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MIRTI

Guidelines for Industrial Relations in Teleworking

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INDEX

- 1. The MIRTI Project and the 'Industrial Relations'-Concept 2
- 2. Telework and industrial relations
a classification related to negotiation 3
- 3. Trade Unions and Telework Implementation /Regulation 5
- 4. European regulatory attempts 7
- 5. Recommendations of the MIRTI team (extract from discussion with involved social
actors in the Austrian, German and Italian test bed sites): 8
- ANNEX..... 15

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1. The MIRT Project and the 'Industrial Relations'-Concept

Before talking about 'guidelines' or preferably about 'recommendations' for industrial relations in telework implementation we would like to present first of all the concept of 'industrial relations' which is inherent in the MIRT project. We do have a very broad approach and understanding of the notion of industrial relations, and this means of the regulatory needs when introducing telework: **Industrial Relations (I.R.) - or Labour Relations - is a concept which in MIRT is not only used for relationships between employers and trade unions, but also for those involving Government with the aim of defining policies facing labour problems, as well as employees and their needs and requirements facing telework.**

Thus, our definition of I.R. includes :

- rules for employment management;
- methods defining those rules;
- a typology of actors (both of employers and workers as well as of their organisations and representatives, but also state and other institutional bodies);
- interaction processes between these entities (which can be participative and conflictual relations).

Drawing up collective agreements, i.e. the last step of a negotiation, is the traditional objective of the parties. This is also true for negotiations concerning telework implementation, but we should not ignore the totally changed preconditions of this new type of work organisation.

When **I.R.** interact with new information and communication technologies (**i.c.t.**), their traditional framework is deeply changing.

In fact, i.c.t. are:

- horizontally pervading all sectors, more and more reciprocally linking them with each other;
- dynamic, i.e. rapidly innovating;
- labour and capital saving and, principally, flexible (i.e. suitable for many purposes).

The most problematic aspect related to the debate on the role and content of I.R. is the necessity of a constant and stable framework, conflicting with the continuous process of workplace transformation with regard to type of work, time and space.

In fact, the needs of a constantly reorganising production and the importance of flexibility for a company's competitiveness on the international markets have a significant impact on the trade union activities. Similarly, the service sector, the i.c.t. related sectors and all forms of atypical work have continued to grow. This has important repercussion for trade unionism as a whole. We are witnessing an **increase in the numbers and importance of workers whose status on the labour market is uncertain**. There are varied examples of this trend, in particular if we look at people working with i.c.t.:

- employees who also work on a freelance basis (sometimes preparing to become small-scale entrepreneurs);
- people who have formally withdrawn from the labour market by taking early retirement and who then find employment in the informal economy;
- freelancers who often have a regular and stable working relationship with a particular company.



All these atypical forms of work have in common their uncertain status on the traditional labour markets and in the system of social security. Consequently, finding a **harmonised balance between flexibility of working conditions and social security** is a crucial issue of the discussion about telework.

Working conditions without the unity of time and space have also become a basic issue with regard to the development of the Information Society. The role of teleworking and its flexibility - in its various *aspects* - is an important part of this discussion. The scope of the **MIRTI Project** is to give a contribution, just starting from the direct and concrete experiences of I.R. concerning teleworking.

In fact, we are convinced that modern I.R. can correctly support (and be supported by) the social dialogue and evolution towards new economic and social conditions. But this requires a thorough analysis of the new situation in all its aspects, from all point of views and it requires flexibility in methods as well as tools-designing of the respective partners.

Until now, MIRTI has initiated an intensive analysis of the existing experiences of telework implementation, of ways of formal and informal 'regulation' of this practice, of existing tools and existing needs and requirements of regulation when introducing telework. This analysis lead the MIRTI team to outline **recommendations on the basis of** the different aspects and requirements of telework, *arised from the* majority of involved actors in test bed sites and experts. These recommendations cover items as :

- working time and work control
- regulation of costs
- qualification
- voluntarity and reversibility
- health and safety
- data protection and liability
- participation and introduction process

2. Telework and industrial relations: a classification related to negotiation

The different categories of teleworkers are protected, neglected, concerned by different regulatory frames. The consequence is that the question of social coherence which will undergo an essential change has to be discussed intensively in order to develop suitable guarantees for teleworkers. But the operation basis for local work councils is rather different, e.g. concerning power, rights and scope of actions. Some of them are in a strong, others in a weak position. This also refers to teleworkers in various types of telework or with a different formal status. In consequence the creation of regulations depends decisively on these preconditions.

Fig. A shows the regulatory needs of the different types of telework that we usually know. We can observe that several classifications of telework are normally used for reporting telework experiences (by organisational approach, by logistic choice, by technology, etc.). In a first step of defining regulatory needs, we have to choose a



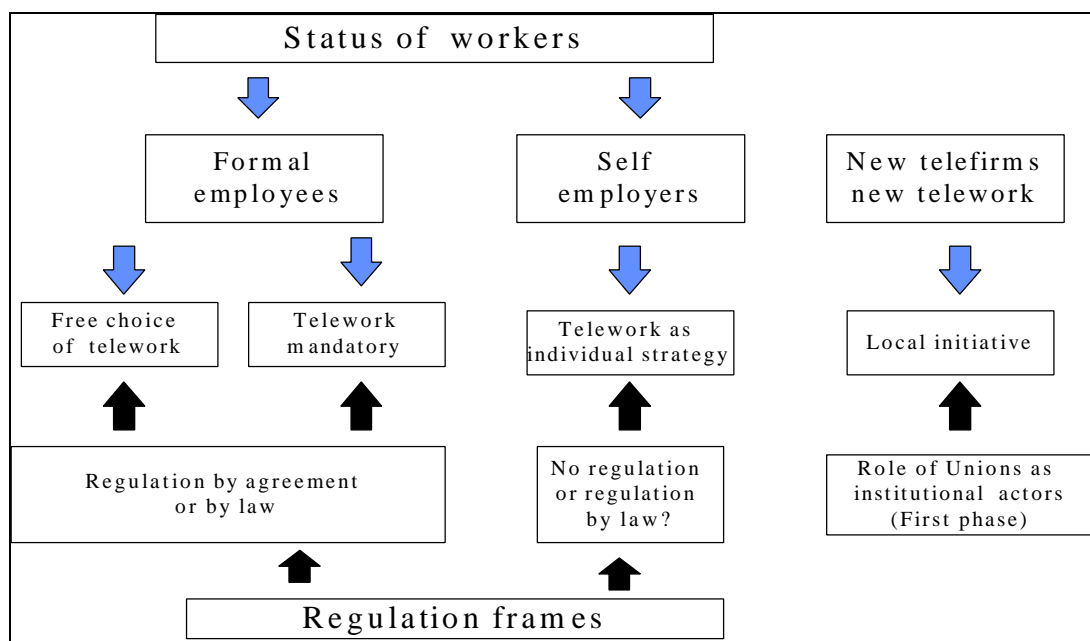
classification suitable for our purpose consisting in separating telework experiences according to:

- the teleworkers' status;
- the degree of freedom left to employees to become teleworkers.

The first category leads us to distinguish between:

- regular employees
- self-employers

Fig. A - Telework Industrial Relations



It is evident that as the unions and their efforts to better guarantee the conditions of work are concerned, MIRTI Project mainly focuses on telework experiences involving regular employees. Until now, self-employers are not unionised, and they have very few other collective representative bodies, even if some initial change can be seen in this field. In Italy and Germany, trade unions are increasingly discussing to define support procedures for self employers teleworkers. In Austria the Union of the Private Sector (GPA) is going to broaden the definition of employees in order to comprise also self-employed especially in the telework sector. Since this phenomenon of self-employed teleworkers is increasing, in the next future the unions or the law could intervene to regulate or negotiate some aspects of activity of that type of workers. Presumably, self-employed teleworkers could need guarantees that refer more to continuity and reliability of their relationship with the customer company than to traditional conditions of work.

The second distinction must be established between experiences in which employees can choose to become teleworkers and those in which they can only accept a company decision. In the first case, usually telework is a mixed strategy, both of the company and of the employees, and a negotiation is set up concerning the way in which advantages can be maximised on both sides.



In the second case, in which telework is a company strategy pursued in order to obtain cost reduction or more flexibility in using the workforce, one can expect that the strategy of employees and of their unions tend to be more defensive, aiming at avoiding the risks normally associated with telework.

Finally, the fig. A shows a third case, in which telework is established as a local public initiative (mostly under the form of a telework centre) aiming at revitalising marginal or disadvantaged areas. In this last case, the union's role is usually to co-operate with other institutional bodies (local administration and regional governments) in order to assure a support to the initiative.

3. Trade Unions and Telework Implementation /Regulation

The role of trade unions and work councils in the implementation process of telework is no longer self-evident. In many countries, no formal structures of workers participation (co-management, Mitbestimmung, etc.) exist for the case of telework. This does not refer to three of the most densely regulated countries of the EC: Austria, Germany, and Italy. Dense, existing regulations are applicable for many cases of telework, *but the problem is to make them effective in practice.*

In **Austria**, the Arbeitsverfassungsgesetz (Work constitution law, ArbVG) provides possibilities of participation for the works council which can be applied also on telework (but only for regular employees). It applies to:

- the employment of new workers and part-time employment (at least a counselling right)
- personnel planning
- the transfer of employees to other positions if they are related to a deterioration of working conditions or wages and also in telework
- dismissal of employees
- control systems
- incentive wage schemes
- changes of the work organisation (right of information and counselling); if these changes are combined with disadvantages, the works council can force the employer in firms with more than 20 employees to negotiate a "social plan" which may (with regard to telework) include elements like voluntariness, alternating telework, normal employee status etc.

In **Germany**, the Betriebsverfassungsgesetz (Factory constitution law, BetrVG) e.g. sets down participation in the cases of:



- introduction of new technologies or new work organisation (information and counselling rights)
- introduction of technology by which the efficiency or the behaviour of the workers be controlled potentially (e.g. ICT controlling the number of keystrokes or protocolling the off-times of a teleworker)
- continuous qualification
- changes of working times
- introduction of wage-systems based on piecework or other new incentive systems
- outsourcing or introduction of telework for a greater part of the *work-force* (if more than 5 % are involved, this would be regarded as “Betriebsaenderung” and would need the consult of works councils [“Betriebsraete”]); a “social plan ” can be negotiated in these cases like in Austria
- selection of workers for telework as far as the work content or work contract is concerned or changed.

At the same time, traditional instruments of participation and control by the works council (e.g. control of working locations without announcement, participation in the selection of hardware and software with regard to ergonomic aspects, workers assemblies, number of elected representatives for each location of the enterprise according to the numbers of employees) will become difficult to be claimed in the case of telework, not only because realisation has become more difficult due to the changed organisational circumstances (of space, time, social contacts, decreasing number of employees and thus of elected representatives in the central departments etc.), but because for the employees themselves these questions don't occur in the daily realisation of their work when working at home or because they feel that the control by the works council is inappropriate with regard to the new situation.

In Italy, there is a highly differentiated system of types of working contracts related to the needs widespread traditional home industry. For the case of Italian labour legislation five types of teleworking are identified by authoritative experts:

- contracts for the procurement of goods and services
- contracts for the rendering of services or the securing of a result
- contracts of semi-employment
- contracts of subordinate employment proper
- contracts for subordinate employment which involve home-working.

At the moment, there is an extremely complicated situation with regard to the legislation on social security protection. There is no particular legislation concerning social security of teleworkers. The needs of the traditional system of home-working has lead to a particular legal institution in Italy, the ‘*Commodatum*’ for use, which has expanded to



telework now. One of the peculiarities of teleworking in Italy relates to the proprietorship of the equipment that companies issue to their employees under the Italian legal system of "commodatum for exclusive use" (article 1803 of the Civil Code). This type of possession imposes many obligations on the user (article 1804 of the Civil Code) including the liability to ensure that "the object is always available (article 1805 of the Civil Code), "estimating the value" (article 1806 of the Civil Code), "wear and tear" (article 1807 of the Civil Code), "cost of using the object and extraordinary expenses" (article 1808 of the Civil Code).

4. European regulatory attempts

The WHITE PAPER ON GROWTH, COMPETITIVENESS, EMPLOYMENT (1993) specifies telework as the first of four "priority applications" of telematics as did the report to the European Council by a prominent persons group on EUROPE AND THE GLOBAL INFORMATION SOCIETY (1994) when they named telework as "the first of ten applications to launch the information society." Realising that telework - mostly on informal level - was developing at high speed without at the same time far-reaching regulatory processes a DRAFT REPORT OF THE INFORMATION SOCIETY FORUM (Jan. 1996) appeals that telework "requires different social and legal frameworks". In this report the following observations were reported:

- It becomes apparent that many telework schemes have been issued **informally**.
- In many other cases, telework is regulated between employers and employees **individually** by an **addendum to the work contract**. Examples are ABB Insurance Belgium, DEC Netherlands, Dresdner Bank and Wuerttembergische Versicherung Germany, referring in the most cases to the home as the teleworkers main workplace and to cost regulation.
- In an increasing number of cases, telework schemes are based on **company agreements**. Within the companies, more and more local agreements for some factories or sites are negotiated.
- Very few organisations and unions have gone the way to develop **collective agreements** on telework, either on a cross-industrial level or on a sectoral level (e.g. IBM / DAG in Germany).
- Even in some cases national legislation is ignored by collective agreements while collective agreements are neglected on the local level.

A nation-wide or even European regulation framework is not yet existing. The INTERIM REPORT OF THE HIGH LEVEL EXPERT GROUP ON THE SOCIETAL ASPECTS OF THE INFORMATION SOCIETY (Jan. 1996) suggests that telework is "one of the major forms of new modes of work which will be established in the Information Society" and that "a concerted action needs to be taken to make sure that these new forms of work are encouraged within a framework which reduces the negative aspects of telework as much as possible". A conclusion that also preoccupied experts during a European Foundation



(Dublin) - European Commission joint Conference in Brussels (May 1996) on “THE SOCIAL IMPLICATIONS OF TELEWORK”.

5. Recommendations of the MIRTI team (extract from discussion with involved social actors in the Austrian, German and Italian test bed sites)

- development of user participation:

The existing participation structures have to develop further under the influence of telework.

⇒ *The existing structures of representation should actively support the design process of the new jobs and keep close contact to the teleworkers. Their concrete functions concerning the representation of teleworkers should be evaluated in the pilot phase as well and enlarged, modified or modernised if necessary.*

⇒ *Teleworkers should be represented in participative groups and bodies of the enterprise (e.g. works council).*

If telework is carried out in multinational enterprise structures, the workers' participation should be an important issue for the European Work councils who should try to establish firm-wide standards for telework.

- introduction process :

The introduction process should be based on a well-defined stepwise strategy

A good preparation of the introduction process of telework will be a crucial element for the success and acceptance of this new form of work organisation both on employers' and employees' side. A lot of enterprises - though being open for the introduction of telework and having made first experiences from model projects - however still feel very uncertain about the methodological procedure when introducing telework. There is still a lack of generalised concepts and concrete plans of action. Case studies show that telework very often is still reduced to specific groups and small sectors, as the danger of disturbing the daily running of the business is reduced and still under control. A broad introduction however will need a thorough - also firm-specific - analysis of the multiple, e.g. technical, organisational, legal aspects of telework. Furthermore, there seems to be a certain bias between the openness of the enterprises to experiment new forms of work organisation within pilot projects on the one hand, and the readiness for broad evaluations and continuous 'action research' on these experiences on the other.



- **planned phases** (at the end of the complex introduction model, the decision for the implementation of telework should be based on the outcomes of the different phases. Although many firms feel capable to introduce telework without a pilot phase and an external evaluation, MIRTI case studies have shown that the risk of backlashes is too high in the case of such a top-down approach):

Trade unions should make sure that the introductory phase is a well planned and initial part of the telework project:

1. *phase: general information on telework and definition of aims and procedures*
2. *phase: design of an organisational frame (with analysis of the organisational reality, contents and application-fields of telework, time planning, costs etc.)*
3. *phase: design of a technical realisation (with analysis of the communicational and informational demands, time and cost planning etc.)*
4. *phase: integration of the particular demands in a more detailed concept*
5. *phase: discussion of legal questions and economic impacts, decision on the proceeding and on the necessities of support*
6. *phase: realisation of the pilot project and continuous optimisation of the process (control of the time-plan, finances, etc.).*

- evaluation

The introduction of telework should be based on pilot projects and should be evaluated thoroughly before generalising the new types of work.

⇒ *As most enterprises are still inexperienced in the field of telework, the introduction of telework should be based on voluntary pilot projects. They should be evaluated by neutral experts in order to create a climate of trust.*

⇒ *The members of the pilot project should not be isolated or recruited from different departments if possible. It seems to be useful to set up or to transform complete telework teams which have been co-operating and trained before starting telework. Otherwise the risk of an unsuccessful pilot project is high.*

⇒ *A negative evaluation of a pilot project may lead to a sceptical attitude towards telework for years.*

⇒ *Training is not only necessary for the teleworkers but also for the managers remaining within the enterprises' location. They have to be trained in the effective use of telecommunications as well as for management by objectives.*



- alternating telework as a preferable type of remote work:

Telework should be introduced on the base of a contract giving preference to alternating telework

- ⇒ *The technical equipment in the teleworkers private flat is put at disposal by the employer - corresponding to the enterprise's standard, serves exclusively for professional use and remains the employer's property. In case of the project's end or dismissal the teleworker has to return it to the employer immediately.*
- ⇒ *The recompense of fix costs (as electricity, heating, telephone and proportional rent) is paid by a flat rate, more precisely defined in a so called "contract granting use".*
- ⇒ *Travelling expenses between enterprise and the employees home or a meal subsidy are not achieved.*
- ⇒ *The setting-up of a teleworking place principally is voluntary. Presupposes the permanent reachability and autonomous fulfilling of the teleworkers duties. It's a regular employment, which comprises all industrial laws and social securities. Disadvantages in comparison with other employees concerning training and carrier may not emerge for teleworkers.*
- ⇒ *The employer as well as the employee has the possibility to initiate or to end a teleworking place (but it exists no right to a teleworking place), accounting an appropriate announcement of the abandonment. A compensation of dis-/advantages in case of ending up the teleworking place is not given.*
- ⇒ *The teleworker achieves the regular working time, agreed by contract, which might be shared between the internal company and domestical working place. It is verified by a working diary in the employee's own responsibility. An electronic control of working times is not allowed without an agreement with the works committee.*
- ⇒ *Data or information protection gets a special attention. A third party may not have access of the enterprises data.*
- ⇒ *Aspects of prevention of accidents, security and ergonomics at the teleworking place are handled in accordance with the valid legal requirements which are accepted in the whole enterprise.*
- ⇒ *Employer, factory committee and data or security protection official have to get access - by early arrangement with the affected teleworker - to the domestical working place.*



- organisational aspects:

The implementation of telework should be embedded in market-related or customer-related strategies, not only in cost-reduction strategies.

⇒ *The introduction of telework should be based on medium and long-range strategic decisions, not only on short-term cost decisions, because they are not easily reversible. Outsourcing and decentralisation processes of complex activities should be based on a precise definition concerning the type of core know-how that should remain disposable within the organisation or even within the central administration. Outsourcing or decentralisation of low-skilled work by means of telecommunication media should be based on a thorough analysis of customers' and teleworkers' needs and flexibility and the impact of telework on the quality of work.*

⇒ *It should be kept in mind that for the successful flexibilisation of an enterprise on the base of telework, high organisational efforts are necessary, concerning training and support of the teleworkers, maintenance of the corporate identity, minimal social integration within the firm etc. (see case ZUTT/Switzerland). The introduction of tele-homework or simple desk-sharing strategies may have an unattended negative impact on the identity and social cohesion of the enterprises.*

⇒ *The substitution of employees by freelancing teleworkers may create certain risks for the employers, mainly in sectors of development, information management, customer services, or distribution / selling. The experiences with freelance teleworkers have not always been positive.*

⇒ *The impact of the creation of tele-homework jobs as an instrument of desk-sharing and downsizing strategies of big enterprises has not been thoroughly evaluated by the "pioneers" of this strategy (see the case of LUFTHANSA). We know very little about the consequences of this strategy which should be used only within pilot projects and evaluated by experts.*

⇒ *Regional policy should support the activities of local and regional network suppliers which are offering a platform for the co-operation of local d SMEs.*

- social insurance:

Experts and involved social actors recommendation:

Teleworkers as normal employees should be subject to the social security insurance. As far as they are self-employed but only or mostly working for a single customer, a legal solution should be found in all European countries to prevent the breakdown of the social insurance funds.



- labour market:

Telework needs support by an active labour market policy.

⇒ *The introduction of telework in peripheral regions should be based on or supplemented by continuous processes of upskilling on the job and by regional schemes of vocational education for target groups.*

⇒ *Public grants for private investment of firms establishing teleservice centres, call centres etc. in rural or old industrial regions should only be supported if training is provided to the teleworkers and if the firms are participating in the infrastructural development of the community.*

⇒ *Telework could optimally contribute to the general economic performance of peripheral or old industrial regions if local and regional actors develop a concept of infrastructure, training and support of freelancing teleworkers and SME introducing telework co-operating with the network providers.*

⇒ *The creation of tele-homework jobs as an instrument of desk-sharing and downsizing strategies of non-local enterprises should not be particularly supported by local administrations and communities because it can be assumed that this strategy is mainly profitable for the companies while it is neither contributing to the local investment nor improving the local infrastructure.*

- social inclusion of particular target groups (e.g. disabled people):

The set up of telework projects for disabled people should be based on collective training.

⇒ *Employers should be informed and consulted how telework could answer their internal organisational issues as well as the needs of disabled people.*

⇒ *The potential disabled teleworkers should be trained within telecentres to make their personal and vocational skills really adapted to the position offered.*

⇒ *Feasibility studies and tests phases should be foreseen according to the very particular situation of each teleworker.*

⇒ *New markets and services should be identified and developed in which teleworkers can successfully compete if their performance is reduced.*



- qualification:

Telework needs for changes in qualification.

- ⇒ *The introduction of telework should be combined with the development of a new training policy of the enterprise: Education and training should be orientated towards self-learning. The analysis of demand for particular qualification and coaching measures as well as of existing resources and the programming of points of continuous mutual professional exchange between employees as well as employees and management should be part of these measures.*
- ⇒ *The installation of a permanent commission, constituted by representatives of the management, employees, the works council as well as external experts, should be recommended to enterprises.*
- ⇒ *Apart from participation in internal training measures which are part of the working time, employees should be granted the right of a yearly minimum release for external training activities in order to prevent risks of dequalification and 'qualificational detachment' from the demands of the labour market.*
- ⇒ *In case of insufficient training resources, enterprises should closely cooperate with specialised training centres which could additionally take over a supervising and support function in the fields of training or personal development for telework and could serve as a sort of regional competence centres for the introduction and accompaniment of the enterprise's teleworking processes.*

- social and psychological aspects:

The person as a whole must be considered.

- ⇒ *The introduction of telework should be based on a thorough evaluation of the social and psychological aspects of ICT supported decentralised work. This mainly should include a clear definition of the new roles and conditions of interaction between both teleworkers and employees in the central office, the analysis of the communication needs of the different functions as well as the communication aspects of working tasks to be fulfilled. This should be done in co-operation with external advisors and under participation of works council representatives.*
- ⇒ *Regular meetings for the continuous evaluation of problems and disturbances in the internal as well as external co-operation and communication network should be installed. Teleworkers should have the right to require technically well equipped communication lines which assure an easy and direct contact to colleagues.*
- ⇒ *Feedback (meta-communication) by regular meetings in the office or by bi-directional telecommunication should be given a certain weight in the communication processes and be part of the working time to enable the workers and managers to discuss communication disturbances in distant work as well as the formal work tasks.*



- health and safety:

⇒ **Mutual information and co-operation is necessary**

⇒ *The introduction of telework should be linked with the obligation of employers as well as employees to be thoroughly informed about the risks of the new work arrangement under the aspect of health and safety protection. There should be transparency on the necessary minimal standards of the technical equipment as well as working conditions. Particular internal or external security commissioners could be responsible for the control of these standards.*

⇒ *The security commissioners, accompanied by a representative of the works council, should have the right of access to the teleworking places with the consent of the teleworkers.*

⇒ *The existing national and European legal frameworks of health and security protection should be checked and completed concerning aspects of health and security in teleworking. These regulations should refer to working conditions as to working instruments as well.*

→→→ In conclusion, some of these issues can be regulated by sectoral or firm-based contract, some are only recommendations. The recommendations on qualification and on social and psychological aspects are rather „weak“, i.e. that it is doubted by some experts whether these items should be regulated by contract, provided that there is more experience with telework. At the moment, however, we hold these recommendations for rather important. Other questions should be regulated basing on European legal action (e.g. social insurance).

Finally, based on considered test bed sites and experiences, no common guideline has been possible with regard to:

- time regulation, amount of time flexibility, agreement of the work council to overwork and forms of time control;
- technical control of work progress;
- right of the work council to participate in questions concerning the teleworkers ' equipment.



ANNEX

Extract from ETUC Position on the Green Paper “Living and working in the Information Society” (adopted by the Executive Committee on 12-13 Dec. 1996)

Workers are showing interest in **teleworking** because it can offer them greater control of their time, and enable them to combine their work and leisure more efficiently. Some workers regard teleworking as an opportunity to be more creative in exercising their profession, although on the downside they view being isolated or being cut off from everyday life in their company as risks that go hand in hand with teleworking.

Teleworking should neither be condemned out of hand nor glorified. The crucial question is how it will be organised - preferably in such a way that the “tele-” aspect of the work in question is placed in a complex setting that stimulates human skills and activities. The decision to opt for teleworking must be voluntary and reversible. Teleworkers must retain the status of employees. Payment and labour relations must not be allowed to deteriorate with the transition to telework. All social security and health insurance rights must be preserved, teleworkers must be guaranteed social protection, and health and safety standards must also be applied to telework jobs. Teleworkers must have the same career opportunities, the same access to in-service training and advanced training as other employees. All basic conditions governing teleworking must be negotiated with the relevant workforce representatives. This applies in particular to working time, and the European Commission is requested to take this factor into account in a directive on teleworking. The Member States of the EU are urged to ratify the ILO Convention on homework.

With regard to teleworking, the ETUC recommends:

- that teleworking should be negotiated in all cases between workers’ representatives and the firm that wishes to introduce teleworking. Anyone who adopts teleworking should do so voluntarily, and retain their status as an employee. The conditions for teleworking should be laid down in a collective bargaining agreement;
- atypical and precarious working conditions are widespread among teleworkers. Protection through social security, access to health insurance and unemployment benefit are urgently required for all. Employee status for teleworkers would offer the best solution for problems in relation to social security;
- if teleworking is carried out for various employers, social security contributions should be paid in the country where the teleworker is employed. Social security thresholds should be lowered to guarantee social security cover for all;
- for teleworkers, it is very important that they should retain their rights to worker participation. Employee representatives should also be responsible for teleworkers, and they should also have the right to meet at regular intervals. This would be extremely important for teleworkers working mainly at home. The opening up of corporate networks for trade union information would be important with regard to the concern for guaranteeing teleworkers rights to participation.
- there should be clear rules for data protection and privacy. Teleworkers must be entitled to disconnect from the network. Rules are required with regard to the supervision of teleworkers, since for example, interactive video offers enormous potential for control of workers, which must not be used.