

A COMPARATIVE STUDY OF THE IMPACT OF ELECTRONIC TECHNOLOGY ON WORKPLACE DISPUTES: NATIONAL REPORT ON ITALY

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I. NEW TECHNOLOGY AND NEW ECONOMY: ITALIAN CASE IN THE EUROPEAN PERSPECTIVE

Discussion of the problem of the impact of electronic technology on employment conditions requires defining the scope of this paper and making some preliminary clarifications. First of all, the gradual introduction of new technologies into production processes can be considered primarily as a sociological and economic issue. Seemingly, law is quite late in becoming involved in this issue. This delay is common in relation to all social phenomena, but it has become ever more relevant to the evolution of the economy and labor relations. Because law has been slow in intruding upon these changes, it is logical to begin our analysis by examining economic and production perspectives rather than by exploring judicial developments.

The most interesting innovations, and methodology, for addressing this issue come from the European Union, where soft law-style mechanisms have been applied and extended to collective bargaining. Clearly, the profile of information technology plays an important role in the context of the so-called *European Employment Strategy*. Accordingly, a supranational perspective is helpful in examining the Italian situation from the perspective of labor relations.¹

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1. The evolving consideration of *Information Technology* can be observed starting from the *Life at Work in the New Economy*, WORLD EMPLOYMENT REPORT 2001 (Jan. 2001) and the *Presidency Conclusions of the Stockholm European Council* (Mar. 23-24, 2001), going to *Modernizing the Organization of Work, A Positive Approach to Change*, Commission Communication 582 (1998), *Strategies for Jobs in the Information Society*, Commission

From this point of view, it is useful to consider the last ILO Report (World Employment Report 2001) concerning the impact of information and communication technology on working conditions and global employment trends. Starting with the concern that the global employment situation is in serious difficulty, the Report emphasizes the number of people in search of employment and the lack of the access to the technological resources necessary to ensure productivity. At the same time, the Report highlights the increasing mobility of workers, which has positive implications for the information technology sector (although this contrasts with the often-dramatic work force problems created by the increasing number of illegal workers).

At the European level, the potential impact of the information society on employment was highlighted at the Luxembourg "Job Summit" in November 1997, when the Commission proposed to take action on this subject matter. As a consequence, in the context of the European Employment Strategy, the National Action Plans for 1998 and subsequent years included actions for the information society. With special attention to the knowledge-driven economy, the Presidency Conclusions of the Lisbon European Council (March 23-24, 2000) committed all the Member States to "set a strategic goal and agree a challenging programme for building knowledge infrastructures, enhancing innovation and economic reform, and modernizing social welfare and education system." Also the Presidency Conclusions of the Stockholm European Council (March 23-24, 2001) substantially reconfirmed the commitments of the previous years.² However, all these EU initiatives are going slower than expected.³

Communication 48 (2000); *New European Labor Markets, Open to All, with Access to All*, Commission Communication to the Council (2001); *E-learning*, Commission Communication 318 (2000). From an Italian perspective see particularly, G. Alpa, *New Economy and Free Professions: The Private Law and Forensic Activities in the Digital Revolution Era*, in *CONTRATTO E IMPRESA EUROPA* 1175 (2000); and, from a supranational perspective, see R. Fahlbeck, *Towards a Revolutionized Working Life: The Information Society and the Transformation of the Workplace*, in *IJCLLIR* 247 (1998).

2. Relating to the European Employment Strategy in respect of New Economy see, e.g., V. Marleau, *Job Creation Strategy, Employment Policy and the Role of Labor Law: Lessons from a Comparative Analysis of US and EU Employment Strategies*, in *JOB CREATION AND LABOR LAW, FROM PROTECTION TOWARDS PROACTION*, KLUWER LAW 21 (M. Biagi ed., 2000) and especially 28-29; also, focusing on the right to information and consultation of workers, M. Colucci, *The European Social Charter and the Right to Information and Consultation of Workers: Its Implementation in the European Union and Italy*, in 39 *BULL. COMP. L. REL.* 87 (2001). See generally, M. Biagi, *The Impact of European Employment Strategy on the Role of Labor Law and Industrial Relations*, in *IJCLLIR* 155 (2000).

3. It is important to note that, at least in Italy, the debate on the impact of the "technological revolution" on the labor law arrived at its pivoting point almost 20 years ago. See

The shift toward a knowledge-based economy is of a crucial importance to ensure economic growth and to build a more inclusive society. “The success of the knowledge society,” as stated in the Presidency Conclusions at the Stockholm European Council, “depends on high levels of digital literacy and on creating conditions in such areas as network security and data protection and privacy, in which people have confidence in using new services.”

In this attempt to modernize work production methods, the social parties must play a key role. To reinforce this conclusion, one should look at the 2001 European Employment Guidelines. The second paragraph of the new Guideline 13 reads that “the social partners are invited . . . within the context of the Luxembourg Process to report annually on which aspects of the zisation of the organisation of work have been covered by the negotiations as well as the status of their implementation and impact on employment and labor market functioning.”

The 2001 European Employment Guidelines confirm that “in order to promote the modernization of work organization and forms of work, a strong partnership should be developed at all appropriate levels (European, national, sectoral, local and enterprise levels).” According to Guideline 13, this means:

the social partners are invited . . . to negotiate and implement at all appropriate levels agreements to modernize the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive, achieving the required balance between flexibility and security, and increasing the quality of jobs. Subjects to be covered may, for example, include the introduction of new technologies, new forms of work and working time issues such as the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, access to career breaks, and associated job security issues.

Also, Guideline 14 provides a mandate for the Member States to be carried out jointly with the social parties. “Member States will, where appropriate in partnership with the social partners or drawing upon agreements negotiated by the social partners, review the existing regulatory framework . . . at the same time . . . examine the possibility of incorporating into national law more flexible types of contract.”

K. KUMAR, *LE NUOVE TECNOLOGIE DEL MONDO CONTEMPORANEO, DALLA SOCIETÀ POST-INDUSTRIALE ALLA SOCIETÀ POST-MODERNA* (2000); P. ZANELLI, *IMPRESA, LAVORO E INNOVAZIONE TECNOLOGICA* (1985); for a more recent reference, see, F. Garibaldi, *Le tecnologie dell'informazione e della comunicazione, la regolazione, l'offerta di beni pubblici*, in 4 *L'ASSISTENZA SOCIALE* 87 (2000).

Furthermore, management and labor are invited to support adaptability in enterprises as a component of lifelong learning. Above all, Guideline 15 invites them "to conclude agreements, where appropriate, on lifelong learning to facilitate adaptability and innovation, particularly in the field of information and communication technologies. In this context, the conditions for giving every worker the opportunity to achieve information society literacy by 2003 should be established."

Comprehensive studies on this subject matter are quite rare in Italy. Nevertheless, caselaw covering the application and use of the informatic tools with respect to the employment contract is common.

Italian labor courts have recently stated that it is lawful to terminate an employee due to the employee's incapacity to adapt to technological innovations, with special reference to information technology, introduced by employer.⁴ The Court has fully justified the dismissal of the employee for reasons related to his incapacity to adapt to the information technology procedures. Consequently, it is considered unlawful that employees object to improvement of information technology skills in order to cope with changes occurring in the enterprise.

Moreover, from the industrial relations point of view, in the context of a company restructuring, the courts have elaborated on the notion of "technological dismissal." Downsizing is allowed when there is a permanent change in the company's organization. This means that the fall in the production rate is no longer considered essential for a workforce reduction.

II. TELEWORK IN ITALY: EUROPEAN UNION LEGISLATION, STATUAL LEGISLATION AND COLLECTIVE BARGAINING

In Italy, specific legislation does not exist covering Telework. In the absence of any specific institutional framework regulating this special kind of employment, the main role is played by collective bargaining. Recently, at the European community level, the adoption of the so-called soft law methodology (under the form of guidelines) has provided a new perspective on the notion of collective bargaining.

The *Guidelines for Telework in Europe*, signed in Brussels on February 7, 2001, come from the sectorial committee for the European social dialogue in the telecommunication industry. The *Guidelines* underline the fact that the increasing use of telework is a

4. Court of Cassation, Apr. 6, 1999, n.3311.

clear indicator of a shift toward a more flexible and more mobile workplace. The EU *Guidelines* are certainly an example of the effective functioning of the so-called “sectorial social European dialogue” and demonstrate that the cooperation process between the social parties at a Community level might develop in many directions. The agreement’s scope of application is limited to those employees who, using information and communications technology, carry out all of their work at home, or regularly perform some work at home while the remaining part is performed on the company’s premises.

In the EU *Guidelines*, some relevant principles are codified. First of all, the introduction of telework should be voluntary for both sides. In any case, the collective agreements should be reached at an appropriate level (e.g., industry, company) in order to provide a framework for the introduction of individual telework contracts. Teleworkers should be treated equitably with employees working on company premises, meaning that they should have access to the same opportunities for training, career development, and career advancement that are available to other employees. Teleworkers must be informed of any performance monitoring facility created to monitor or control their work. As far as possible, control should focus on the output rather than activity. Any performance monitoring arrangements must be consistent, including regard for the specific characteristics of telework, with those applied to other employees who work on company premises. The company managers and supervisors might visit Teleworkers at home only after prior appointment and agreement. As far as it concerns collective rights, it is important to emphasize that teleworkers are entitled to exercise the same rights as the other employees, including the rights of communication with works councils and trade union representatives.

In Italy, telework has always posed serious problems of definition and qualification. Scholars have been debating the very nature of these employment contracts, having in mind two possible alternatives: subordinate employment vs. self-employment. Actually, telework is a combination of distant communication technology and information technology. Work activity can be performed far from the official workplace. Only to the extent that the teleworker is virtually included in the employer’s organization can this kind of work be referred to as the subordinate type regulated by Article 2094 of the Italian Civil Code.

The most widespread form of telework so far has been the arrangement whereby work is performed at home under a contract of subordinate employment. In such a situation, the characteristic

feature lies in the place of work, which must be at the worker's disposal. With respect to this kind of telework, Act No. 877/1973, which regulates work at home, is applicable.

It is hard to say whether a standard, such as Act No. 877/1973, enacted mainly to cover manufacturing industries, may be readily applied to the communication and information technology sector where employees are not supposed to be involved in a production process as that term is understood in its narrow sense. Of course, in theory, some norms of Act No. 877/1973 may be easily applied to this sector. For example Article 11, paragraph 1, states that "a worker at home should perform his work with diligence, keep secret the information related to his work and obey the instructions received from its employer," which is a universally recognized principle, at least in subordinate employment.

A. *Health and Safety Regulations*

Teleworkers, additionally, are covered by Article 2087 of the Civil Code, which states that the employer in the performance of working activity is obliged to adopt, in accordance with the work peculiarities, experience, and techniques, all the necessary measures to assure physical integrity and moral personality of the employee. Italian caselaw has always considered this norm directly applicable, even in absence of detailed legislation implementing these general provisions.⁵

The teleworker also enjoys complete protection under the highly technical standards in the area of health and safety.⁶ These norms refer to all employees who are employed by the employer. Special attention should be paid to Arts. 3, 4, and 5 of the Legislative Decree No. 626/1994, which provides a wide range of obligations, that include teleworkers. The employer should: identify all possible risks connected with the performance of work, eliminate or reduce them as much as possible, substitute the dangerous processes with nondangerous ones, respect the ergonomic principles in conceiving the working places and in choosing the equipment, and inform and train the workers in matters concerning health and safety in the working places.

5. In this regard, see, M. Esposito, *Salute e Sicurezza*, in L. GAETA, P. PASCUCI, *TELELAVORO E DIRITTO* 128 (1998); see also L. NOGLER, *ART. 2128, LAVORO A DOMICILIO* 565 (2000) (*Commentario* by P. Schlesinger).

6. See Legislative Decree No. 626/1994.

A controversial aspect in the area of health and safety protection of teleworkers, as provided by Legislative Decree No. 626/1994, relates to the use of the equipment supplied with videoterminals.⁷ This standard was modified by the Act of December 29, 2000, No. 422, which does not expressly mention teleworkers. One might conclude at first glance from this silence that legislation is against the use of telework as applied to video monitors, since the hypothesis of Act No. 833/1973, which prohibits “work at home in order to perform an activity with the use of substances considered dangerous and harmful for the health and safety of teleworker and his family.” However, the dominant point of view is that the standard respecting the use of equipment supplied with video monitors can be wholly adapted to teleworking. Thus, an employer that decides to use at-home telework is obliged *ex lege* to identify the specific risks, ergonomic conditions of the environment hygiene, and adopt the appropriate measures in order to eliminate these risks (Article 52).

Under the above-mentioned standard, during daily working activity, teleworkers must be given a break after every four consecutive hours of work. Such breaks are usually provided by company level collective bargaining agreements. The employer is also obliged to assign the working tasks connected with the video monitors utilized in order to avoid the repetitiveness and monotony of the operations, and to conduct appropriate employee training regarding measures to insure workplace safety.

B. The Role of Collective Bargaining: Remuneration

Collective bargaining agreements are playing an important role in establishing a framework for important minimum standards that protect teleworkers. A good example of this is the role, in the 1990s, of collective agreements in dealing with remuneration of teleworkers who are employed at home as well as elsewhere. Some collective actors, especially at the firm level, have contended that teleworker services did not permit the worker to receive predetermined hourly or monthly compensation. This kind of activity differs from the typical organization of the company’s work. For this reason, some argue that, to calculate the compensation, it is usually preferable to adopt another method, such as incentive pay, which differs greatly from that paid to “standard” workers. Naturally, these tools carry the risks of

7. See the different approach of M. Esposito, *supra* note 5, at 132; NOGLER, *supra* note 5, at 554.

inadequacy of the remuneration in violation of the principles established by Article 36 of the Italian Constitution.

C. The Limitation of the Employer's Powers in Collective Bargaining

Another very important issue for the collective bargaining context relates to the employer's power to differentiate between independent and dependent teleworkers. In collective bargaining, at-home telework is defined as an activity performed at home at the employee's convenience, where the employee periodically returns to the enterprise to perform any service or participate in meetings concerning organization and training. It is difficult to determine if a working place which is out of the employer's direct control, is also out of the sphere of the employer's organizational responsibilities. As it was frequently noted⁸ in the Italian practice, pure telework does not exist. Collective bargaining, especially at the firm level, implies alternated telework because employees return to the enterprise at the employer's unilateral initiative.

An element of such contractual arrangements is the provision of a fixed working day whose duration is linked to that of the other workers of the firm. A particular provision respecting direction and control of the employee's activity is typically found in an explicit contract provision mandating the employee's participation in the scheduled meetings of technical-organizational character or the employee's availability during certain hours of the day. Such a scheme is the norm in Italy.

The telework proposal partially approved on June 22, 1999 by the Senate Commission during the last parliament has not yet been wholly adopted. This proposal would create a number of "fundamental" rights for teleworkers. Among them are the right to send and receive messages, both inherent and not to the working service by way of connection with the employer's enterprise, right of confidentiality, and a range of the restrictions of the employer's control power, such as trade union liberty and the right to receive essential information.

D. Telework and Civil Service

Since 1999, broad and detailed standards have been established for the sector of civil service, which can be at least partially useful for analyzing private sector practices. Article 4 of the law of June 16,

8. NOGLER, *supra* note 5, at 537.

1998, No. 191 (the so-called *Bassanini ter* law) provides the possibility for public administrators “to make use of the forms of the work at a distance,” to install necessary information equipment and telephonic connections, and to authorize dependent employees to perform the service at equal pay in locations other than the usual workplaces. Thereafter, the Presidential Decree of March 8, 1999, No. 70 (which contains an executive regulation) was adopted and then the first collective agreement on telework in the public sector was reached on July 21, 2000.⁹

Some provisions of the Decree are very interesting. For example, Article 2 of the regulation defines telework not only from the perspective of the possible forms of work at home, but also from that of the situation in which the service is not performed in the place of the employee’s disposal. The collective agreement further defines telework in the public sector as an employment relationship that involves the support of information and communication technologies that can be executed only through teleworking.

It is important to stress that a provision of Article 5 of the telework regulation requires that installation of information technology devices and all the respective costs, including the management and maintenance of telematic connections, be charged to the employer/public administration. In the case of a specific analysis of the eventual risks, adequate safety levels of the communications between telework and the informative system should be assured. The regulation also provides that the teleworker’s use of the telework system can be confined to those activities that are inherent in the employment.

In Article 6, paragraph 3 of the collective agreement on telework, it is stipulated that the public administration should pay a fixed amount in order to cover all the eventual expenses of the at-home teleworker, including energy consumption. Paragraph 2 of Article 5 of collective agreement provides that informative, communicative, and instrumental equipment necessary for the telework fulfillment should be provided to the employee *gratis* for the telework project.

Finally, paragraph 5 of Article 5 provides that the public administration guarantees telework will be implemented in complete conformity with the current environment, safety, and health standards. Furthermore, the employee should receive all the

9. L. Gaeta, *Il regolamento sul telelavoro nelle pubbliche amministrazioni*, in LPA 311 (1999); see also NOGLER, *supra* note 5, at 581.

information necessary to ensure both the employee's safety and safety of all the persons living in proximity.

Each project linked with a telework contract activity should provide an opportunity for an employee's periodic return to the working office with a "medium frequency." Because there is a tendency for teleworkers with the standard dependent form of the work to become isolated, the agreement should guarantee for the teleworker equal opportunities for career advancement, participation in the training initiatives, and socialization with the other dependent workers (Article 2, paragraph 4). The public administration is also obligated to ensure general and special training opportunities that guarantee an employee adequate professional and social level support.

Another important issue is to verify compliance of the working place norms for the general safety. Presidential Decree No. 70 of 1999 provides that such a power should be exercised by the public administration, but provides as well that collective bargaining should define the procedure according to which a person responsible for health, safety, and maintenance matters can have access at the teleworker's home. Under this collective agreement, where telework takes place directly at employee's home, the employee should ensure that the person responsible for maintenance has access to the equipment in use. The same applies to the persons responsible for prevention, protection, and security matters. In this way, they can provide correct utilization of security equipment related to telework and technical equipment.

The civil service sector has gone further than the private sector in dealing with the affects of telework. The telework collective agreement provides that teleworkers be given the same quantity of working hours as the other employees working in the official administrative location. It additionally should be the same as for all workers of the public sector set down by the national collective bargaining agreement.

III. EMPLOYER'S POWERS UNDER CURRENT LAW

The best way to assess the progress made in the labor system with respect to the impact of the information technology revolution is to study the limits concerning employer monitoring of distant workers or other employees using information tools. Italian legislation does not have explicit norms regarding utilization of information support equipment inside and outside the enterprise, nor specific legislation

regarding the tools that can be used by employers to govern the work performed via electronic technology.

Italy has a privacy protection standard, which has been very effective as the experience of the recent years has shown. The law No. 675 of 1996 codified a range of fundamental principles that are applicable in the field of labor law. This approach has been progressively developed during the recent years. This evolution confirmed the shift from the static conception of privacy law, which was intended solely as a right of secrecy, to a concept that takes into consideration such new phenomena as information and communication technology. It has now been expanded to not only the right of personal secrecy but, also a right to keep control of the information flow respecting personal data to prevent its improper use.¹⁰

As far as it involves labor law relations, Italian privacy legislation can be an instrument limiting the employer's authority by imposing procedural restrictions on the employer's power to deal with personal information. The application of the law No. 675 of 1996 to the labor relations regarding personal data protection seems to resolve most privacy questions arising out of the use of information technologies.

A. Electronic Technology as a Tool for Monitoring Dependent Workers and Distant Workers

Article 4 of the law No. 300/1970 (Worker's Statute) is a core reference point in the addressing the employer's authority to monitor employee activities. The first paragraph of the article prohibits audio-visual equipment and other instruments for remote monitoring of the workers. The installation of equipment that allows remote monitoring of workers must be agreed upon in advance with trade-unions representatives. In the absence of such an agreement, the employer has a right to apply to a Ministry of Labor, which can authorize the use of such equipment.

Before the Worker's Statute adoption, it was argued that monitoring workers with electronic technology was dangerous and violated worker dignity. During the 1980s in Italy, there was both scientific and juridical debate on the issue of the electronic monitoring, particularly with respect to the affect of Article 4 of the Worker's Statute. Direct application of Article 4 of the Statute was

10. On these aspects see S. Rodotà, *Privacy e costruzione della sfera privata*, in POL. DIR. 521 (1991).

doubtful. However, in time, the opinion of the proponents of the complete adaptability of this article to electronic monitoring prevailed. It is now evident that the limits contained in Article 4 of the Worker's Statute are applicable to information technology communication at work. For example, it is unlawful to use telecameras (including so-called Webcams) to constantly monitor an employee because Article 8 of law No. 675/1997 strictly prohibits indirect control over employee activity utilizing telecameras and the images received from them.

In this regard, it is important to stress that law No. 675/1996 treats as "personal data" every kind of information that permits direct or indirect identification of the involved subjects. This principle covers all the monitoring methods and information gathering. Thus, the Public Authority of Privacy (*Garante della Privacy*) has confirmed that these principles should be observed even when enterprises use information technological tools for the internal monitoring of workers.

Relative to the employer's use of electronic technology, the Law No. 675/1996 prevents employers from performing such operations as elaboration, organization, selection, comparison, interaction, or interconnection of personal data regarding workers. The law No. 675/1996 also allows an employee to oppose any decision adopted by the employer based on methods that use personal data in an effort to identify the worker's personality. Such behavior can be considered an abuse of power.

In the situation of telework, the main form of employer monitoring that is permissible is monitoring to verify performance from the technical point of view. In addition, the employer has a right to use direct monitoring by entrusting responsible persons. But in engaging in such monitoring, the employer must consider the employee's and his family's right to privacy. For example, the control visits should take place solely during the employee's working hours and the employee should be notified by the person in charge prior to the visit. It is not necessary that the latter be his hierarchical chief.

The collective agreement concluded between Confcommercio and Filcams-Cgil, Fisascat-Cisl, Uitucs-Uil on Telework (June 20, 1997) provides that the employer or his substitute's visits "should be agreed with the teleworker in reasonable advance." The collective agreement also provides that the worker make a commitment to be available on certain hours of a day, week, or month that are to be agreed at the individual or enterprise level for the purpose of permitting communications related to his working activity. Finally, it

provides that there should be previously agreed visits of the person responsible for safety and protection matters, as well as the person who checks correct application of workplace safety equipment.

Most issues arise in the context of the electronic equipment utilization by the workers where the problem concerns the sphere of balance between the employee's liberty and employer's authority. In light of the new information technology progressive development, there are major liability and penal risks, both for the employee and for the employer. There also can be problems involving security of property and business and individual reputation. Often, these issues do not find an explicit expression in adopted legislation and must be resolved based on common and generic principles which, as a rule, are only partly suitable. Moreover, there is not yet a suitable record of judicial decisions to offer guidance. The most attention to these problems is paid inside the enterprise.

Consider the nature of employee use of portable computers, electronic mail, or access to the Internet. In most cases, these services are indispensable for work. From this perspective, it is important to ascertain whether the use is for the worker's private interests or the enterprise's interests. To resolve this problem, Confindustria has prepared a definitive document "Guidelines for the Informatic Enterprise Systems Use" (July 5, 2001) that contains a model enterprise regulation that, in the future, can be adapted to enterprises in various sectors. The list of the proposed guidelines for worker behavior respecting equipment use can identify when such use is improper and can be punished through the tools specified in Article 7 of the Worker's Statute. In particularly serious cases, violations can also involve employee dismissal.

One can assume, for example, that a worker can use a company computer for personal activities. From the general perspective, this use can be considered lawful only if it takes place during non-work time. An employer can avoid such use by installing software that can block or diminish the computer power at other times. However, the Confindustria guidelines make a different assumption: a personal computer and all related programs entrusted to a worker can be used only for business purposes and not for personal ones.

A number of limitations related to computer use are imposed by the Confindustria guidelines. Among them are prohibitions against modifying the configurations installed at his computer, listening to the audio or musical programs or files, using programs not officially distributed, downloading files contained in magnetic or optical

supports that are not directly related to the employees' working activity, and the like.

Similar problems arise with respect to use of electronic mail. Doctrine and jurisprudence have already extended the guarantees of the normal post to the electronic one. Article 15 of the Italian Constitution provides the principle of correspondence secrecy and freedom that can be limited only by authorization of official legal powers for a lawful reason. By monitoring electronic mail, the employer potentially can have access to an employees' personal information. Because this data can be "sensitive," the employer in this case faces several limitations. One set of restrictions is imposed by Article 8 of the Worker's Statute, which provides that employers cannot investigate political, religious, or trade-unionist opinions of the employees nor other facts that do not relate to their professional activity. Another source of restrictions is found in general principals of the law No. 675/1996 that limits data collection and use and requires compliance with the Public Authority of Privacy's notification/authorization procedure. Accordingly, an employer is not permitted to examine the contents of electronic mail contents, but can monitor the flow of messages. This means that the employer can confine the use of the electronic mail to work-related purposes (as proposed in the Confindustria's document).

One other limitation on employer monitoring of e-mail is imposed by Opinions of the Public Authority of Privacy that explain that the constitutional protection of private communications requires that e-mail be treated in the same manner as traditional mail. Thus, monitoring should be limited to situations involving suspected illegal conduct and be available only by court order.

The same observations are pertinent to Internet use. Some enterprises have information systems that permit monitoring access to the data in the general system and use of individual personal computers and, therefore, can monitor an employee's operations. However, the analysis of such data can be considered a violation of Articles 4 and 8 of the Worker's Statute. Through the examination of the Web sites visited by a certain worker, one can gain information about the opinions of the latter (for example, if several times a day a worker visits Web sites of trade unions or political parties), which would appear to be a direct violation of the Article 8 of the Worker's Statute.

The Confindustria proposal contains an enterprise regulation that prohibits Internet navigation for purposes not closely related to the work, especially because the visiting of the Web sites can reveal

employee's political, religious, or other personal opinions. In addition, financial transactions or software downloads should also be prohibited if they are not authorized by a specific directive. An employer can also simply block access to certain Web sites by setting up special barriers utilizing specific software.

In Italy, there is no specific standard, like the one for telephone traffic in legislative decree No. 1671/1998, that obliges the employer, in using programs that limit employee access, to not use those that would permit examination of the contents of electronic messages or the identification of visited Web sites. Such a restriction would reduce the employer's monitoring ability to a quantitative complication (the number of the messages received or the time and duration of Internet navigation). Nor is there any regulation establishing the employee's responsibility for unlawful use of information technologies or the employee's protections in the event of an accusation of illegal use of, intrusions upon, or interference with the equipment.

A recent decision regarding monitoring of telephone traffic suggests possible limitations to the potential employee privacy protections. In a case in which it addressed its attention to Article 4 of the Worker's Statute, the Italian Supreme Court held that electronic switchboards can be monitored to determine whether employees are making private telephone calls. The Court justified the result based on the employer's right to protect its property. Under Article 8 of the European Convention of Human Rights and Fundamental Freedoms, this decision would appear to be valid only to the extent that the employees are given prior notice that such monitoring will take place and the content monitoring does not exceed that which is minimally necessary to identify the nature of the communication. In addition, as discussed above, while the recent decision may have an affect on monitoring of Internet surfing, for the reasons discussed above, it should not be applicable to e-mail transactions because the latter should receive the additional protections given to traditional mail.

Utilization of new information technologies also poses the problem of protecting employees from intrusions by third persons, including colleagues. The unique instrument of the password helps prevent undesirable access by a third person. An employee must have a right to change the password provided that he informs the personnel responsible for the password.¹¹ The communication of that change should not be in a manner that would permit others to know the password.

11. NEWSLETTER OF THE PUBLIC AUTHORITY OF PRIVACY (Feb. 19-25, 2001).

B. Trade Union Participation

The issue of trade union participation in the enterprise via electronic information is another very important issue requiring further exploration. Currently, union representation offices can, of course, use the electronic information network to contact workers outside the workplace. Article 25 of the Worker's Statute provides that trade union representatives can use certain spaces for communications with employees. It focuses on the use of informative notice boards that are accessible to all employees. It has been held, therefore, that union representatives have the right to use a type of workplace electronic informational bulletin board.¹²

Some time ago, collective agreements were adopted that granted a right to use electronic mail for contacting employees. Contacts with trade unions have no limits and special postal boxes reserved by trade unions should be created in the enterprise. Trade unions also can send collective messages to all the workers. A trade union electronic journal (a new journal, "via e-mail," that substitutes the old stamped version) probably can be inserted in the postal box.

IV. INTELLECTUAL PROPERTY

Another important issue related to the effects of electronic technology on workplace disputes is the protection of an employee's intellectual property. In the absence of recent cases and collective agreements in this field, guidance must be found in established principles. Article 12bis of Law No. 633/1941 provides that "if not agreed otherwise, a program created by the employee during the performance of his working activity is considered to be his own exclusive property and he has exclusive rights for utilization of such a program."

V. CONCLUSION

Italian legislation has not kept pace with the rate of information technology development. In the absence of general standards covering these new matters, lawyers have to discern the relevant principles from the old normatives and adjust them to the specific new cases. The problem is that, as a rule, these normatives are of a generic character and can only be partially applied for reaching sound

12. Pretura Milan (Apr. 3, 1995).

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decisions in this new context. Italian legislation in this area probably deserves a complete revision.

