teleworker from being isolated from the rest of the working community in the company, such as giving him/her the opportunity to meet with colleagues on a regular basis and access to company information. ..."* (9. Work organisation)

*"...No obstacles are put to communicating with workers' representatives. ..."* (11. Collective rights issues)

These provisions fully address the concerns expressed by the Commission. They have been taken up in a number of implementing measures, especially those based on a literal translation of the Framework Agreement, and in several legislative measures (e.g. Portugal, Poland and Slovakia). Some instruments go into more detail on the types of measures expected or possible, such as regular meetings with the superior, participation in social activities, electronic networking facilities and innovative organisational practices (e.g. France and The UK). Other measures do not address this issue (e.g. The Czech Republic, Denmark on industry/services, and Slovenia).

### **3.12. Collective rights of teleworkers**

In order to guarantee adequate representation of teleworkers, the Commission considered that they should have full opportunities to exercise their trade union rights. The trade unions or workers' representatives must be involved in negotiating the rules concerning teleworkers. Teleworkers must have the right to participate in the election of workers' representatives and to stand for election.

Collective rights issues are addressed in Clause 11 of the Framework Agreement:

*"11. Collective rights issues"*

*Teleworkers have the same collective rights as workers at the employer's premises. No obstacles are put to communicating with workers' representatives.*

*The same conditions for participating in and standing for elections to bodies representing workers or providing worker representation apply to them. Teleworkers are included in calculations for determining thresholds for bodies with worker representation in accordance with European and national law, collective agreements or practices. The establishment to which the teleworker will be attached for the purpose of exercising his/her collective rights is specified from the outset.*

*Worker representatives are informed and consulted on the introduction of telework in accordance with European and national legislations, collective agreements and practices."*

The European Agreement satisfies all the conditions spelled out by the Commission to ensure that teleworkers enjoy their rights to collective representation and participation. The European social partners went into even greater detail on several points to ensure that teleworkers were able to exercise their collective rights, i.e. the inclusion of teleworkers in threshold calculations and the need to determine the establishment to which the teleworker is attached. Furthermore, the role of workers' representatives in laying down rules for telework is also guaranteed.

The majority of implementing measures ensure that teleworkers can exercise their collective rights: some do this by stating that national legislation on collective representation is fully applicable to teleworkers. Other measures do not specifically address the question of collective rights, since they consider them to be guaranteed by the equal treatment clause (e.g. Hungary).

Many implementing measures also state that the introduction of telework should take place in consultation with the bodies representing workers, in accordance with national legislation and collective agreements (e.g. Belgium, Finland and Poland). In one case the role of the works council is limited to receiving information on the number and position of teleworkers (Hungary). Some instruments require agreements between employers and trade unions to spell out the conditions for applying telework (e.g. Poland). In many countries, rules on telework are typically established by company-level agreements negotiated by the management and the workers' representatives; several agreements of this type are known to exist (e.g. Germany, The Netherlands and Spain). Some national collective agreements on telework explicitly allow for adaptation by agreements at lower levels, notably within the company (e.g. France and Italy), while others make the introduction of telework subject to a local agreement (e.g. Denmark – local government).

### **3.13. Access to telework**

The Commission proposed that access to telework should be granted on the basis of objective criteria known to the workers and management and in compliance with the principles of equal treatment and equal opportunities.

This issue is only dealt with indirectly by the Framework Agreement in so far as worker representatives must be informed and consulted on the introduction of telework (see Section 3.12 above). Nevertheless, several implementing measures address the issue of access to telework, e.g. by stating that the employer should accommodate the employee's request for telework "where possible" (Poland).



#### **4. ANALYSIS OF THE IMPLEMENTATION PROCESS AND OUTCOMES**

Autonomous agreements implemented in Member States through social dialogue must follow the specific rules of each country's national industrial relations systems, which vary considerably as regards the responsibilities of the actors, and in particular of the national trade union and employers' organisations. The implementation process cannot therefore be regarded as equivalent to the legislative transposition process for Community directives, and uniform outcomes cannot be expected. Any assessment of the implementation of autonomous agreements has to take account of their specific character and national industrial relations systems in general.

##### **4.1. The choice of instruments**

A number of instruments are used by the social partners and/or public authorities to implement the Framework Agreement on Telework. They range from collective agreements at cross-industry or sector level to other forms of agreements with recommendations to lower bargaining levels and guidelines addressed to companies and teleworkers. In some countries instruments also include legislation or other action by public authorities, such as measures to extend the scope of collective agreements to the entire workforce (see following table for more details).

## Instruments chosen to implement the Framework Agreement on Telework

Instruments chosen*			Countries
Collective agreements at national level	cross-industry	extended by decree/binding <i>erga omnes</i>	FR, BE, LU, GR <sup>1,2</sup> and IS <sup>1</sup>
		binding on signatory parties and their members	IT
	sectoral		DK <sup>3</sup>
Agreements by social partners	recommendations to lower bargaining levels		FI and ES <sup>2</sup>
Guidelines, recommendations	addressed mainly to lower bargaining levels as well as companies and teleworkers		NL and SE <sup>2</sup>
	addressed mainly to individual companies and teleworkers		UK, IE <sup>4</sup> , AT <sup>5</sup> , LV <sup>2</sup> and NO <sup>2</sup>
Joint declarations			DE
Model agreements proposed by social partners			DE <sup>5</sup> and IE
Legislation	based on agreement between social partners		PL
	after consultation of social partners		HU, SK and CZ <sup>6</sup>
	no/little involvement of social partners		PT and SI <sup>6</sup>
no implementation yet/no information			CY, EE, LT, MT, BG and RO
<p><u>Notes:</u></p> <p>* This table does not cover sector-specific or regional agreements reported by social partners which relate to a small number of sectors or regions only and which have sometimes been adopted prior to/without any reference to the Framework Agreement (e.g. DE, ES and AT). Furthermore, it does not cover individual company agreements on telework reported by social partners and adopted prior to or as follow-up to the Framework Agreement (e.g. NL, DE and ES). Incomplete or example-based reporting of individual instruments and the difficulty of identifying them in all Member States could distort the overall presentation.</p> <p><sup>1</sup> Legal status not fully certain.</p> <p><sup>2</sup> Mainly based on literal translation/translation in annex, i.e. little adaptation to national context.</p> <p><sup>3</sup> Covers the industry, services, local, regional and national government sectors, is accompanied by guidelines and is supplemented by cross-industry agreement.</p> <p><sup>4</sup> Implementation not finalised.</p> <p><sup>5</sup> Unilateral instruments, i.e. not jointly adopted.</p> <p><sup>6</sup> Partial implementation only.</p>			

The first alternative in Article 139(2) to which the Framework Agreement refers provides that autonomous agreements are to be implemented *"in accordance with the procedures and practices specific to management and labour and the Member States"*. The instruments chosen and the procedures for their adoption should therefore follow the usual practice for dealing with similar issues in national industrial relations.

In most countries, traditional procedures and practices have been followed: collective bargaining at national or sector level has reflected traditional practice in several countries (Belgium, Denmark, France, Greece, Iceland, Italy and Luxembourg). Some national social partners have made recommendations to counterparts at lower levels in accordance with their usual procedures (Spain, Finland, the Netherlands and Sweden). Guidelines have been adopted by the social partners in countries where industrial relations tend to be decentralised and do not provide for binding instruments at national level, leaving national social partners with little more than a coordinating function (The UK, Ireland and Latvia). In Germany the issue has typically been dealt with at company level and several social partners have issued model agreements for use at that level. In some Member States, given their industrial relations system, the social partners left regulatory matters to the legislator even though they were involved in the drafting or consultation process (Poland, Hungary, Slovakia and the Czech Republic).

In several cases the social partners have developed promising innovative practices that have sometimes gone further than could have been expected, given the traditional industrial relations there (Poland and The UK).

In some countries the implementing measures have not gone as far as expected, given the degree of development of industrial relations there. Sectoral social partner organisations could have been more involved in the implementation process (Germany, Sweden and Austria) and coordination and dissemination at cross-industry level could have been better. In Portugal and Slovenia, the social partners would traditionally have been more involved in the implementation of the Framework Agreement. In Ireland, the social partners may be expected to finalise the implementation process they are engaged in.<sup>9</sup>

Lastly, the Agreement has not yet been implemented in a number of countries and the social partners may be expected to start the implementation process in accordance with their national industrial relations systems (Cyprus, Estonia, Lithuania and Malta). In the case of Bulgaria and Romania, the fact that social partners have only recently started to participate in European social dialogue explains why not much has happened yet.

#### **4.2. The level of protection**

The Commission's consultation document laid down a number of general principles governing telework that should be observed so that teleworkers and employers enjoy the necessary protection, stability and flexibility, and telework can develop in a balanced fashion across Europe. The European social partners' Framework Agreement, which covers the main concerns raised by the Commission, sets out rules for ensuring these principles are observed.

##### *Incorporation of key principles into implementing measures*

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<sup>9</sup> In Norway, non-binding guidelines were adopted in place of a national collective agreement.

The analysis shows that the main provisions and principles of the Framework Agreement have been incorporated fully into most national implementing measures with some exceptions (the Czech Republic, Slovenia and, to a lesser extent, Hungary). The key principles featuring in the vast majority of national instruments are:

- a common definition of telework;
- the principle of equal treatment of teleworkers compared with other employees working at the employer's premises (as regards working conditions, training and career development, and collective rights);
- the maintenance of teleworkers' employee status;
- the voluntary nature of telework;
- the employer's responsibility for equipment and costs;
- the employer's responsibility for teleworkers' health and safety at work;
- data protection and respect of privacy.

By addressing the most important issues regarding the practice of telework, the implementing measures have achieved an appropriate level of convergence across Europe with regard to the regulation of this form of work and the protection of workers and employers' interests.

#### *The case for awareness-raising*

Owing to the diversity of instruments chosen by the social partners, the effective application of these principles and awareness of the instruments at workplaces may be expected to vary considerably from country to country. This is also the result of the great variation in legal status and options for enforcing the implementing measures. Autonomous agreements cannot guarantee uniform outcomes, binding status and full coverage in all countries; they simply provide an overall framework and cannot enforce minimum labour standards or fundamental social rights.

However, autonomous agreements should nevertheless produce tangible results in all Member States. Particularly in the case of 'soft' instruments, there is a risk that knowledge of them is not sufficiently widespread at the workplace and their objectives may therefore not be fulfilled. Raising awareness of national implementing measures among sectoral, regional and local employers' organisations and trade unions, individual employers, local trade union officials, workers and their representatives is therefore crucial to enhancing the impact of autonomous agreements. The benefits of telework and its potential contribution to active ageing could also be addressed in this context.

### **4.3. A dynamic implementation process**

#### *Ongoing implementation*

Even though the implementation period expired in 2005 and the social partners delivered their report in 2006, the implementation process is not yet over. Several implementing measures were adopted in 2006 and 2007 and more action can probably be expected in coming years. National industrial relations have their own dynamics and different priorities may prevail at

different times in different countries. European agreements may be implemented as part of package deals or in conjunction with other issues. In several countries, collective bargaining rounds on the subject of working conditions (other than wages and working time) take place every few years only. Telework could therefore feature as one aspect of periodic sector-level bargaining in coming years, and the EU Framework Agreement may continue to provide useful guidance in this respect.

### *Specific challenges in the new Member States*

Social partners from 12 Member States joined the European social dialogue in 2004 and 2007. They were, however, already involved to some extent during the negotiations in 2002 and were invited to implement the Framework Agreement. In these countries, labour legislation and industrial relations went through a fast catching-up process as the full *acquis communautaire* had to be introduced and applied in practice. In these circumstances, implementing an autonomous EU agreement represented a major challenge to industrial relations systems that had only been established relatively recently and were still developing. Nevertheless, several countries managed quite well, often with the support of public authorities. A positive element in this connection is the work undertaken by the European social partners to improve the capacity of their national members to implement social dialogue results. Improvements and more action may be expected in those countries, especially Bulgaria and Romania, whose social partners joined only last year, as well as in countries that have not yet implemented the Agreement (Cyprus, Estonia, Lithuania and Malta).

### *Growing incidence of telework*

Telework is growing in importance across Europe as a new form of work organisation. In 2000, only 5% of the European workforce (EU-15) reported that they were teleworking from home for at least a quarter of their working time, while home-based teleworking on a full-time basis was carried out by just over 1% of the working population<sup>10</sup>. In 2005 those figures had risen to 8% of the workforce teleworking at least occasionally from home and around 2% for permanent home-based teleworkers in the enlarged European Union (EU-27)<sup>11</sup>.

The incidence of telework and the use of modern IT tools at work in general are still rather low in several countries<sup>12</sup>, which may explain why telework has not featured as a priority in national bipartite social dialogue and why implementation of the Framework Agreement is comparatively less advanced there. Nonetheless, the incidence of telework may be expected to rise across all Member States, since its potential has not yet been fully exploited and new IT tools are constantly being developed and disseminated on an ever wider scale. This may help ensure that telework takes on greater importance in discussions and negotiations between the social partners, which should lead to the progressive implementation of the EU Framework Agreement and thereby create positive conditions for telework's steady development across Europe.

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<sup>10</sup> European Foundation for the Improvement of Living and Working Conditions, Third European Working Conditions Survey 2000: <http://www.eurofound.europa.eu/publications/htmlfiles/ef0121.htm>

<sup>11</sup> European Foundation for the Improvement of Living and Working Conditions, Fourth European Working Conditions Survey 2005: <http://www.eurofound.europa.eu/ewco/surveys/EWCS2005/index.htm>

<sup>12</sup> For instance, the rates of at least occasional home-based telework are 2% in Bulgaria and Romania, 3% in Malta and 5% in Cyprus.

### *Precedent for other autonomous agreements*

Lastly, the implementation of the Framework Agreement on Telework, the first autonomous agreement, is a groundbreaking achievement for the European and national social partners. In many instances, national actors needed to discuss and agree on their responsibilities for the implementation process. Some of them may have had initial doubts and reservations concerning their involvement and commitment. Implementation is a continuous process of learning — including across borders — and confidence-building. Lessons will certainly be learned for the future as regards implementation of other autonomous agreements at national level<sup>13</sup>.

The importance of the European social partners' coordinating role has been recognised by all actors. The lessons to be learnt should provide input for discussions planned in the European social partners' joint work programme for 2006-08 on a common understanding of social dialogue instruments, including autonomous agreements.

#### **4.4. Added value and impact**

##### *Triggering action*

With some exceptions (e.g. Denmark and Ireland), very few regulatory instruments, such as laws and collective agreements, covering telework were in place at national level prior to the signing of the Framework Agreement in 2002. That event successfully triggered discussion and joint action by the social partners in most Member States on how this new form of work may be utilised for the benefit of both workers and employers. The Framework Agreement created critical momentum and provided useful guidance on how telework may be introduced and carried out in a balanced way, safeguarding basic employee rights and providing the necessary flexibility. With few exceptions (the Czech Republic and Slovenia), the Framework Agreement influenced implementing measures to a very large extent.

##### *Shaping telework practices*

A positive result of the implementation process is that telework has been 'mainstreamed' in labour law in the vast majority of countries. The aim of the Commission and the social partners for telework to be recognised as a form of work organisation rather than a new employment status has therefore been achieved in most countries, though some reservations remain in cases where it is treated as equivalent to home working. The risk of discrimination of teleworkers compared with employees working on a permanent basis at the employer's premises is likely to have been reduced. Several national implementing measures have clearly sought to reduce the incidence of bogus self-employment among teleworkers.

As was pointed out above, the impact of the Framework Agreement may be expected to vary considerably between the Member States, owing to different coverage and status of instruments. On the basis of information available, the full impact of the Framework Agreement on the protection of workers and the promotion of telework is difficult to assess at this stage. Further analysis based on more experience is necessary to determine its long-term impact.

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<sup>13</sup> See footnote 1.

## 5. CONCLUSIONS

At this point the implementation of the Framework Agreement on Telework may be considered a success. Given the objectives and scope of autonomous agreements, the instruments chosen and the level of protection and guidance provided by them are deemed adequate in the majority of EU Member States and EEA countries.

On the whole, the specific objectives set by the Commission (and shared by the social partners) have been achieved both through the Framework Agreement itself and via its implementation at national level. The Agreement's implementation has therefore clearly contributed to the Lisbon goals of modernising labour markets and achieving a more dynamic knowledge-based economy. By ensuring sound management and organisation of telework it has also made useful contributions to the goals of the i2010 Strategy, which emphasises information and communication technologies as a driver of inclusion and quality of life, and to the EU's Sustainable Development Strategy.

The Framework Agreement and the autonomous process for its implementation have paved the way for steady, balanced development of telework across Europe and are likely to warrant a high level of ownership and commitment by employers and trade unions.

Analysis has also shown that there is scope for improvement in several Member States in terms of the implementation process, follow-up to implementing measures and/or the content of instruments.

- (1) The coverage of the Framework Agreement could be improved by:
  - starting or pursuing discussion in countries where the implementation process has not yet been finalised or even started;
  - exploring the possibility of a joint instrument being adopted by both employers and trade unions in cases where the only solutions found so far have been unilateral.
- (2) The impact of several implementing measures might be enhanced by:
  - improving the Framework Agreement's visibility in some countries through additional instruments, such as joint guidelines;
  - taking up recommendations from national social partners to counterparts at lower levels in periodic sector-level bargaining;
  - strengthening efforts to disseminate non-binding guidelines drafted by social partners in several countries and to raise awareness among individual employers and local trade union officials. Monitoring of company-level developments could be useful in that case.
- (3) Lastly, the Framework Agreement's specific objectives could be achieved more successfully in some countries by:
  - implementing those aspects of the Agreement still outstanding in countries where it has only been partially implemented;

- clarifying the following content-related aspects: the relationship between traditional home working and telework in national legislation; the protection of teleworkers who are bogus self-employed; the implementing measures' applicability to alternating telework (which concerns the large majority of teleworkers) and permanent telework;
- concentrating special efforts on sectors and professions where there is a high incidence of telework.

At European level, the social partners have played a very important role in promoting the Framework Agreement, coordinating exchanges and cross-border learning, and monitoring the implementation process. Further monitoring and, where appropriate, specific action in the context of sectoral social dialogue could also help in implementing the Framework Agreement. In addition, where the European social partners decide to conduct a review under Clause 12 of the Framework Agreement, they could usefully consider at greater depth some of the issues that have emerged both in this Report and in the social partners' own analysis as a result of monitoring the Framework Agreement, such as bogus self-employment, treatment of teleworking as equivalent to home working, alternating and permanent telework, cross-border situations and coverage of the public sector.



## 6. ANNEX

### FRAMEWORK AGREEMENT ON TELEWORK

#### 1. GENERAL CONSIDERATIONS

In the context of the European employment strategy, the European Council invited the social partners to negotiate agreements modernising the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the necessary balance between flexibility and security.

The European Commission, in its second stage consultation of social partners on modernising and improving employment relations, invited the social partners to start negotiations on telework. On 20 September 2001, ETUC (and the liaison committee EUROCADRES/CEC), UNICE/UEAPME and CEEP announced their intention to start negotiations aimed at an agreement to be implemented by the members of the signatory parties in the Member States and in the countries of the European Economic Area. Through them, they wished to contribute to preparing the transition to a knowledge-based economy and society as agreed by the European Council in Lisbon.

Telework covers a wide and fast evolving spectrum of circumstances and practices. For that reason, social partners have chosen a definition of telework that permits to cover various forms of regular telework.

The social partners see telework both as a way for companies and public service organisations to modernise work organisation, and as a way for workers to reconcile work and social life and giving them greater autonomy in the accomplishment of their tasks. If Europe wants to make the most out of the information society, it must encourage this new form of work organisation in such a way, that flexibility and security go together and the quality of jobs is enhanced, and that the chances of disabled people on the labour market are increased.

This voluntary Agreement aims at establishing a general framework at the European level to be implemented by the members of the signatory parties in accordance with the national procedures and practices specific to management and labour. The signatory parties also invite their member organisations in candidate countries to implement this agreement.

Implementation of this agreement does not constitute valid grounds to reduce the general level of protection afforded to workers in the field of this agreement. When implementing this agreement, the members of the signatory parties avoid unnecessary burdens on SMEs.

This agreement does not prejudice the right of social partners to conclude, at the appropriate level, including European level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific needs of the social partners concerned.

#### 2. DEFINITION AND SCOPE

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

This agreement covers teleworkers. A teleworker is any person carrying out telework as defined above.

### **3. VOLUNTARY CHARACTER**

Telework is voluntary for the worker and the employer concerned. Teleworking may be required as part of a worker's initial job description or it may be engaged in as a voluntary arrangement subsequently.

In both cases, the employer provides the teleworker with relevant written information in accordance with directive 91/533/EEC, including information on applicable collective agreements, description of the work to be performed, etc. The specificities of telework normally require additional written 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 arrangements, etc.

If telework is not part of the initial job description, and the employer makes an offer of telework, the worker may accept or refuse this offer. If a worker expresses the wish to opt for telework, the employer may accept or refuse this request.

The passage to telework as such, because it only modifies the way in which work is performed, does not affect the teleworker's employment status. A worker refusal to opt for telework is not, as such, a reason for terminating the employment relationship or changing the terms and conditions of employment of that worker.

If telework is not part of the initial job description, the decision to pass to telework is reversible by individual and/or collective agreement. The reversibility could imply returning to work at the employer's premises at the worker's or at the employer's request. The modalities of this reversibility are established by individual and/or collective agreement.

### **4. EMPLOYMENT CONDITIONS**

Regarding employment conditions, teleworkers benefit from the same rights, guaranteed by applicable legislation and collective agreements, as comparable workers at the employer's premises. However, in order to take into account the particularities of telework, specific complementary collective and/or individual agreements may be necessary.

### **5. DATA PROTECTION**

The employer is responsible for taking the appropriate measures, notably with regard to software, to ensure the protection of data used and processed by the teleworker for professional purposes.

The employer informs the teleworker of all relevant legislation and company rules concerning data protection.

It is the teleworker's responsibility to comply with these rules.

The employer informs the teleworker in particular of:

- any restrictions on the use of IT equipment or tools such as the internet,

– sanctions in the case of non-compliance.

## **6. PRIVACY**

The employer respects the privacy of the teleworker.

If any kind of monitoring system is put in place, it needs to be proportionate to the objective and introduced in accordance with Directive 90/270 on visual display units.

## **7. EQUIPMENT**

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/her own equipment.

If telework is performed on a regular basis, the employer compensates or covers the costs directly caused by the work, in particular those relating to communication.

The employer provides the teleworker with an appropriate technical support facility.

The employer has the liability, in accordance with national legislation and collective agreements, regarding costs for loss and damage to the equipment and data used by the teleworker.

The teleworker takes good care of the equipment provided to him/her and does not collect or distribute illegal material via the internet.

## **8. HEALTH AND SAFETY**

The employer is responsible for the protection of the occupational health and safety of the teleworker in accordance with Directive 89/391 and relevant daughter directives, national legislation and collective agreements.

The employer informs the teleworker of the company's policy on occupational health and safety, in particular requirements on visual display units. The teleworker applies these safety policies correctly.

In order to verify that the applicable 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 is entitled to request inspection visits.

## **9. ORGANISATION OF WORK**

Within the framework of applicable legislation, collective agreements and company rules, the teleworker manages the organisation of his/her working time.

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

The employer ensures that measures are taken preventing the teleworker from being isolated from the rest of the working community in the company, such as giving him/her the opportunity to meet with colleagues on a regular basis and access to company information.

## **10. TRAINING**

Teleworkers have the same access to training and career development opportunities as comparable workers at the employer's premises and are subject to the same appraisal policies as these other workers.

Teleworkers receive appropriate training targeted at the technical equipment at their disposal and at the characteristics of this form of work organisation. The teleworker's supervisor and his/her direct colleagues may also need training for this form of work and its management.

## **11. COLLECTIVE RIGHTS ISSUES**

Teleworkers have the same collective rights as workers at the employer's premises. No obstacles are put to communicating with workers representatives.

The same conditions for participating in and standing for elections to bodies representing workers or providing worker representation apply to them.

Teleworkers are included in calculations for determining thresholds for bodies with worker representation in accordance with European and national law, collective agreements or practices. The establishment to which the teleworker will be attached for the purpose of exercising his/her collective rights is specified from the outset.

Worker representatives are informed and consulted on the introduction of telework in accordance with European and national legislations, collective agreements and practices.

## **12. IMPLEMENTATION AND FOLLOW-UP**

In the context of article 139 of the Treaty, 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.

This implementation will be carried out within three years after the date of signature of this agreement.

Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement.

In case of questions on the content of this agreement, member organisations involved can separately or jointly refer to the signatory parties.

The signatory parties shall review the agreement five years after the date of signature if requested by one of the signatory parties.

Brussels, 16 July 2002

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