Smart working, Covid-19 and industrial relations: the regulatory perspective in Italy

Table of contents

1. The adoption of remote work pre Covid-19 in Italy and analysis of the related regulative framework

What generally falls under the definition of remote work[1] in Italy is currently regulated under three different sets of provisions[2]. The first one refers to the notion of "telework", as established in the European Framework Agreement signed on 16 July 2002, transposed in Italy by a cross-industry agreement for the private sector signed on 9 June 2004[3]. The second one corresponds to the category of "agile work" (smart work), as designed and conceived in Law no. 81/2017. The third scheme consists of a "derogated" version of the existing legal scheme of agile work, as designed by the aforesaid 2017 Act. Whereas the first two set of provisions have been introduced before the pandemic, the last one represents a first attempt to simplify the adoption of remote working solutions as a general health and safety measure during the pandemic.

1.1 Definitions, regulations and related legal issues of remote work in Italy

Definitions

In Italy, the concept of remote work has assumed different forms and definitions over the years following the evolution of ICT and digital processes. Since the end of the '70 a consistent part of work could be performed outside the company premises and often from home through an ICT connection with the company. This initial form of teleworking ensures the achievement of greater flexibility and efficiency from the employers' side and a higher level of work-life balance form the workers' side. However, telework has had a limited application in the Italian labour market[4] as it was commonly perceived as a rigid organisation form of working remotely. With the evolution of ICT and digital technologies and the increasing automation of production processes, remote work is mainly carried out through ICT and digital media, out of predefined work-places: this new evolution of remote work is named ICT-mobile model and is considered a third generation telework as the work is mainly performed thanks to wireless technologies and mobile devices. ICT mobile work differs from the tradition form of telework as is not bound to a precise workplace and offers a wider mobility (work anywhere and anytime).

The most recent form of regulation of remote work is the so-called "agile work", commonly known as "smart work" even though this term has never been mentioned in the law regulating it (Law n. 81/2017). The definition of agile work does not only refer to remote work but implies a result-

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[1] A general definition of remote work in Italy has been elaborated among others by *Iacopo Senatori and Carla Spinelli: (Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience. Italian Labour Law E-Journal, vol. 14, no. 1 (2021) 209–260.*

[2] Iacopo Senatori (2021), Italian Industrial Relations and the Challenges of Digitalisation in Hungarian Labour Law E-Journal 2021/2 http://www.hllj.hu

[3] https://www.cliclavoro.gov.it/aziende/documents/accordo_interconfederale_telelavoro_9_6_2004.pdf

[4] Eurofound, Telework in the European Union, Luxembourg, 2010, https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/telework-in-the-european-union.

oriented organisational flexibility in a dynamic work environment in which "*spaces, hours and work tools are reshaped in front of greater freedom and empowerment granted to workers*"[5]. More precisely, the Article 18 of the Act no. 81/17 defines "agile work" as a "*method for the execution of the employment relationship established by agreement between the parties, even with forms of organization by phases, cycles and objectives and without precise constraints of time or place of work, with the possible use of technological tools for the performance of the work activity. The work activity is performed, partly inside company premises and partly outside without a fixed location, within the limits of maximum duration only of daily and weekly working hours, deriving from the law and collective bargaining*".

Furthermore, agile work, as conceived in its legislative origin, is strictly connected to organisational autonomy. As many empirical studies have highlighted, the benefits of organizational flexibility are fully realized only if workers decide autonomously where, when and how to perform work, without constraints imposed by the management. With this regard, it is important to highlight how the use of technologies can amplify the exposure of "agile workers" to pervasive forms of control by the employer[6].

Telework regulation

In Italy, telework has a distinct regulation in the public and in private sectors.

The Law 191/1998 and then the DPR (Decree of President of Republic) n.70/1999 regulate teleworking in the **public sector** and was originally aimed at modernising public administrations[7]. Within this legislative framework, the term telework refers to a working activity performed outside the workplace in any suitable place, with the prevailing use of ICT for guaranteeing the connection with public administrations. If the legislative source provides for the instructions on how to identify the objectives that each teleworking project has to pursue, what technologies to be used, the number of employee to be involved and all the operative and methodological issues, the Framework Agreement signed on 23 March 2000 by the social partners in the public sector[8] defines the criteria and methods for the assignment of public employees to teleworking projects and the economic and normative treatment to be applied (health and safety, limits in power of control, retributions and trade union rights)[9].

A more recent attempt was made to promote a sort of telework by default in the public administrations with Law n. 221 of 17 December 2012. The main purpose behind the law was to

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[5] G. Chiaro, G. Prati, M. Zocca, Smart Working: dal lavoro flessibile al lavoro agile, in Soc. lav., 2015, p. 72
[6] R. Albano, S. Bertolini, Y. Curzi, T. Fabbri, T. Parisi, DigitAgile: l'ufficio nel dispositivo mobile. Opportunità e rischi per lavoratori e aziende, Osservatorio MU.S.I.C., Working Paper Series n. 03-2017, p. 7 ss
[7] The Presidential Decree No. 70 of 8 March 1999 defines the organisational measures for implementing telework and gives a specific definition of it: (art. 2, c. 1, lett. b), teleworking is characterised by "performing work in any place deemed suitable, placed outside the public administration's premises, where the work activity is technically possible, with the prevailing support of information and communication technologies, allowing connection with the public administration where the work is expected".
[8] Aran per the employers' side and CGIL, CISL, UIL, CONFSAL, CISAL, COSMED, CIDA from the workers' side.
[9] The Framework Agreement includes three different models of teleworking: teleworking from home, mobile teleworking and work in telework centres. Alternating telework is also admitted.

undertake a real reversal of perspective, which would have seen teleworking pass from exception to ordinary rule. But even this provision was largely disregarded and, therefore, a few years later the legislator intervened again with article 14 of Law no. 124/2015, entitled "Promotion of work-life balance in public administrations" (the so-called Madia Reform of the Public Administration). The reform establishes that public administrations must adopt organisational measures such as new spatial-temporal forms of work in order to support work-life balance and that at least 10% of public employees should make use of this organisational solutions within three years on a voluntary basis. The law introduced also the Organisational Plan for Agile Worl (Pola, Piano Organizzativo del lavoro Agile) to be included in the Performance Plan of the Public Adminsitrations: through the Polas the legislator aims at reinforcing the message within Public Administration that agile work does not arise from improvisation but from programming.

In **private sectors**, conversely, the main normative source regulating telework is the cross-sectoral Agreement of 9 June 2004[10] which fully implements, with a few marginal modifications, the European Framework Agreement on Telework signed on 16th July 2002[11]. According to the 2004 collective agreement, 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*". The main aspects of telework in private sectors, as designed in the 2004 collective agreement, are as follows:

- It should be on a regular basis that theoretically seem to leave aside all those forms of occasional teleworking. Nevertheless, it should be pointed out, in this regard, that a consistent number of collective agreements has introduced a classification of the different categories of telework depending on the place in which the activity is performed (workers' home, work centres, company hubs, mobile teleworkers). That classification suggests that in its operative transposition, telework should be not simply considered as a form of homework but different levels of "agility" are envisaged, in coherence also with the general regulation provided by the European social partners;

- Telework is voluntary and the choice shall be reversible for both employers and employees;

- Teleworkers benefit from the same rights and economic and occupational treatments as all the on-premises workers. Employers are responsible for ensuring the same social and economic treatments to teleworkers, for data protection, for surveillance, for work equipment, for health and safety and training. It is of interest to notice that the majority of collective agreements regulate surveillance and control measures according to the standard hierarchical model based on direction and control without adopting, or only rarely, result-oriented approaches;

- Teleworkers should manage autonomously the organisation of their working time within the framework of the legal and contractual provisions and in accordance with the company

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[10] The cross-sectoral agreement was signed by Confindustria, Confartigianato, Confesercenti, CNA, Confapi, Confservizi, ABI, AGCI, ANIA, APLA, Casartigiani, CIA, CLAAI, Coldiretti, Confagricoltura, Confcooperative, Confcommercio, Confetra, Confinterim, Legacooperative, UNCI e CGIL, CISL, UIL

[11] Cfr. ETUC, Framework Agreement on Telework – Interpretation Guide, disponibile all'indirizzo https://resourcecentre.etuc.org/linked_files/documents/Telework%20-20ETUC%20interpretation%20guide%20EN.pdf

directives. Although the general regulatory framework seems to ensure wide margins of self-organization, the effective implementation is more rigid;

Agile work (smart work) regulation

In Italy, agile work or smart work is regulated by Law 81/2017 but before its approval many collective bargaining experiences have been concluded in different sectors (bank and insurance, food and beverage, metalworking, energy). These pioneering collective agreements on agile work covered all organisational and employment issues of remote work (wages, time and space of the working performance, health and safety, control and surveillance, confidentiality[12]) and had two different goals. Formally, they were oriented to promote work-life balance and productivity while encouraging a management by objective model. Informally, they tried to escape the (perceived) rigidity of the telework regulation. A more optimistic vision, nevertheless, might suggest that the rationale of the legislative source is the systematization of different negotiation experiences in a legislative framework to overcome the absence of the *erga omnes* validity of national collective bargaining.

The statutory law (Law 81/2017) covers both private and public employees and refers only to subordinate workers. The use of digital and ICT devices is possible but not compulsory: technology has a supporting function. As for telework, agile work shall be voluntary and that means that employees' consent is necessary and cannot be overcome. The qualifying element of the agile work is the flexibility (mobility) in time and space of its execution, or the so-called space and time de-structuring. The only reference to the collective bargaining included in the Law 81/2017 regards working time flexibility that must be set in compliance with the terms provided for by statutory law or collective bargaining.

The distinction between agile work and telework is still highly debated in Italy and many interpretative perspectives have emerged. According to a part of authors, agile work differs from telework as it cannot be performed on "a regular basis", as the latter. For some other authors[13], on the contrary, agile work is a form of telework, the so-called alternating telework, as the regularity of the work performed outside the employers' premises should be interpreted as not occasional. Another perspective looks at the use of ICT technology: as the use of ICT devices qualifies telework but not agile work, when agile work is performed as ICT mobile remote work it falls under the scope of telework regulation[14].

If the legislative source defines the legal framework, the determination of organisational and operative issues (working and resting time, place of the working performance, control and surveillance methods, disconnection, use of ICT and digital devices) is left to the individual agile work pact among the parties, and so the employer and the single employee. If the rationale of the individual pact is clearly the adapting of agile work to the personal and company needs, it certainly represents a critical aspect in terms of balance of negotiating power, discrimination and spontaneity

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[12] M. Tiraboschi - E. Dagnino – P. Tomassetti – C. Tourres, Il "lavoro agile" nella contrattazione collettiva oggi, Working Paper Adapt, n. 2/2016,
https://moodle.adaptland.it/pluginfile.php/26070/mod_resource/content/0/lavoro_agile_contrattazione_wp_3.2.pdf
[13] P. PASCUCCI, La tutela della salute e della sicurezza sul lavoro, Aras Ediz., Fano, 2014, 60.
[14] Iacopo senatori and Carla Spinelli (2021), ICT-enhanced remote and mobile work, National report on Italy, IReL – Smarter Industrial Relations to Address New Technological Challenges in the World of Work (ref VS/2019/0081).

of the employees' consent. It is worth noting that also all the technical measures necessary to ensure the right to disconnect from digital devices should be defined within the individual agile work pact, whilst in other countries (France and Spain) it is deferred to collective bargaining.

While all the pioneering collective agreements introducing forms of agile work before 2017 have not specifically regulated all the risks related to the prolonged use of ICT tools (such as time porosity, technostress, zoom fatigue), the law 81/2017 ensures some first rudimental provisions to be integrated by the individual agile work pact. As regards health and safety, teleworkers must be informed once a year on the specific risks of working outside the employer's premises and fall under the protections provided for by the Legislative Decree 81/2008 (the legal framework on health and safety at work) every time that their work is performed using technological devices.

1.2 - Collective bargaining and remote work

Collective bargaining has always played a fundamental regulative role on remote work in Italy. All the operative and substantive provisions related to telework have been formally introduced by the multi-level system of collective bargaining originated by the European Framework on Telework. About telework, the law has rarely interfered with contractual rules. Most of the times, it has supported the regulatory function of collective bargaining in telework by requiring that all teleworking arrangements should be mediated by social partners in collective agreements. Company-level bargaining has mainly dealt with specific organizational patterns like working hours and the modalities of the rotation between remote and on-site performances, adapting the standard rules by means of increasingly flexible arrangements tailored on company-specific needs.

With the 2017 Act on "agile work" a new process of "legification" in the regulation of remote work has begun. As a matter of fact, some pioneering company collective agreements concluded since 2010 have exerted a relevant influence on how the Law 81/17 conceived "agile" work in its provisions. Before Law 81/2017, smart working regulation was present in only six national sector agreements and 24 company agreements[15], which anticipated the regulatory provisions[16]. The main intent behind all the agreements concluded before Law 81/2017 was to establish flexible organisation arrangements different from telework. In its attempt of pushing company to go beyond telework as a form of "remote work", the legislation on agile work has also pursued a strategy of marginalisation of collective bargaining. As a matter of fact, Law 81/2017 never mentions collective bargaining as regulatory source of agile work: individual agreements are the only formal means to translate the legislative principles and guidelines into detailed operational arrangements. From an industrial relations perspective, the Law regulating agile work may be perceived as a breaking point in the acknowledgment of a regulatory function of collective bargaining in remote work.

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[15] Tiraboschi, M., 2017, *Il lavoro agile tra legge e contrattazione collettiva.* Available at:
https://moodle.adaptland.it/pluginfile.php/30724/mod_resource/content/1/Tiraboschi_Lavoro_Agile.pdf.
[16] All company agreements provided for individual agreement between the parties on the use of smart working, the implementation of the activities inside and outside the companies, the absence of a pre-defined working time schemes for the part of work performed outside the office and the definition of specific categories of recipients entitled to ask for smart working

Negotiation issues of remote work

The 2004 cross-sectoral agreement on telework includes the possibility to conclude specific collective agreements at the "competent level", that should be interpreted in the Italian industrial relations system as the industry-wide collective bargaining[17]. Telework schemes have been introduced in several sectoral agreements since 2004 covering a wide share of labour force (trade, banking telecommunication, textile and so on) but the contents are pretty much the same. Only a small part of the collective agreements attempts to adapt the contents of the 2004 cross-sectoral agreement to the specific sectoral needs. That homogeneity over time suggests that collective bargaining on telework has been more formal than substantial without any concrete adjustment to the ICT technological development that has occurred in the last decades. Company-level agreements are also present but mainly concentrated in large groups of the banking, ICT and energy sectors and are firstly aimed at regulating the alternation of periods of remote and on-premises work, specific training for teleworkers, the allocation of equipment costs, monitoring and assessing the work performance and eligibility criteria for teleworkers[18]. This aspect clearly shows a transposition process in its operative translation from the sectoral level to the company level. A transposition process that has been repeated also during the pandemic regarding the use of "agile" work". Telework, and all forms of remote work, has been originally conceived to balance the need of organisational efficiency and personal wellbeing but in practice has often been used as a flexible form of labour market to be activated in specific circumstances (as alternative to layoffs, or transfer of plant or as a measure of social support addressed to "fragile" categories of workers).

Although more than ten years separate the regulation of telework and the legislation of agile work, collective bargaining has carried out a "minimalist" implementation of the innovative elements proposed by the legislation on agile work. Autonomy is often reduced to a discretionary choice to adopt a time schedule within a given reference framework, coupled with an obligation of availability, and the adoption of a management by objectives approach, promoted by the law on "agile work", is more a formal commitment.

In terms of right of disconnection as well, it seems that the collective agreements are more focused on supporting an organisational culture oriented to develop a correct digital behaviour than providing strict enforcement mechanisms, such as the automatic shutoff of all digital devices[19].

The initial formal distance between telework and agile work seems to disappear when comparing empirically the two forms of remote work. On one side, the implementation of agile work is less dynamic than what the legislative source provides for and, on the other side, the application of telework is less rigid than what it was supposed to be. The main difference between the two schemes of remote work does not refer to the operative application but should be found in the rules concerning the distribution of the responsibilities on flexible work organisation between employers and employees. If the Framework Agreement on Telework clearly states the accountability of the

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[17] Iacopo senatori and Carla Spinelli (2021), ICT-enhanced remote and mobile work, National report on Italy, IReL – Smarter Industrial Relations to Address New Technological Challenges in the World of Work (ref VS/2019/0081).

[18] Although the majority of collective agreements puts all the workers in the same standing, a part of them provides for special prerogatives to some specific categories, such as caregivers, commuters, physically impaired worker and older workers

[19] Iacopo Senatori (2021), Italian Industrial Relations and the Challenges of Digitalisation in Hungarian Labour Law E-Journal 2021/2 http://www.hllj.hu

employers for any aspect of the employment relationships (health and safety, equipment costs, equal treatment), the normative source on agile work establishes that most of the organisational issues are defined by individual agreements between the single employee and the employer, exposing the former to higher risks.

1.3 Pre Covid-19 diffusion of remote work in Italy, related opportunities and threads

According to the Smartworking observatory of the Polytechnic of Milan, in 2019 the number of smart-workers[20], and so those employees who enjoy flexibility and autonomy in choosing the time and place of work, is about 570 thousand, up 20% comparted to 2018. According to Eurofound (2020), only 10% of Italian employees work from home at least several times a week before the pandemic, against 15.8% on average in the EU 27[21]. Eurostat in its survey on work from home conducted on February 2020, and so just before the Covid-19 outbreak, ranks Italy at the bottom of the EU27 comparison with 3.6% (5.4% in EU) employees involved in this type of working mode. And the scenario does not change if we consider only those who "sometimes" work from home (about 1,.2% in Italy and 9.8 in EU).

One aspect to pay attention is not only the number of employees effectively working from home but also the number of employees that potentially could work from home in order to understand how a unleashed increased of smart work can be uneven, on one side, and limited, to the other side. How wany workers are actually in a situation to perform work remotely? And what are the characteristics of this share of workers? Some authors[22] have tried to answer these questions combining more database[23]:

- Only 30% of the Italian workforce, or 6.7 million workers, have an occupation that can be done from home

- Agile work is feasible for 60% of high-skilled workers (scientific-academic professions and for technical professional) while for service occupations as well as elementary professions, the opportunities for remote working reduce drastically with variations ranging from 5% to 0%;

- Median wages of not-working from home occupations are largely concentrated in the range of €500-1.800 per month, while working from home occupations record median wages largely concentrated in the range of €1.000- 2.000 per month.

In 2019, 58% of **large companies** started Smart Work projects internally, a slight increase compared to 56% in 2018. To these percentages must be added 7% of companies that had already activated informal initiatives and 5% that planned to do so in the next twelve months. Of the remaining 30%,

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[20] The estimate is based on detection of a sample of 1000 workers representative of the population of employees, executives and manager who work in organizations with at least 10 employees.

[21] Eurofound, 2020, *Living, working and COVID-19 dataset, Dublin*, COVID-19 Series. Available at: https://www.eurofound.europa.eu/data/covid-19.

[22] Cetrulo, A., Guarascio, D. & Virgillito, M.E. The Privilege of Working From Home at the Time of Social Distancing. *Intereconomics* **55,** 142–147 (2020). https://doi.org/10.1007/s10272-020-0891-3

[23] The following results adapt and expand the methodology proposed by Dingel and Neiman (2020), who analyse the occupations that can be carried out from home in the US starting from the O*NET dictionary of occupations. The analysis for Italy is based on an integrated database that includes the ICP and the Italian National Institute of Statistics (Istat) Labour Force survey, updated in 2016.

22% declared future introduction probable and only 8% did not know if they would have introduced it or showed no interest. In large companies almost half of the structured Smart Working projects (49%) are already fully operational, while 36% are extending the possibility of joining a greater number of employees; only 15% have recently started projects and are in an experimentation phase. In half of the structured projects (50%), however, Smart Working is conceived only as remote work, while the other 50% adopts a more complete model which provides, in addition to the flexibility of place and time, also the rethinking of environments from a perspective of "smart office".

The first objective for large companies is the improvement of the work-life balance of workers, indicated by 78% of the sample, followed by the ability to attract and involve talents (59%) and the desire to ensure greater organizational well-being (46%). The main obstacles remain the lack of interest and resistance from bosses (50%) and fears for data security and under-digitized activities (both at 31%). On the other hand, the "*lack of awareness of the benefits deriving from Smart Working projects*" falls among the obstacles, which goes from 48% in 2018 to 27% in 2019, a sign of growing awareness and clarity of the positive effects achieved in many organizations. As for the number of remote days, the most frequent choice is the possibility of working remotely 4 days a month, in a quarter of cases 8 days a month, only 10% are allowed to work remotely without constraints. Regarding the flexibility of the working place, 40% allow employees to work from anywhere, but the most common option is the employee's home (98%).

Among **SMEs**, 2019 sees an increase in the spread of Smart Working: structured projects passed from 8% in 2018 to 12% in 2019, informal projects from 16% to 18%, but also the share of companies not interested in the subject has also increased (from 38% to 51%). The reasons that guide the activation of the projects are above all the improvement of organizational well-being, indicated by 1 out of 2 companies, and the improvement of business processes (26%). Among the reasons that instead induce 51% of SMEs not to show interest, the difficulty of transferring this model into their own companies (68%) and the resistance of the employers/managers (23%) stand out. These perspectives can be explained by the fact that in SMEs Smart Working is still associated with working from home and consequently is perceived as an unattainable model in sectors where the physical presence of the employee is considered indispensable, such as commerce or manufacturing.

The most significant growth was recorded among the **Public Administrations**: in one year in the public sector, structured Smart Working projects doubled (rising from 8% 16%), 7% of PAs had activated informal initiatives (1% in 2018), 6% intended to start them in next twelve months. The most advanced were the larger PAs, which in 42% of cases had already introduced structured initiatives and in 7% had activated informal initiatives. Despite these encouraging data, the delay remained evident, with nearly 4 out of 10 PAs with no Smart Working projects. It should also be emphasized that the Smart Working projects in the PAs were still limited in terms of internal diffusion since they involved on average 12% of the administration's population, near to that 10% that the "Madia directive" defined as the lower limit to adoption. This data seems to testify that many PAs had followed an approach of mere regulatory compliance. The limited implementation of Smart Working in the public sector as a new form of management by objectives is strictly connected with its substantial association with a pure work-life balance scope: the selection of the people to be involved in the project was mainly based on family needs, such as returns from maternity leave (in 70% of PAs) or the presence of disabilities (57%) and, only secondarily, taking into account the characteristics of the activities carried out by the person (57%).

A better work-life balance (78% of the sample), greater organizational well-being (71%) and an increase in productivity and quality of work (62%), are the first reasons that push PAs to adopt projects for Smart Working. The barriers indicated are instead the perception that it is not applicable to the specific realities (43%), the lack of awareness of the benefits (27%) and the presence of poorly digitized activities, linked to the use of paper documents and inadequate technology (21%).

2. Diffusion of remote work during Covid-19 in Italy and analysis of the industrial relations practices to regulate it

2.1 Remote work diffusion during the pandemic in Italy: sectoral, regional differences and characteristics of the workers involved

As outlined in section 1.3 of this paper, before the pandemic only 10% of Italian employees worked from home at least several times a week during the pandemic, against 15.8% on average in the EU and according to Eurostat data, Italy ranked at the bottom of the EU27 comparison with 3.6% (5.4% in the EU) of employees involved in this working mode. At the end of 2020, the Milan Politecnico's Observatory on smart working estimated at over 6,6 millions of workers in so-called emergency smart working[24] (or simplified) active in March 2020 (down to 5 million in September, equal to 33.8% of employees) and estimates that in the "new normal" the number will stabilize at 5.3 million.

At the beginning of the emergency, remote working concerned an audience of potential users much wider than usual and more classic smart worker profile (white collars in large companies), coming to include all permanent employees. The following figure shows the incidence of smart workers/ remote workers on the total of the potential ones in the observed period.

Figure 1 - Incidence of smart workers / remote workers on the total of the potential ones in the observed period
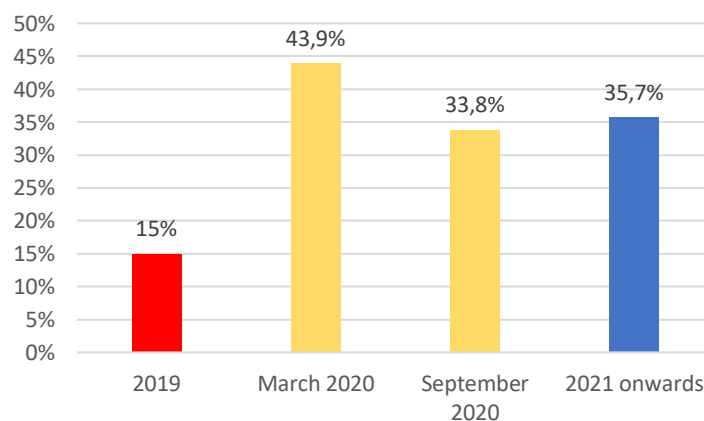
Source: own elaborations on Politecnico's Observatory

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[24] Please see section 2.3 on the legislative changes put in place after the Covid-19 pandemic.

According to the Milan Politecnico's Observatory[25], during 2021, with the advancement of the vaccination campaign, the number of smart workers progressively decreased, passing from 5.37 million in the first quarter of the year to 4.07 million in the third quarter. In September, in fact, there were a total of 1.77 million agile workers in large companies, 630 thousand in SMEs, 810 thousand in micro-enterprises and 860 thousand in the Public Administration. Structured or informal smart working projects are present in 81% of large companies (compared to 65% in 2019), in 53% of SMEs (in 2019 they were 30%) and in 67% of PAs (compared to 23% before -Covid).

This gradual return to the office does not generally mark a decline in Smart Working, on the contrary, at the end of the pandemic, organizations expect an increase in smart workers compared to the numbers recorded in September: 4.38 million workers are expected to operate at least in part remotely (+ 8%), of which 2.03 million in large enterprises, 700 thousand in SMEs, 970 thousand in micro-enterprises and 680 thousand in the PA.

In a survey conducted by the National Institute of Statistics (Istat)[26] in 2021 on Public Institutions, one in five public institutions declared themselves in favour of adopting structured Smart Working initiatives in a stable form after the emergency phase, one in two postponed the decision to subsequent evaluations while one in two Institutions out of four responded that they were against.

The variability between institutional types is strong. The greater propensity to use agile work in a structured form is found in central administrations (85.3%), public universities (85.7%) and metropolitan cities (78.6%). Provinces and regional councils and councils also exceed 60%. The considerable share of 48.7% of companies or bodies of the national health service that before the pandemic had introduced structured initiatives to a lesser extent (6.9%) than other types of administrations should be highlighted. On the opposite front, the administrations included in the non-economic public bodies (35.2%) and in the Other legal form (26.4%), as well as municipalities with less than 5.000 inhabitants (26%).

At the territorial level, the institutions that declare their intention to adopt structured Smart Working initiatives in the future are mainly located in the North-East and in the Centre of Italy, respectively in 20.2% and 19.5% of cases, against the average 16.7% national. Emilia Romagna stands out with 29,.%, followed by Lazio with 21.7% and Tuscany with 21.5%. In the same geographical areas there are most of public institutions that had introduced structured agile work initiatives before the health emergency. On the contrary, the percentage of administrations that reserve the right to evaluate or exclude this possibility is prevalent in the remaining divisions, particularly in the South.

Of the 2.454 institutions in favour of adopting structured Smart Working initiatives in the post-emergency phase, four out of ten plan to introduce a maximum share of people who could work in Smart Working, between 26 and 50%. One in four institutions indicates a maximum percentage of Smart workers within 15%.

Looking at the private sector, the results of the survey conducted by Istat in the autumn 2021[27], confirms that the spread of smart working or teleworking methods is decreasing compared to the

[25] https://www.osservatori.net/it/ricerche/comunicati-stampa/smart-working-italia-numeri-trend
[26] https://www.istat.it/it/files//2021/12/REPORT-ISTITUZIONI-PUBBLICHE-2020.pdf
[27] https://www.istat.it/it/files//2022/02/REPORT-COVID-IMPRESE_2022.pdf

survey carried out in the previous autumn, which had seized a phase in which the exacerbation of the health emergency had determined containment measures and unfavourable behaviours to work in the presence.

The share of companies reporting the use of remote working methods was 6.6%, as compared to 11,3% recorded in the previous survey (over 20% between March and May 2020). The sectoral differences remain very large and rather stable over time. Remote work is most frequently used by service companies: almost one in ten companies declares to make use of it (14% at the end of 2020). Within the sector, a high share is found in the services of information and communication (34.3%), professional, scientific and technical activities (24.4%), education (19.0%) and financial and insurance activities (17.4%). In industry, the share of companies that make use of this form of work was limited (5.8%) and far lower than that observed at the end of 2020 (11.6%). In trade and construction, the incidence of businesses in smart working fell from about 7% in October 2020 to less than 4% in 2021. Overall, the use of these types of work, although decreasing in all classes of employees, is much more frequent as the size of the company increases: 4.4% of micro-enterprises and 10.9% of small companies declare that they use remote work while the share reaches 31.4% respectively for medium-sized companies and 61.6% for large companies. The difference is observed in all the main sectors: the share of large companies that claim to make use of smart working is 65% in industry and in construction, compared to 50.8% in trade and 61.9% in other services.

In the same report, it is pointed out that although smart working and teleworking were used less frequently in the second part of 2021 compared to the same period of 2020, and although there is still a large part (in average more than one in two) which does not report any effects on the activity, companies report an improvement generalized as regards the perceived net effects of the use of these forms of work. This is especially true for the well-being of the staff who, thanks to a significant increase in respect a year earlier, it became the dimension with the balance between positive and negative opinions the most favourable (equal to 42.5 percentage points compared to 22,8 points in 2020).

An improvement in assessments can also be observed with regard to labour productivity, which now registers a balance positive, and to operating costs, for which the containment effect prevails. However, the net effects on efficiency in the management of operational processes remain negative (balance of -10,2 percentage points) and those relating to the interaction, collaboration and communication of staff (-19,0) but, also for these two variables, a much less unfavourable situation emerges than that of a year earlier. Finally, the judgments on the impact of using remote work on investments in staff training show a limited positive balance (+7,5 percentage points) almost unchanged over time. The judgments relating to the effect of remote work on staff well-being marked a significant improvement compared to a year earlier in all the main production sectors.

Finally, looking at the key characteristics of tele-workers, an Inapp study released at beginning of 2022[28], based on a survey conducted between March and July 2021, showed that differently from the first year of the pandemic, where a larger percentage of women as compared with man worked remotely, the percentage of male and female working at least one day remotely is almost the same (respectively 32% and 33%). Instead, the educational qualification is a discriminating element with

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[28]https://oa.inapp.org/xmlui/bitstream/handle/20.500.12916/3420/INAPP_Il_lavoro_da_remoto_modalit%c3%a0_att uative_strumenti_punto_di_vista_dei_lavoratori_PB26_2022.pdf?sequence=4&isAllowed=y

54.5% of the employed with a degree or qualification post-graduate worked remotely, compared to 14,6% of those who have at most the middle school certificate. It is clear that this data is strongly affected by the relationship between the qualification and the profession carried out which, in some cases, does not allow the work to be carried out in a place other than the company's one.

2.2 Key issues and problems in the remote work arisen during the pandemic[29]

In general terms, the massive and sudden adoption of home working reinforced some of the problems related to a working mode that was not very diffused and well-regulated before the pandemic[30]. According to some authors[31], it can expose to the risk of an increase of employer's power over individual workers to the detriment of public regulation and collective bargaining. The public sector envisaged several key problems in the massive shift towards remote working as in this sector was almost inexistent before the pandemic and in most of its sub-sectors and agencies the lack of technological equipment as well as digital skills were significant. From this perspective it is worth to look at what happened to the education sector: in this case remote working has heavily deconstructed public service, either in organizational modalities, with exposure to bad conditions of work for teachers and of learning for students, with an increased social inequality due to access and use difficulties of technologies and non-uniformity of methodologies, presenting obstacles to the affirmation of the fundamental right to education[32].

Most of the studies conducted during the pandemic of Covid-19 in Italy agree on the emergency nature of the situation and highlight both opportunities that could be associated with better organization of smart working following the emergency phase as well as the critical aspects that look to be structural and so need to be controlled by means of legislation and collective bargaining.

According to a survey conducted by the Milan Politecnico's Observatory[33] overall, the spread of Smart Working, albeit in emergency, had a positive impact on workers: 39% have improved their work-life balance, 38% feel more efficient in carrying out their duties and 35% more effective, according to 32%, trust has grown between managers and collaborators and for 31% the communication between colleagues.

However, the continued pandemic and long periods of forced homework have also had some negative repercussions. The percentage of fully engaged smart workers (i.e. linked to the company and attached to their work, as well as satisfied) has further decreased, passing from 18% to 7%, remaining however, albeit slightly, higher than that of other workers, which is equal to 6%. Technostress (i.e. the negative behavioral or psychological impacts caused by the use of

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[29] This section is largely based on the literature review by Di Nunzio D. (2021), "Lavoro agile, forme organizzative e soggettività del lavoratore", in Carabelli U. e Fassina L., Smart Working: Tutele e condizioni di lavoro, Seminari della Consulta Giuridica CGIL, N. 4.

[30] Allamprese A., Pascucci F., 2017, La tutela della salute e della sicurezza del lavoratore «agile», in *Rivista Giuridica del Lavoro*, n. 2, pp. 307-330.

[31] Alessi C., Vallauri M.L., 2020, Il lavoro agile alla prova del Covid-19, in Bonardi O., Carabelli U., D'Onghia M., Zoppoli L. 2020, a cura di, *Covid-19 e diritti dei lavoratori*, Roma, Ediesse, pp. 131-152.

[32] Di Nunzio D., Pedaci M., Pirro F. e Toscano E. 2020, *La scuola «restata a casa». Organizzazione, didattica e lavoro durante il lockdown per la pandemia di Covid-19*, Fondazione Di Vittorio, Working Paper FDV, n. 2.

[33] Op. cit.

technologies) affected one in four workers, to a greater extent smart workers (28% versus 22% of other employees), women (29% versus 22% of colleagues) and managers (27% against 23% of collaborators). Some possible negative effects of technostress are the worsening of the work-life balance, efficiency and overworking. Overall, overworking (i.e. dedicating a large amount of time to work activities neglecting moments of rest) involved 13% of workers and to a greater extent the smart workers than other workers (17% vs.9%), more women than men (19% versus 11%) and more managers than collaborators (19% versus 9%).

These results tend to be confirm by a research by the Di Vittorio Foundation (2020), conducted with the National CGIL through an online questionnaire (6.170 respondents, 66% private sector, 34% public sector; females 65%, male 35%), notes that 82% of the sample lived the experience of working from home for the first time, starting to do it in the emergency phase for the Covid-19 epidemic, and emerge numerous critical issues for working conditions, such as intensification, the difficulties in conciliation, the strengthening of inequalities gender, the obstacles in accessing tools and technologies, in a context of reduction of spaces for participation and negotiation (smart working was introduced in 36% of cases unilaterally by the employer, in 37% it was individually agreed with the employer, and in 27% through collective bargaining with the union).

According to the Istat Census on Public Institutions[34] Smart Working has had the greatest positive impact on the aspect of worker satisfaction and well-being, thanks to improvement of the balance between professional and private life.

The study also shows that working method adopted during the emergency phase by Covid-19 had no particular repercussions in terms of communication between colleagues. The frequency of interactions within the team of work remained unchanged according to what was declared by 50% of public institutions while it increased for 30.5% of them, with peaks exceeding 61% in the case of State Administrations and Universities, that is to say for the public administrations that have most distinguished themselves for having provided staff in service all the digital tools and skills needed to work remotely. Only 12.1% of the institutions complains of a decrease in interactions within his work team up to a maximum 15% in the case of municipalities over 5,000 inhabitants. A residual 7.5% did not know how to answer.

A study conducted by Forum PA (2020) via survey (5.225 respondents of which 4.200 public employees) shows that the majority of respondents (88%) judge the experience positive and 61.1% believe that this new culture, based on the flexibility and cooperation within entities, between entities and in relations with citizens and businesses, it will prevail even once emergency phase is over.
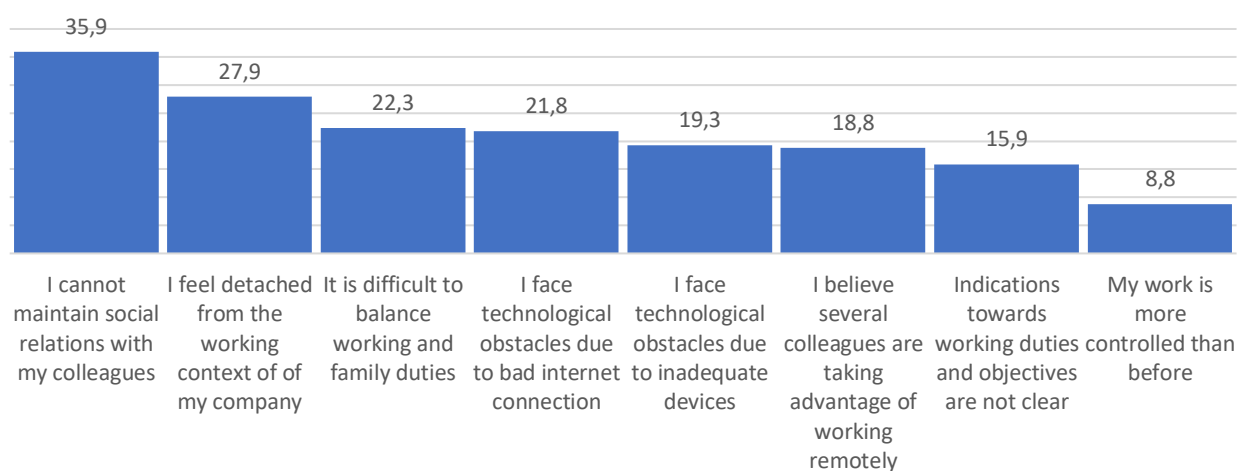
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[34] Op. Cit.

Figure 2 – Positive aspects of remote working as experienced so far during the pandemic
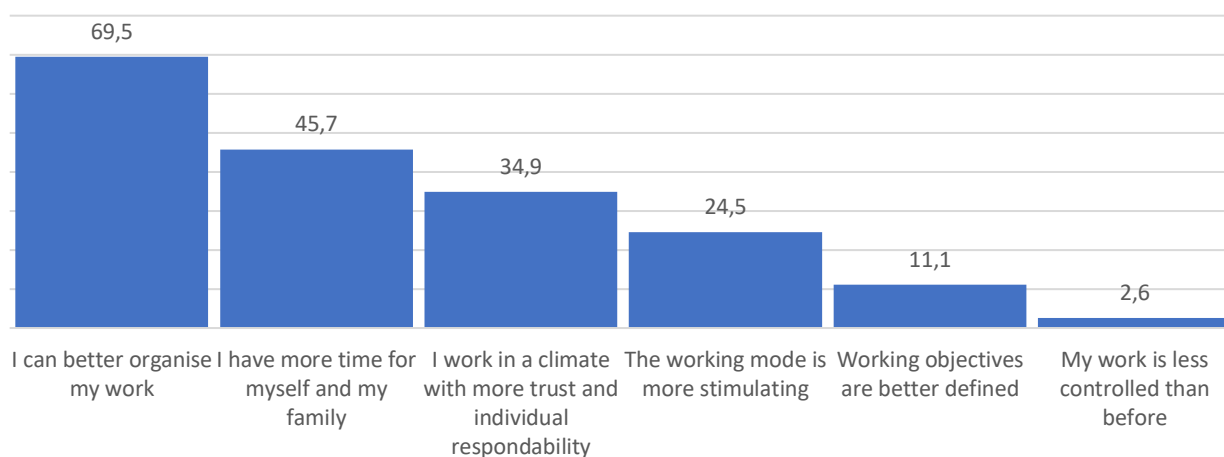
Source: own elaborations on Forum PA (2020)

Figure 3 – Negative aspects of remote working as experienced so far during the pandemic

Source: own elaborations on Forum PA (2020)

Moving the attention on the private sectors, some studies[35] tend to confirm both the positive and the negative aspects of remote working pointed out by the Politecnico's Observatory: stringer creativity, the home-work conflict, social isolation and exhaustion from work, as well as the will to continue to adopt these forms of work also in future. Even in the investigations from which strongly critical analyses emerge[36], most of the respondents (95%, out of a sample of 2,846 questionnaires) would like to continue the work experience in smart working, possibly establishing a good balance between remote and in presence work, even if considers necessary to move towards a voluntary scheme of adoption by workers and intervene on numerous critical aspects, such as the need to redefine the overall organizational model. In fact, although the possibility of reconciling work and private life can be perceived by workers as an opportunity, as well as the ability to work following

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[35] Garlatti Costa G., Bertoni I., 2020, Smart working forzato e massivo durante l'emergenza Covid-19 ed impatti sulla creatività individuale: uno studio empirico, *Economia e Società Regionale*, n. 2.

[36] Rete Lavoratrici e Lavoratori Agili, 2020, *Inchiesta sul lavoro da remoto*, Rapporto di ricerca.

the restrictions on the mobility for the Covid-19 epidemic, the risks of smart working there are many: isolation, technological and organizational difficulties, the trend towards a centralization of decision-making processes, the intensification of rhythms, the deconstruction of times with an erosion of the separation between work and private life[37].

With this regard should be specifically underlined gender inequalities, considering that in Italy family duties weight much more on women than on men, and wage inequalities, with greater opportunities for higher-wage workers (more often male employees, older)[38]. Smart working in the epidemic phase has reinforced inequalities not only between men and women but also between women with or without care tasks, especially for children.

2.3 From the problem to the solution: industrial relation practices to address the key organizational issues arisen in the remote work during the pandemic

Before looking into the industrial relation practices put in place to address some of the key organizational issues arisen in the remote work during the pandemic, we illustrate the legislative changes of remote work established as a reaction to the Covid-19 outbreak.

Deregulated agile work during the pandemic

Due to the health emergency related to Covid-19 outbreak, the normative framework on remote work has been drastically simplified and amended both in the private and in the public sectors.

In the private sectors, the new simplified regime deviates significantly from the ordinary ruling system, as designed by Law 81/2017, in two fundamental aspects. In the voluntary activation of agile work: agile work can be activated also by a unilateral employer's decision without the formal employee's consent expressed by the individual agile work pact, in accordance with the protocol concluded by the national social partners on 24 April 2020 to contrast the diffusion of COVID-19 in the workplaces. In the extension of the right of agile work with particular attention to workers with care responsibilities and workers with disabilities[39]: if it is compatible with the specific job, the employer is obliged to accept every request coming from an eligible worker.

In the public sectors, agile work was declared the ordinary way of carrying out work in the public sector (Ministry Public Administration Directive No. 2/2020). Nevertheless, while turning into the ordinary mode of work, the agile work has been strongly deregulated from its ordinary structure. Deregulated in its nature, as it was mainly conceived as a health measure and, furthermore, oriented to guarantee the public service continuity. Deregulated also in its form, as it was mainly home-

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[37] Tripi S., Mattei G., 2020, *COVID-19 e Pubblica Amministrazione: implicazioni dello smart working per il management e per la salute mentale dei lavoratori*, DEMB Working Paper Series, n. 171.
[38] INAPP, 2020, *Gli effetti indesiderabili dello smart working sulla disuguaglianza dei redditi in Italia*, Roma, INAPP Policy Brief n. 20.
[39] Disabled workers, workers with immunodeficiencies and people who live with them, workers in other conditions of health vulnerability that may increase the risk of being affected by COVID-19; parents of children under the age of 14 affected by school closures.

working and it could be activated unilaterally by Public Administrations which is the most relevant change in agile work regulation (Art. 87, DL n. 18/2020, conv. by Law No. 27/2020).

Trade unions have harshly criticized this decree, as it would leave the regulation to the discretionary power of the public managers. Trade unions claimed for the central role of collective bargaining with reference to all aspects of the agile employment relationships and, firstly, to the most controversial aspects related to the economic and regulatory treatment to be applied to agile workers: overtime and leaves, the attribution of meal vouchers, the responsibility for the use of ICT equipment, data protection and privacy issues, the right to disconnect. The legitimacy of the trade unions' request is also grounded on the structure of the sources of law in the public sector, which leaves a limited space for intervention to individual autonomy, substantially restricted to the genetic phase of the employment relationship, due to the principle of equal treatment that public administrations are required to observe towards their employees (art. 45, Legislative decree No. 165/2001). Nevertheless, it is also important to stress the role of collective bargaining at national level, considering the different forms of public administrations in terms of both organisational structure and administrative functions. However, it is necessary to remark that the purpose of the collective agreements should be to define a common regulatory framework, more articulated than the generic legislative dictate, leaving to the agile work pact the adoption of the most appropriate measures, in relation to public administrations' organisational goals and employees' personal needs[40].

The so-called "Relaunch Decree" (Decree Law No. 34/2020, conv. by Law No. 77/2020, which amend Art 14, l. n. 124/2015) states that by 31 January of each year (starting from January 2021) the public administrations must draw up, after consulting the trade unions, the Pola (Organizational Plan for agile work). The POLA identifies the implementation methods of agile work by providing, for the activities that can be carried out in agile mode, that at least 60%[41] of employees can make use of them - a percentage then reduced to 15% by the Extension Decree ("Decreto Proroghe", Law Decree 30 April 2021, n. 56) - and ensuring that they do not suffer penalties for the purposes of recognition of professionalism and career progression[42].

Collective bargaining and remote work during the pandemic

Moving the focus to the collective bargaining during the pandemic and the industrial relation practices selected, it should be noted that during the pandemic an intensive collective bargaining activity has been carried out at both national and company level. With regard to the national level, the last renewal of the metalworking collective agreement (February 2021) agreed to entrust a bipartite commission with the task to lay down a specific regulatory framework. Similarly, specific sectoral frameworks on agile work have been established in telecommunications (30 July 2020) and insurance sectors (21 February 2021). Furthermore, some trade unions confederations (Cgil) and

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[40] Zoppoli L., Dopo la digi-demia quale smart working per le pubbliche amministrazioni?, WP C.S.D.L.E. "Massimo D'Antona" n. 421/2020.it.

[41] If the Plan is not adopted due to the inertia of the public administration, the use of agile work must in any case be allowed to at least 30% (now 15% with the Extension Decree 56/2021) of employees, who make a request.

[42] At the end of February 2021, the data of the monitoring carried out through the Performance Portal of the Public Function Department were disclosed. From these data it emerged that 54 out of 162 of Public Administrations, equal to 33.3%, had published the POLA.

also some national Union Federations (Fim-Cisl) produced specific guidelines aimed at supporting collective bargaining on remote work at the company level .

The rich production of collective bargaining experiences at the company level has raised several analytical issues:

- In their preambles, many company-collective agreements stress the role of agile work as an a new "philosophy" of production, rooted in the "responsibilization" of workers, the result-oriented attitude and a condition of mutual trust (e.g. HBG Online gaming 3 February 2020, trade and services sector; FCA 12 March 2018, Automotive/Metalworking). But not only. Many of them emphasizes how agile work is expected to improve workers' well being (Coop Alleanza 3.0 16 December 2020), reduce the environmental impact (e.g. Poste Italiane 18 December 2020), re-organize promptly the production process in case of a public emergency (TIM, telecommunications, 4 August 2020). Agile work is mostly included into the broader context of "company welfare" policies as an instrument oriented to improving workers' wellbeing and their protection from social risks, paying attention to specific vulnerable categories of workers (Hera, energy and chemical sector, 4 June 2020). Nevertheless, the same agreements provide for a widespread and "structural" use of agile work, reinforcing the idea that agile work should favour a progressive shift of the organisation model for all;

- Another recurring issue is related to the definition of agile work: whilst for the law the ICT implication is only possible, some company agreements regard it as a prerequisite (Coop Alleanza 3.0);

- A big part of the agreement reduces the choice of workplace that the loose legal definition would seem to leave to workers. The limitations are mainly due to privacy, health and safety and data protection. And although the employer has not the power to mandate a specific choice, the duty of prior communication that in many cases is imposed on the worker grants the latter a limited but significant margin of interference: with all these limitations, "work anywhere" it looks more like a theoretical aspiration;

- The mass experience of collective bargaining on agile work during the pandemic also imposes some limitations to the theoretical lack of time constraints that the law entails. Most agreements allow for the free allocation of the activity within a given reference time (normally the 8-20 lapse), in which the agile worker is basically permitted to adopt an intermittent and discontinuous schedule. However, such flexibility is usually mitigated by the obligation to remain available for calls and to stay on duty in certain time slots. Only a few agreements provide for an overall reorganization of work patterns based on the lack of rigid schedules, applicable equally to the performances executed on the premise and remotely (Bayer 2021);

- About disconnection, collective agreements on agile work mostly adopt a "soft" normative approach, consistently with the recommendations given by the European Framework Agreement on Digitalisation of June 2020 (e. g. Fastweb 29 September 2020, telecommunication sector; Credito Cooperativo 21 September 2020, banking sector). Only in a few cases the worker is specifically granted the right to log-off and deactivate the work

devices (e.g. Poste Italiane 18 December 2020). Interestingly, in one case (Coop Alleanza 3.0) disconnection is qualified as a right/duty;

- As far as control and surveillance are concerned, collective agreements reaffirm the employer's obligation to respect the limits and conditions set out by article 4 of the Workers' Statute, which is referred to also in the agile work legislation (article 21, law n° 81/17). Only a few of them expressly commit the employer not to install remote surveillance devices (HBG Online gaming; Findomestic; Eataly). Article 4 is indeed the central provision on employee remote surveillance in Italian labour law and collective bargaining, even during the pandemic, has not attempted new integration solutions;

- Regarding union rights and collective relations, many agreements guarantees the same treatment to agile workers (e. g. ENEL 9 June 2020; TIM 4 August 2020; Fastweb 2020). Finally, on worker participation, trade unions and/or works councils are often involved in the periodical monitoring of the implementation of agile work in the company (E.g. Ericsson 7 February 2019; Poste italiane 18 December 2020; Fincantieri 17 July 2020) through the constitution of joint committee.

Relevant Industrial relations practices on remote work

As is possible to grasp from some aspects of the collective bargaining occurred after Covid-19 outbreak, the pandemic has radically changed not only the use and the forms of remote work at the workplace but also the relationships between social partners and the same concept of remote work. If before the pandemic, smart work was mainly perceived as a form of corporate welfare addressed to specific categories of workers, now it is a common need of workers and companies that cannot be neglected by social partners at the national level. Whit this purpose, two industrial relations practices have been selected:

- The tripartite agreement between the Ministry of Labour and main Trade Unions and Employers' Associations in the private sector signed on December 7th 2021: the "National Protocol on Agile Work"
- The new national collective labour agreement 2019-2022 between ARAN (National Agency representing Public Administrations) and the main Trade Unions on Public Administration Central Functions.

The National protocol on agile work

The tripartite agreement on agile work signed on 7th December 2021 by the Ministry of Labour and the main trade unions and employers' organisation representing the private sector[43] may be considered a step forward in the formal acknowledgement of the role of collective bargaining as a regulative source of agile work. As a matter of fact, the protocol emphasizes the "pivotal role" of collective bargaining, whose function was absolutely neglected in the Law 81/2017, and in the art. 15 the social partners agree on the need to encourage the correct use of agile work also through public incentives for companies that regulate agile by collective bargaining.

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[43] Cgil, Cisl, Uil, Ugl, Confsal, Cisal, Usb, Confindustria, Confapi, Confcommercio, Confesercenti, Confartigianato, Cna, Casartigiani, Alleanza cooperative, Confagricoltura, Coldiretti, Cia, Copagri, Abi, Ania, Confprofessioni, Confservizi, Federdistribuzione, Confimi e Confetra

The Protocol on agile work finds its justification in the firm and common belief that such a fluid and rapidly growing phenomenon cannot be rigidified through a law. The protocol thus intends to lay the foundations for creating a climate of tripartite trust on which to provide guidelines for collective bargaining at the national, sectoral, company and local level.

The Protocol confirms that the choice of agile work must be made on a voluntary basis and is subject to an individual agreement, as defined by articles 19 and 21, l. n. 81/2017 and as established by collective agreements, where regulated. It is still unsolved the question on how to conciliate the voluntary nature of the individual agreement and the structural presence of agile work in the work organization.

Differently from what is provided for by the Law, the Protocol clearly indicates that the individual agreement should include specific contents:

- Duration, alternation of on line and in-premises working performance, rest times and disconnection. More precisely, agile work performance can be divided into time slots, identifying the disconnection range in which the worker is not allowed to provide the work performance. During the days of agile work, overtime shifts cannot be foreseen and authorized; during periods of illness, leave or holidays, the worker can deactivate their digital devices, inhibiting the exchange between individual rights and agile work;

- Work-places unsuitable for reasons of data security and confidentiality;

- work tools, the employer provides IT tools and bears all maintenance and replacement costs;

- forms of control and surveillance, personal data protection, confidentiality and union rights;

- training to guarantee all the agile workers equal opportunities in the use of ICT tools and professional enrichment

Concerning health and safety, agile workers are fully entitled of the protection ensured by the Law 81/2017 and the occupational health and safety obligations referred to in Legislative Decree no. 81/2008 and, furthermore, the employer guarantees, insurance coverage against accidents at work and occupational diseases, including those resulting from the use of video terminals, as well as protection against accidents while traveling, in accordance with the law.

The National collective bargaining agreement 2019-2022 on Public Administration's Central Functions

On the 9th of May 2022 ARAN, the public agency representing the public administration, and the most representative unions[44] signed the 2019 – 2022 Central Functions collective bargaining agreement. It is a very relevant practice that tried to regulate remote working in public administration, indeed it represents the first attempt in Europe to govern agile and remote work in a national level contract.

With regard to this contract, trade unions appear to have embraced these issues as strategic, both in terms of enhancing quality of working life, driving innovation within the public administration,

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[44] The unions signing this agreement were: Cisl Fp, Cisl, Fp Cgil, Cgil, Uil Pa, Uil, Confsal Unsa, Confsal, Flp, Cgs, Usb Pi, Usb, Confintesa Fp, Confintesa.

and improving the quality of services. This notion of a potential "win-win-win", in which workers, the agency and users all benefit from remote and agile work, appears to be driven by the lived experience of the COVID-19 pandemic, in which workers, forced to use new digital tools, were – in some instances – able to move away from a time—based concept of work to a more outcomes-based concept, and create new ways of providing better services, closer to citizens. The hope, then, appears to be able to define the concepts of remote and agile work, and create mechanisms, through collective bargaining and joint exam, that can result in the extension of remote and smart work to, potentially, all employees.

One of the over-arching priorities from the trade union perspective was to move the concepts of remote and agile work out of the niche realm, something that a manager would "concede" to a worker on the basis of an individual disadvantage (e.g., young children at home), to where remote and agile work were considered as equally legitimate ways of working, with respect to traditional office work. The second element in the trade union strategy was to shift from a notion of "who is 'smart-able'" to "what phases or cycles of work" are smart-able. By shifting from positions to activities, the aim is to potentially enable all employees, regardless of their specific role, to benefit from some degrees of agile or remote work.

The aim of the national level contract for the Central Functions is to provide definitions and establish clear guidelines within which remote and agile work can be further negotiated. The contract envisions this happening at the second level and using, in the words of one interviewee "the most advanced instrument we have by law: joint exam ("il confronto").

One of the most relevant issues related to the new contract is that it makes a distinction between agile and remote work. Substantively, agile work should be driven by objectives and maximum freedom for the individual worker, while remote work retains many of the features of traditional work arrangements (e.g., time not objectives are the key measure), providing flexibility with regard to where the individual worker carriers out their duties, but not necessarily over how or what duties to carry out (as in the case of agile work). The section on remote work makes reference to many of the clauses regarding agile work, including the requirement that the arrangement be voluntary and based on the stipulation of an individual agreement.

Therefore, while purely "agile" work means that employees work towards objectives, without regard to time, the contract provides protections also for agile workers regarding the amount of hours in a day or week that someone working remotely should be "contactable" (without the requirement to provide an immediate response) as well as their right to disconnect. Both terms are defined with reference to the contractually defined number of working hours in a day or week (e.g., 36 hours per week). Unions regard this as a key protection, both the definition of when someone should make themselves available to be contacted, and when they have the right to disconnect.

In particular, the distinction between agile and remote work are addressed under Title V of the contract:

1.) The contract defines agile work, with reference to law 81/2017, as "having the goal of improving public service, organizational innovation while guaranteeing work-life balance." It establishes that remote or agile work does not alter the nature of the employment relation, and guarantees equal treatment to agile and remote workers."

2.) The contract extends remote and agile work to all employees, except to shift workers and workers who must "continuously use specific instrumentation that a can't be used remotely." Again, the principal is that all employees, to the extent possible, should be able to benefit from remote or agile work.

3.) The contract requires the stipulation of a specific, individual agreement with each employee that determine the parameters of the remote or agile work.

4.) The contract sets limits to the total number of hours in a day in which an agile worker must be available to be contacted, and makes reference to the average number of working hours in a day, as well as providing for right to disconnect for 11 consecutive hours. During the period of availability, an agile worker has the same rights to time off as any other worker.

5.) The contract also calls for workers to be provided with adequate training so as to allow agile workers to experience greater autonomy and empowerment (the words used to describe the desired effect of agile work by interviewees included "self-management" and "self-determination.")

As mentioned, the goal of the national-level contract is to provide a framework and guidelines for determining what activities can be carried out under smart- or remote-working, and delegates to second tier bargaining, joint exam and the stipulation of individual agreements to operationalise those guidelines.

Conclusions and general remarks

As outlined in the paper, Italian workers "discovered" remote working with the Covid-19 pandemic as it was almost inexistent before. The legislative framework was thus largely inadequate for a massive adoption of remote working and to face the health emergency, the normative framework on remote work has been drastically simplified and amended both in the private and in the public sector. The sudden and large scale adoption of smart working allowed workers to experience it for the first time, making them acknowledging both positive and negative effects, which have been outlined in the paper. During 2021, although still quantitative relevant, the percentage of remote workers decreased as compared to 2020 even if the large majority of workers would like to maintain at least a part of their working time on a remote basis.

Collective bargaining activity has been intensive during the pandemic period and remote working has been addressed in several agreements, one of the most relevant is the tripartite agreement between the Ministry of Labour and main Trade Unions and Employers' Associations in the private sector, illustrated in the report. Overall at this stage it could be concluded that a part of the remote working experienced during the pandemic is becoming structural and collective bargaining and social dialogue started to address and solve some of the key relevant issues emerged, in particular on the duration of working time and right to disconnect, forms of control and surveillance and working tools, even if several aspects in most of the public and private sectors remain still open and in need of regulation.