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THE CHALLENGES AND OPPORTUNITIES OF SMART WORKING

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THE CHALLENGES AND OPPORTUNITIES OF SMART WORKING

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Abstract: The pandemic has forced people and organizations to discover that it is possible to work “remotely”. This paper collects various contributions that analyse the many aspects of “smartly organized” work, namely its legal implications, the problem of planning efficient timing in order to ensure full complementarity between remotely managed functions and functions managed in presence, the need to revise job contents and old standardized routines and, the repercussions on social relations and on a series of variables such as environment, transport, health, urban planning, land planning, location of structures for “leisure” and social life.

Keywords: Smart working; jobs contents; work organization; social relations

JEL codes: J08, J5, J53, K31, L23

INTRODUCTION: SMART WORKING OR WORKING FROM HOME?

Sebastiano Fadda (University of Roma Tre)

To begin at the beginning, the pandemic has been kind of a whip: under the emergency it has forced people and organizations to discover that it is possible to work “remotely”. Mainly, it has shown that very often the same tasks which were previously performed in the premises of a company could be easily performed at home by making use of appropriate technological devices. As a consequence, some rankings of more or less "remotizable" tasks and jobs have also been elaborated. In this way, lot of jobs were allowed to be kept during the lockdown and the number of workers working entirely from home has literally exploded.

This dislocation of work performance from the premises of companies to home has been hastily given by the media, and progressively by almost everyone, the name of “smart working”. But smart work is something different; it consists of a restructuring of work organizations induced by the re-engineering of production processes through the intensive use of new technologies. This reorganization, which we could call "smart work organization" provides for a combination of phases of work carried out in presence with work phases carried out remotely.

Actually, it is the new technologies that trigger the transformation. Total connectivity, the enormous mass of big data, internet of things (M2M), artificial intelligence, machine learning, augmented reality are all factors that give rise to cyber-physical production systems, characterized by a close link between physical elements and the virtual world: all objects, from passive " become "active". This is done through the use of barcodes, sensors, radio frequency indicators and other technological innovations. As a consequence, Industrial production and the production of services, both public and private, remain profoundly modified, while this dynamic of transformation embraces practically all areas of social life. In this frame the smart work, therefore, consists of planning the contribution of workers in a new model of work organization, designed in accordance with restructured production processes which, thanks to these new technologies, are able to combine functions managed in presence with functions remotely managed.

We have evidence that the current debate is mainly concerned with discussing only one of the many aspects of the “smartly organized” work: the one-off working from home and its legal implications. These aspects are not at all irrelevant. Problems such as salary schemes, career paths, times of disconnection, meal vouchers, overtime regulation, measures of performance, safety at work, on-the-job training, etc. deserve deep investigation and are to be defined, partly by legislative regulation and partly through the management of industrial relations in order to find “firm specific” solutions. But it is necessary to recall all other aspects of the “smartly organized” work, because they concern both the efficiency of production and the quality of work.

In the first place comes the problem of planning an efficient timing in order to ensure full complementarity between remotely managed functions and functions managed in presence. Usually remote work is assigned to two or three days per week, but the hours of connection can be flexible: in some cases a core connection time is fixed, leaving freedom to manage autonomously the remaining time. Finally, an accurate planning of the integration between teams of work that alternate in presence and remotely is due in order to optimize the process of production of goods and services.

Secondly, smart work involves a revision of job contents. It implies the abandon of the approach based on individual tasks and the emphasis, instead, on team responsibility. In this context, the need arises to foster the ability in “problem solving” in view of the results to be achieved. From this, in turn, descends the need to downsize the repetitiveness of routines (which are standardized behavior sequences established for a class of problems already solved) in favor of creativity in the face of rapid evolution of scenarios and technologies that always present new problems or new ways to cope with old problems. The need to change old standardized routines, no more appropriate in face of the new economic and social scenario, is generally neglected in the Public Administration, in favor of the simple dislocation of the execution of the same tasks from the offices to one's own homes. In this way the whole idea of smart work is simply reduced to “working from home”.

Thirdly, smart work implies a great flexibility in the use of places and spaces. The places where the remote work can be actually performed are not only the family houses, but may also be spaces of co-working, municipalities, libraries, locations adjacent to situations of interest for the activity of the enterprise, and so on. The same physical premises of the company must be structured and equipped according to a logic of assigning the spaces not to individuals, but to functions. Which means that the same space can be used in rotation by different teams or different individuals, depending on the needs coming from the particular phase of the production process.

Finally, an important point is worth mentioning. It concerns the repercussions of such smart work reorganization on a series of variables such as: environment, transports, health, urban planning, land planning, location of structures for “leisure” and social life. Considering also the possible impact on value chains and production systems, this overall transformation could also open new perspectives for local development planning and local employment dynamics.

As it can be seen, smart work cannot to be mistaken with “working from home”; the latter is only one part and one aspect of the more complex and global restructuring of work in the contest of a new “smart organization”. But, having said this, a few critical points should be mentioned because they constitute a challenge for this new form of work organization.

The absence of physical proximity in the working environment and the reduction of social interaction in the work premises, could hamper the growth of that sense of community, that feeling of belonging, that culture of the firm which are vital both for the quality of work and for the level of productivity. Parallel to this, the possible feeling of

loneliness and the possible stress due to the conditions of working from home could threaten the psychological stability and the quality of life of workers. Further to this, the reduction of hierarchical relationships of a static nature and the emphasis on result achievement rather than on routine tasks require from the management new forms of leadership and new forms of control of individual commitment and staff productivity, which could be difficult to achieve.

It is clear that all this demands, in addition to a good mastery of the new technologies, a cultural revolution and the development of new abilities on the part of the managers, which go far beyond the simple acquisition of computer and digital skills.

Faced with the benefits for companies deriving from smart work lies the interest of workers in improving working conditions and quality of life. For this reason, everyone must express an adequate ability to use new technologies, an assumption of responsibility for achieving the objectives, a willingness to collaborate in a logic of teamwork. But it is also necessary that workers are protected so as not to suffer setbacks in terms of labour standards and so that further inequalities are not created between those involved in these new forms of work and those who are not. The company's need to improve productivity and the need of workers to improve the quality of life and the quality of work have always been confronted: with smart work there is the possibility that this contrast be solved. It is up to the managers to find the right balance between these potentially conflicting dynamics, and it is up to scholars to explore all aspects of them in order to find appropriate solutions.

SMART WORKING: FROM RHETORIC TO PRACTICE

Giuseppe Della Rocca (University of Calabria)

1. Remote working

The spread of the pandemic has had a profound impact on the labour market. The annual ILO estimate confirms that in 2020, worldwide, labour was disrupted on a historically unprecedented scale. In 2020, 8.8 per cent of global working hours were lost relative to the fourth quarter of 2019, equivalent to 255 million full-time jobs. Working-hour losses were particularly high in Latin America and the Caribbean, Southern Europe, and Southern Asia, and in 2020 they were approximately four times greater than during the global financial crisis of 2009. (ILO – Monitor: Covid – 19 and the world of work. 2021-01)

Remote working was and still is a partial solution to the decrease of working hours and employment. During the pandemic it became a necessity in industries, service, and public administration, to work at home; in practice the solution was a new way of working with the objective of maintaining positive trends in economic life instead of shutting down work.

In 2020 in Italy, the rate of home working reported a significant growth, reaching 18.6% among employees and 21.9% among the self-employed in the second quarter of the year (they were 1.6 and 14.7% respectively in the same quarter in 2019) for a average of just over 3 million over the three quarters (and a peak of 4.4 million in the second 2020). Before the pandemic, the use of remote work therefore impacted a limited segment of activities and workers. On the average during 2019 for all the first three quarters, among those who theoretically had the potential, just under one to ten employees had worked remotely; on the other hand, in the first three quarters of 2020 it went up respectively to 17.1%, 41.9% and 28.6%. (*Istituto Nazionale di Statistica: Il mercato del lavoro 2020 una lettura integrata*)

We still do not have a shared definition of remote working. There is not even an agreement on the exact term to be used. In European literature it is often referred to as teleworking, or home working, in American literature telecommuting, in other countries it's called work at distance, off-site working, remote working, or flexi work. Each of these terms aim to have a similar meaning and are often used interchangeably (Passarelli 2021). Nowadays in Italy the term smart working seems to be the most common as a single generic definition that includes different technologies with any sort of organization and workers.

The question is if home working, teleworking, smart working are not the same phenomena. Today in remote work most of workers have been forced to stay home by Covid19, with the same tasks and types of organization (same procedures, same performance control, interaction with supervisors, colleagues and clients.) Most of those experiences are *home working* which does not mean information technology (De Masi,

2020). The worker can carry out the tasks that he or she would normally perform in the office with the support of a telephone, email, fax, according to different needs. On the other hand, information and communication technologies are essential to the definition of *telework*. The term highlights the opportunities offered by the use of new information technologies and communication technologies for the performance of delocalized work, or remote cooperation among workers away from the office or the company headquarters (ILO, 1990). The most exhaustive definition of telework was given by Eurofound, which defines telework as a form of organizing or performing work, using information technology, in the context of an employment contract / relationship in which work is performed on the same regular basis as in the office (Eurofound 2017).

Smartworking is instead defined as "a managerial philosophy based on restoring autonomy and flexibility to the worker in choosing the place, working hours and tools to be used, in the face of greater responsibility for results" (Milan Polytechnic Observatory 2020). In practice the differences are much broader. Smart work is used in a context of a light, or lean organization, which means working with digital technology with new organizational patterns, new procedures and tasks, new competences, performing in more than one single job, in a integrated system of jobs that are changing frequently¹.

In the future of the Italian innovation and resilience plan it is important to distinguish among those different phenomena. During the health crisis it was realized in a broad sense that it is possible to work at home, however this does not necessarily equate to an increase in the quality of organization, work content, and improved performance. If we consider the future in a context of health care normalization many of those questions regarding smart working remain: Which organisation, activities and jobs must be changed to increase productivity and work quality in the meantime? What is smart and what is just working at home? What are the differences in efficiency, in quality of life in implementing the use of telephone and email or telecommunication on one side or digital systems and smart work from the other? And here again, what is the difference in the use of an automatic platform marked by an algorithmic set of information or in open digital system that allows for a different type of interaction, and not in the simple automatic exchange of information between single individual tasks?

2. The spread of digital technology: a precondition to smart working

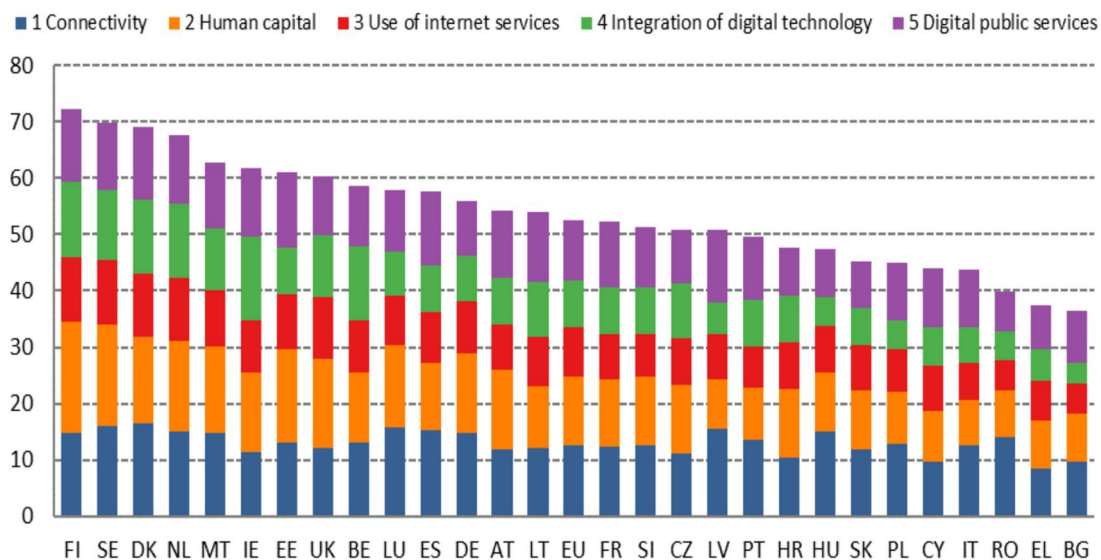
Most of the debate on smart working has been about working conditions and new forms of regulation like working time, the right to disconnect, and new competencies. This

¹ Smart working is usually part of the wider context of *Industry 4.0* meaning *Smart production*: new technologies that create collaboration among all the elements present in the production; *Smart service*: all the "IT infrastructures" and techniques that allow for the integration of production systems, companies (supplier - customer) with each other and with external structures (roads, hubs, waste management, etc.); *Smart energy*: with a careful eye on energy consumption, creating more performing systems and reducing energy waste according to the typical paradigms of sustainable energy. The cornerstones of Industry 4.0 are cyber-physical systems (CPS) or physical systems that are closely connected with computer systems and that can interact and collaborate with other CPS systems.

contribution shall instead focus on the preconditions for accomplishing an effective smart or telecommunication kind of work in the future. First, it is important to know the degree of the country's technological background, the degree of integration and diversity of digital platforms of interdependence and competencies.

The Digital Economy and Society Index (DESI 2020) gives an initial idea on the spread of some of these requisites in 2019. DESI is a composite index that summarises relevant indicators on Europe's digital performance and tracks the evolution of EU Member States in digital competitiveness; a classification with five broad items that give an idea of results and problems. The DESI report *has Italy in the fourth to last position in the final ranking of all European countries*. If we consider Italian smart working potentiality in the five items which compose the ranking, human capital index and digital integration are the most critical, far lower than the European average.

Figure 1: Digital Economy and Society Index (DESI) 2020



Source: DESI 2020, European Commission

With the first items, *Broadband connectivity to access to a fast and reliable broadband connection* (including fixed and mobile connections) is crucial in the current context, in which key societal and economic services are delivered online. Italy connectivity is up to the EU average, common to other member States with robust policies and targeted investment in all the areas.

In the second item, *Human capital in Digital skills* engaging in basic activities on line, especially when mobility is restricted, Italy is under the average of EU members with part of the population that still lacks basic digital skills, even though most jobs require such skills.

Internet use by individual citizens soared during the pandemic with the recurrent access to social media and entertainment platforms as well as to teleworking, e-

commerce, and e-government services. This trend was already in place prior to the pandemic, as internet use has continued to increase. Figures range from 67% in Bulgaria to 95% in Denmark, Sweden and the Netherlands, but even in this case, Italy still ranks below the European average.

In *integration of digital technology by businesses*, such as Internet of Things, cloud computing, and big data analysis able to improve efficiency, opening up new opportunities for European businesses and crucial for the economic recovery, Italy is well below of European average because the high number of small and very small businesses. The index in Europe shows large differences by company size, sector; 38.5% of large companies already relied on advanced cloud services and 32.7% were using big data analytics, but the vast majority of SMEs were not yet taking advantage of these technologies, with only 17% of them using cloud services and only 12% using big data analytics.

In *Digital public services*, Italy ranks above the European average. The COVID-19 crisis shows how important it is to ensure the continuation of governmental activities when social distancing measures are in place. Prior to the pandemic there was an upward trend in digital public services. In 2019, both the quality and usage of digital public services increased; 67% of internet users who submitted forms to their public administration now use online channels (up from 57% in 2014) showing the convenience of online procedures over paper-based ones.

3. Organization as the main precondition: the case of Public Administration.

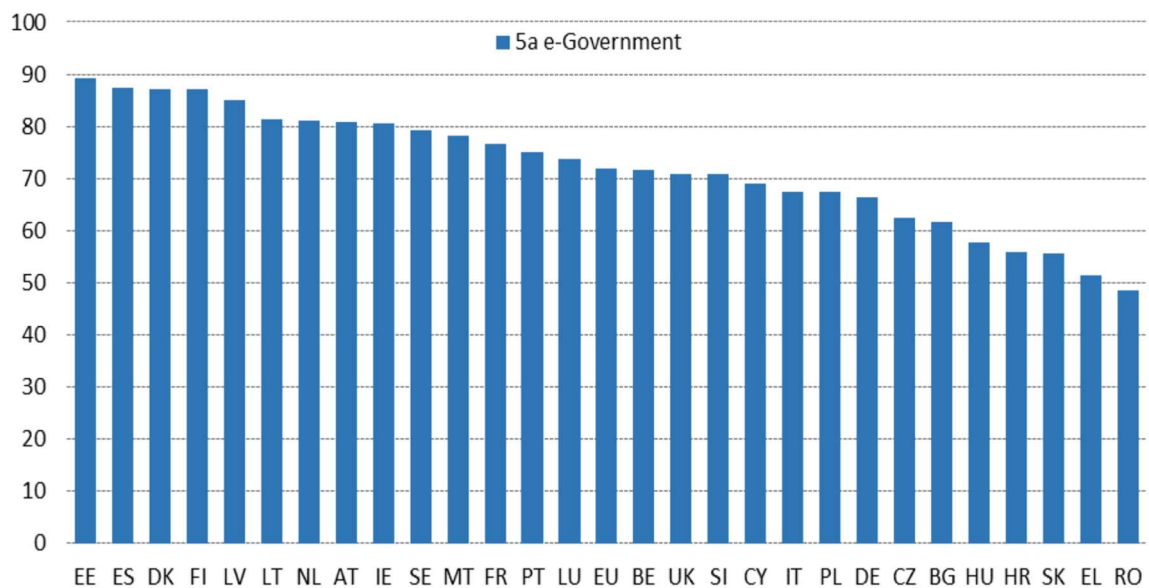
Smart working but also telework and home work are primarily a matter of organization with many alternatives and dilemmas which in turn define the type of skills and working conditions. Organization is a subject that has the merit to make clear the differences between the various forms in remote work; a good example is Italian Public Administration, both as a case of working at home or as a possible implementation of smart working.

From the point of view of technological diffusion, the Italian Public Administration stands in a better position than in the other composite items of DEXI index. No longer in the fourth to last place but in the middle just above the European average. Among other European countries Italy's attempt to develop digitalization of services is recognized as having implemented individual digital services to citizens like the Electronic Identity Card, Digital identity to use public services, Online payments to PA, Digital Invoices, Residential Citizens central data base, Cash flow of public expenditures, and Digital payslips.

This development is mainly based on individual algorithms with a low degree of integration and interdependence. That means an organization with single standard procedures, no interoperability between procedures and tasks. Technology replaces

mainly administrative work with little integration among different documental flows and tasks and jobs. For such a reason it is difficult to find in the organization a mutual adaptation among services; nor a very great autonomy at work because of the low degree of interdependence during the processes among activities, procedures, and other services. Cases of mutual adaptations between procedures and employees, like teamwork and project groups, are not widespread, or involve few professional people.

Figure 2 Digital Economy and Society Index (DESI) 2020, Digital public services



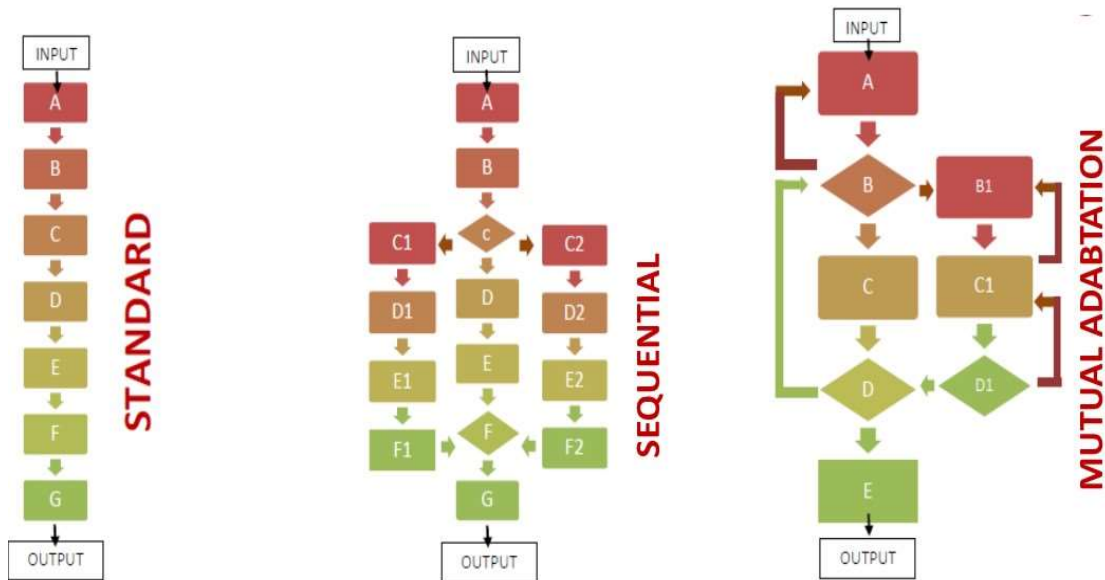
Source: DESI 2020, European Commission

Home working frequently uses standard procedures without interdependence among different roles. Smart working instead must “be smart”, requiring interdependence among separate functions, roles, customers, and networks. Information must be selected, and able to take decisions even in operating jobs like rearranging information and documentation, entering in more than one archive land register, making selections in real time with right and effective decisions.

According to Thomson (1990) work organization processes can be seen in three separate dimensions of distribution of tasks and roles: working on a standard flow of tasks or jobs only with vertical interaction without feedback (the well-known example is the traditional assembly line in the car industry); working on a sequential vertical integration with interaction down flow with other different services, procedures, and roles; working on mutual adaptation with interdependences during the processes among activities upwards and horizontally (see figure 3). Smart working from home or in other places outside the office usually means working in a complex vertical flow, or in mutual adaptation of teamwork or project groups. When there are evident limits in the

development of technology for mutual adaptation in work organization and social interaction, remote work becomes ineffective and the only appropriate solution becomes to work face-to-face in the same place thanks to meetings or in team project groups.

Figure 3: The organization in action.



4. A case study in local public administration

It is difficult to have a large scenario on what happens in work organizations in the Public Administration. Only the analysis of single cases can provide what are the effective practices. From the quantity point of view we only know that in March and April 2020, during the first pandemic wave, remote working in the public administration involved 59,8% of employees from a range of 99% in the Independent Service Authority to 5% in the National Health Service; 60,3% in Metropolitan Cities and Provinces, 46,9% in Municipalities (Lavoro Pubblico 19 June 2020).

A case study on managerial responses to the spread of remote working in the service organization in a single large municipality can provide some empirical evidence about the different possible alternatives. The purpose of the case study was to shy away from many of the generic narratives that are characterizing the public debate today on smart-working. (Della Rocca et others 2021)

As of April 13 - 2020, 787 employees, or 65.5%, were engaged in remote working with important differences among the branches: 83,0 % of the educational and social sectors, 63,0% of the businesses, construction, and territory services; 55,0% of Maintenance services, environment, mobility, and civil protection; 64.3% of cultural

services, sports and associations; 86,0% of Administrative and accounting staff services: 13,9% of Local Police Corps.

The use of technology was facilitated by previous individual teleworking experiences (20 workstations from 2016 and 30 from 2019). After, remote work was extended to many employees, using standard information flows like Virtual Desktop Interface for secure access to parts of the company information systems; Virtual Private Network, which allows remote desktop access to the office personal computer. Communication via e-mail, cloud, messaging, video calls and collaborations was extended also to teachers of educational services; an e-learning platform was provided in order to access all the tutorials with technical-operational provisions. Using the Voice Over IP telephone switchboard and soft phones, employees could remotely use an office telephone number. These innovations as first generation ICT technologies improved the efficiency and effectiveness of the previous standard procedures, eliminated some of the face-to-face work, such as transfer of paper documents, personal interactions, and meetings, but they did not allow for strong interdependencies interactions.

From an organizational point of view, in some sectors it was possible to simplify the procedures by eliminating some steps for internal and external authorizations like direct communication among jobs, or with citizens (Social Sector, Civil Status Services, Construction Services for authorization of occupations of public land, single accounting procedures). An attempt to rationalize the document system into a single domain was only partially carried out due to the internal resistance of the individual sectors and managers. There was also a review of the materials and forms of communication to allow distance learning and the updating of the learning path for teachers as well.

However, these are examples which, if we refer to smart work (that requires more targeted and punctual interconnection among databases, documentation, and procedures), are not sufficient to improve the information assets of the Public Functions, with the Recovery Fund. It is therefore not a question of reproducing generalized interventions, but of promoting them in order to be considered priorities for the effectiveness of work organization. The experience of the Municipality in fact presents an implementation of remote work with limits and the possibility of improving the degree of reciprocal and non-standard interdependencies, among organizational segments, roles and administrative systems. Smart work means not working in standard but also sequential and mutual adaptation among structures and roles; not only from the technological point of view but also, and especially, from the organizational one.

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REMOTE WORKING: WHAT ORGANISATIONS NEED TO CHANGE IN ORDER TO AVOID THE RISKS OF REDUCED PERFORMANCE AND QUALITY OF WORK

Anna M. Ponzellini (Apotema)

The recent very rapid world-wide experiment of teleworking during the pandemic has certainly raised a great deal of enthusiasm both from companies and from employees, in terms of reduced costs, and has also widened individuals' freedoms and quality of working life. Actually, we are becoming more and more aware that all that glitters is not gold, neither for companies, nor for individuals (inasmuch as they directly reflect on companies). In this essay, I will describe the main problems organisations might have to cope with.

1. Only a smart organisation enables smart working

What we call smart-working can be considered a specific way of working from remote, since it is expected to be rooted in a smart organisation. As defined by the European Commission, "a smart organisation is knowledge driven, internet worked and dynamically adaptive to new organisational forms and practices, learning as well as agile in their ability to create and exploit the opportunities offered by ICT-enabled solutions" (*European Commission's research programme Information Technologies Society, 2006*).

Being internet-based, a smart organisation does not only imply the presence of connectivity and digital devices, but also the use of the entire set of tools that facilitates a hyperlinking of documents, people and organizations (Levine et Al., 2000). As a matter of fact, transforming an organisation into a smart one is a long and intricate course of action, which entails the realization of a deep integration among processes, systems, and functions, and a wide circulation, at all levels, of information. Only once this process has been accomplished, can we truly refer to working as "smart." At that point, we will have created a "digital workplace" (Koffers, 2015), which means we have enabled individuals to cooperate with their colleagues regardless of the fact that they are working 6,000 miles away or they are working face-to-face in the same room.

2. Remote working's possible negative impacts on organisations: a review on the basis of the sociological theory

Productivity is a major goal in every kind of organisational change, so it is important to consider a number of possible negative impacts of working from remote.

First of all, from the perspective of relations, distance matters. The lack of face-to-face interaction may impoverish and cool organizational relationships and therefore it

may cause conflicts and reduced performance. We already have a good deal of data coming from twenty years of research on “geographically distributed teams” (non-collocated teams working together, which are very common in sectors such as the Oil & Gas industry, IT companies, etc.). Industrial psychology and organisational studies suggest that remotely located teams operate differently and experience different outcomes than traditional teams, and show that when teams aren’t located in the same room and must rely on technology to mediate communication, this will have an impact on team members and raise the risk of inter-organisational conflict of all types – task, affective, and process (Hinds and Bailey, 2003). From a socio-technical point of view, organisational studies predict that only those teams having a relatively low task interdependency – “loosely coupled teams”, according to Olson and Olson, 2000 – and rely mostly on routines, have a chance at succeeding with remote work (Bayer and Lauche, 2010). Otherwise, change in coordination systems or perhaps some new digital tool for collaboration is needed.

More in general, in light of the constraints we experienced during the pandemic, physical presence turned out to be more important than we had previously realized (Ponzellini, 2020). During that period, we had the opportunity to reconsider the prominence of social relations in the workplace and now we can analyse the ways remote working might affect them. Being in the same place, at the same time, with our own bodies, is the way we are accustomed to building our relationships. A few theories can help us understand what the reducing of in-person working may cause to our organisations. When we lack face-to-face interaction, we can lose what Georg Simmel called “sociability” (*vergesellschaftung*), namely the positive perception of the presence of others around us. According to this author, sociability deals with emotive exchanges between individuals and contributes to creating a relational atmosphere from which arises the will to share (Simmel, 1908). Similarly, according to Richard Sennett, in workplaces and society we can overcome differences by building bridges among people: “empathy” is a key-factor in the rituals of cooperation but is a difficult craft to accomplish, as it requires people-to-people exchanges. If we underestimate the necessity of these close exchanges, we take the risk of being faced with misunderstanding and hostility. Even spaces, and the way they are designed, are important to encourage “strangers” to meet and cooperate (Sennett, 2014). From a more general point of view, work itself should be regarded as a process where interactions are continuous. Understanding each other on the fly and empathizing, which are harder in virtual meetings, have been shown to be vital for the strength of our collaborations.

Furthermore, concerning social relations, if working from home becomes the preferred pattern of work in the future, what is going to happen is a comprehensive reduction in the opportunities to meet people, both on formal and informal occasions. No more trains and buses, no more stations and airports, no cafeterias, no hallways: thus, will come to an end to all those fortuitous meetings and unexpected connections that provide insights and illuminations, which are so useful towards taking decisions and innovating. Granovetter (1973), emphasizes the importance of these weak ties – a combination of the

amount of time, emotional intensity, and mutual confiding – to build social structure and foster creativity.

Remote working will also modify the ways social capital – i.e. the resources for action that individuals derive from their environment (Coleman, 2005) – develops within organisations and the ways it binds to the power of organisations. With the reduction of interactions between bosses and fellow workers, the building of social capital is going to be harder, especially with regard to some groups of workers: new entries, young and marginalised people. Those who are located on the periphery of networks are likely to suffer a worse marginalisation and a rise in inequality is likely to occur. Networks are power, that is a fact.

The end of the office will have consequences as well. Being not only physical work environments but also symbolic ones, we could say that, like homes, also workplaces have a soul. Then, if we stay away from our office, we are likely to lose more than we expect: habits, everyday routines, company customs, even some part of our identity. Moreover, in case of working from home, the quality of working-life might get harder, especially for young parents. According to Arlie Hochschild's research, for many young parents the office had become "a second chance" with respect to family life: as a matter of fact, many individuals – not only men - often come home late from work because home and the family are no longer a cosy little nest, but places of caring fatigue and tensions, while the office can represent a safe and rewarding place where you can get a pat on the back from the boss or exchange jokes with colleagues. In *The Time Bind* (1997), this Author concluded that the roles of home and work had reversed: work had become more attractive, offering a sense of belonging, while home had grown more stressful, becoming a dreaded place with too many demands. Incidentally, this evidence questions the shallow conclusion that working from home always has a positive impact on family life.

3. Which change does an organisation have to face?

As mentioned above, smart-working – that means the higher-level mode of working from remote - requires a certain degree of process digitalisation. To perform your activities, you are expected to use communication tools (shared desk, cooperative platforms, digital agendas) but also quite a lot of software systems and applications (ERP, design and autocad programs, project management software). What necessarily results in a certain degree of standardisation of tasks and challenges the traditional ways of cooperating between colleagues and of relating with bosses. From this point on, questions raised by remote working are the same questions that digitalisation raises. Which are these questions?

The first question: automation of work, to what extent? In order to make activities easy to integrate and coordinate, they have to be simplified while single task has to be standardised and controlled in its goals. Then a question is: To what extent is the automation of work acceptable both in terms of performance and of quality of work? In

other words, will working from remote facilitate the coming true of the prophecy of a new Taylorism even in professional and cognitive occupations (together with an overall boost to digital control on work)? A long lasting debate and many research evidence exist on this issue: see, for example, the debate on the alternative between automation and informatisation (Zuboff, 1988; Morosov 2019); see also the recent case-studies collection on the impact of digital technology on the quality of work (Pais and Ponzellini, 2021).

Actually, on one hand, working remotely comprises a larger autonomy for teams and individuals about where, and often when, to perform their work. On the other hand, in order to assure coordination and cooperation, most of the activities of people working remotely are likely to be reduced to standard procedures (thus opening the way, in the not too distant future, to be divided into operations of different responsibility being distributed to different employees) and also strictly controlled by KPIs (key performance indicators). In conclusion, in all those jobs that are going to be performed remotely the operators will probably meet new constraints towards spontaneously organising their tasks and individually building their role. From a certain point of view, this might be considered the inevitable counterbalance for the gained autonomy of space.

The second question: is it really a simple matter of organisation of work? The recent debate on the widespread experience of working remotely during the pandemic seems to have improperly reduced the organisational problems companies have to tackle, to a simple fact of changing the work organisation. Yet, smart working is going to challenge organisations at 360° and particularly in going to stress the necessity of an in-depth change in coordination and control systems, which is a much more complicated step. Coordination systems have to be reshaped in the direction of increasing formalisation of some operational processes and management practices, as we discussed above, but also in the direction of opening to a broad-based information sharing as well. This latter option means allowing all the employees to access data and information, as a way to empower them and enable an indirect form of coordination. Wide accessibility to information improves knowledge sharing, increases employees' voice, and is a powerful way to gain cohesion despite being distant (unfortunately, many companies seem to be afraid of allowing for employee improvement and greater influence).

The third question: physical distance, how to cope with? How to assure cooperation when teams and individuals are remote? Organisational theory already brought forth the social-technical gap in human-computer interaction. Human activity is highly flexible, nuanced and contextualised: for example, Goffman (1961) noted that people have very nuanced behaviour concerning how and with whom they wish to share information. Actually, current collaboration tools – like sharing platforms, virtual meetings, instant messaging and other systems of computer supported interaction - although they hopefully are going to continuously improve, will never fully support the social world (Ackerman, 2000). People and organisations are trying to cope with the “big change” while technology is promising us that every gap will be soon closed. However, the doubts still resist and quite

a bit of time will be necessary to get some uncontroversial findings about what remote work is going to subtract to traditional in-person cooperation.

According to a socio-technical approach, ways of addressing digital change – and, in consequence, of implementing remote work - could not be the simple use of the available, however sophisticated, technologies. In order to get a positive balance between technology, performance and the quality of work, companies taking the path of remote working need to develop a deep organisational redesign in which all organisational levels would be involved. As shown above, different options exist as for task standardisation degree, coordination systems and the building of social relations at workplace: organisations must make their own choices (Butera, 2020), better if toward a balance between efficiency for the company and skills and autonomy for the employees. No alternative exits but to proceed through trials and errors.

4. Conclusions

What we have come to learn so far from the incredible experience of remote working during the most recent months can be synthesized in the complex mix of a good boost toward digitalisation (particularly, in the most backward situations like public administrations), some important gains in work-life balance, but unfortunately also increased task standardisation and reduced social relations in the workplace. Whether the rise in automation will result in a probable penalty for workers' autonomy and their quality of work, the weakening of internal relationships will certainly affect companies' social capital, organisational culture, and sense of community.

The prospect of a general spreading of remote working questions companies' traditional organisation structure and put in evidence the need to revise it in a major way, in particular regarding management and coordination systems and the building of the company culture.

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AGILE WORK IN THE PRE- AND POST-EMERGENCY CONTEXT: PROSPECTS FOR THE MODERNISATION OF WORK

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1. Health and safety protection of agile workers in “ordinary” legal regulation

Agile working is part of the broader labour issue of the progressive blurring of the boundary between subordinate and self-employed work and the continuing diversification of protection between the different contractual statuses. This is without neglecting the aim of increasing competitiveness, stimulating productivity through work organisation in phases, and achieving predefined objectives.

Chapter II of Law no. 81 of 22/05/2017³ define agile work as an employment relationship that can be used in both the private and public sectors. The parties can freely regulate the details through a specific agreement and in compliance with the fundamental principles established by a regulatory framework that is deliberately not too detailed. More specifically, article 18 of Law No. 81/2017 defines agile work as a “*mode of execution of the employment relationship established by agreement between the parties, also with forms of organisation by phases, cycles, and objectives, and without precise time or place of work constraints, with the use of technological tools for carrying out the work activity. The work is carried out partly on company premises and partly outside without a fixed location, within the limits of maximum daily and weekly working time, deriving from the law and collective bargaining*”.

The *ratio* of this legal institute responds to the growing need for organisational flexibility of the parties to the employment relationship (employers and employees) and for a better work-life balance (of employees) while safeguarding the classic ‘strong’ protections of subordination, which include those aimed at protecting OSH (as per Legislative Decree no. 81/2008⁴) and insurance cover against accidents at work (as per Presidential Decree no. 1124/1965⁵).

Law No. 81/2017 provided for specific provisions on health and safety, with a division of prevention obligations between employer and employee (Art. 22), the provision that the employer is responsible for the safety and proper functioning of the technological tools assigned to the worker for performing the work activity (Art. 18, par. 2), and the extension to the worker performing the service in agile mode with the right to

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³ Law 22/05/2017 No. 81, Measures for the protection of non-entrepreneurial self-employment and measures to encourage flexible articulation in the times and places of subordinate work.

⁴ Legislative Decree no. 81 of 09/04/2008, Implementation of Article 1 of Law no. 123 of 3 August 2007, on health and safety at work

⁵ Presidential Decree No. 1124 of 30/06/1965, Consolidation Act of the provisions for compulsory insurance against accidents at work and occupational diseases.

compulsory accident insurance (Art. 23). Some specific provisions have also concerned the protection of the worker's right to disconnection (Art. 19 par.1)) and working time (Art. 18(1)). In terms of prevention, these are also important since they are connected to those *work-life balance* profiles that are an integral part of the institution's *ratio* (Allamprese, Bonardi, 2020; Dagnino, 2017; Russo, 2020).

However, the OSH provisions have raised several doubts in the doctrinal debate regarding their coordination with the general regulations on accident prevention (Legislative Decree 81/2008), which regulate these aspects of the employment relationship for the part of the work that is ordinarily performed on company premises.

In particular, Article 22 shows that the employer must ensure the protection of agile workers. To this end, the employer must provide the latter and the RLS⁶, at least once a year, with a written statement identifying both the general and specific risks related to the particular mode of execution of the employment relationship. Workers must cooperate in the implementation of the prevention measures prepared by the employer to deal with the risks connected with performing the service outside the company premises.

The day after it entered into force, the provision had already fuelled many interpretative uncertainties based on the assumption - contrary to what has been argued by a few commentators (Petracci, Marin, 2016) - that the mere delivery of notice is unlikely to ensure the protection of the agile worker, especially for that part of the activity that takes place outside company premises (*ex multis*, Toscano, 2021; Pelusi, 2017).

In fact, Article 22 of Law No. 81/2017, in sanctioning the employer's obligation to prepare written information on general and specific risks, did not specify whether this completely fulfils the safety obligation placed on the employer (*ex multis*, Santoro Passarelli, 2017; Peruzzi, 2017).

Therefore, the regulation on agile work comprises a 'meagre' *body* of rules in Law 81/2017 (*contra*, Ichino, 2016) which reserves some important areas of intervention for regulating the modalities of performance to the individual agreement, while leaving room for interpretative uncertainty on the information security obligation.

Faced with this uncertainty, the alternative for the doctrine is between the continuance of all the obligations envisaged for all workers by Legislative Decree no. 81/2008, together with the obligation of the information above (*ex multis*, Pelusi, 2017; Delogu, 2017), for the employer and the application of the specific prescriptions to agile work dictated for teleworking under article 3, paragraph 10, of Legislative Decree n. 81/2008 (*ex multis*, Peruzzi, 2017; Tiraboschi, 2017). This latter interpretative position would therefore legitimise the application of Legislative Decree no. 81/2008 under Title VII (Equipment fitted with video display terminals) and, if employers provide their own equipment, of Title III on the use of work equipment and personal protective equipment. It also includes the provision to verify the correct implementation of the safety regulations, the employer, the workers' representatives, and the competent authorities

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have access to the workplace, subject to prior notice and consent of the worker in the case of work at home.

On this point, the majority view, which has been interpreted in different ways, is that Article 22 of Law no. 81/2017 should be correctly interpreted by placing it within the general framework of the safety obligations laid down by Legislative Decree no. 81/2008 (*ex multis*, Lai, 2017; D'Addio, 2017; Allamprese, Pascucci, 2017).

As noted in doctrine (Pelusi, 2017; Gallo, 2017), elements that support the thesis that the delivery of written information is complementary (though not exhaustive) to the employer's obligation to prevent accidents. These elements are provided by the Senate Study Service document⁷, which clarified that, regarding all employees, the obligations of informing and training, under Articles 36 and 37 Legislative Decree. n. 81/2008, remain applicable to agile work, including those at home and INAIL Circular No. 48/2017, which clarified that the tariff classification of work performed in agile mode follows that of the same work carried out in the company. In fact, according to the Institute, for tariff purposes, equal risk must correspond to an identical classification, implementing the principle that the regulatory and remuneration treatment of "agile" workers compared to their colleagues working in the company must be the same, including the adoption of workers health and safety standards. In addition, the original wording of Bill 2233-B⁸, in Article 18, specified that the employer is to guarantee the health and safety of the worker who performs service in agile mode and "also" provide the worker with the written information. Lastly, it is not insignificant that the Senate rejected the proposed amendments to the text specifying the provision of the information that allow the safety obligation to be considered fully complied with.

Concerning the annual frequency of delivery of the report, some scholars (Guariniello, 2017; Pelusi, 2017) have pointed out that the use of the adverb "at least" shows the need for the employer to update and return the report when there are changes in the workplace, both inside and outside the company premises, that affect the risk factors.

Illustrative instructions for the definition of the minimum content of the information, which the public sector employer must prepare and deliver to the agile worker, were instead provided in Chapter 6 of the guidelines attached to Directive 3 of the PCM⁹, issued in implementation of Article 14, paragraph 3, Law No. 124/2015, which introduced agile work for Pub Adm employees - regulatory framework enriched by Law No. 81/2017.

⁷ Brief Note No. 156 of the Senate Study Service of March 2017 entitled Bill A.S. No. 2233-B, "*Measures for the protection of non-entrepreneurial self-employment and measures to encourage flexible articulation in times and places of employment*".

⁸ DDL-S. 2233-B, Measures for the protection of non-entrepreneurial self-employed work and measures to encourage flexible time and place.

⁹ Directive 1/06/2017 No. 3 of the PCM, Guidelines for the implementation of paragraphs 1 and 2, of Article 14, Law No. 124 of 7 August 2015, and guidelines containing rules inherent to the organisation of work aimed at promoting the reconciliation of employees' working and living times.

With Article 23 of Law No. 81/2017, the Legislator instead defined INAIL's insurance protection against accidents for agile workers. Precisely, the provision has given this category of workers the right to protection against accidents at work, occupational diseases dependent on risks related to work performed outside the company's premises, and protection against commuting accidents. Insurance protection for commuting accidents has been recognised, within the limits and conditions set out in Article 2(3) of Presidential Decree no. 1124/1965, when the choice of the place of work is dictated by requirements connected with the work itself or by the worker's need to reconcile life and work needs and meets reasonable criteria. Therefore, the prior definition of the agile service location is decisive for recognising insurance cover. If the causes and criterion of reasonableness are not met, the event occurring *in itinere* will not be eligible for compensation, nor will accidents occur at a place chosen by the worker. Some observe (Santoro Passarelli, 2017; Lai, 2017) that the conditions laid down by the provision are not clearly determined and imply some discretion on the part of INAIL. This may jeopardise the certainty of protection and generate disputes. The same doctrine has also duly reiterated that indemnity for injury does not cover all the damage to health and remains the responsibility of the civilly liable party both, in the event of a crime, the differential damage, and the complementary damage, provided that the worker can prove them (Allamprese, Pascucci, 2017; Delogu, 2017).

Finally, and consistent with the purposes of the rules under review, it should be recalled that with Law no. 145/2018¹⁰ (Budget Law 2019), the Legislator has recognised priority for two categories of agile workers who have greater difficulty than others in combining family and professional needs: female workers in the three years following the conclusion of the period of maternity leave; workers with disabled children.

2. The use of agile work in the context of the SARS-CoV-2 pandemic.

It should be remembered that, consistent with the purposes of the rules under review, the Legislator, with Law no. 145/2018 (Budget Law 2019), recognised priority of access to agile work priority for two categories of workers who have more difficulty than others in combining family and professional needs: female workers in the three years following the conclusion of the period of maternity leave; workers with disabled children.

With the onset of the pandemic, there has been a change in the rationale for recourse to agile work. From being an innovative corporate welfare tool for increasing productivity and improving work-life balance, it has been converted into a tool for better balancing constitutional principles and rights, such as public health, occupational safety, and job preservation, against the much more dramatic prospect outlined by the corporate crisis, ranging from recourse to redundancy funds, to the total suspension of activities or the even more rapid spread of the viral infection in the workplace.

¹⁰ Law No. 145 of 30/12/2018, State Budget for the financial year 2019 and multi-year budget for the three-year period 2019-2021.

Where technically possible, and precisely because it aims at preventing the spread of the SARS-CoV-2 infection, recourse to agile work has become a concrete security measure (Marazza, 2020) in both the private and public sectors and a tool to support the continuity of a large portion of work activities and services following the rules on social distancing and the limitation of freedom of movement (*ex multis*, Caruso, 2020; Ferrara, 2020; Lai, 2021; Tinti, 2020). To this function, some doctrine (Zoppoli, 2020; Balestreri, 2020) also attributes a new social shock absorber to agile work. In this interpretative direction, the application of agile work can avoid the fraudulent use of social shock absorbers where workers on layoff *de facto* continue working remotely.

However, there is also the risk of its evasive use as a social shock absorber, especially in the Public Adm («CIGO¹¹ surrogate»), if “agile” employees are in reality inactive while being paid.

In times of emergency, and within the limits of compatibility with the type of activity carried out, agile working has become the preferred, if not indeed compulsory, way of carrying out salaried work to avoid the risk of contagion as far as possible.

On closer inspection, this is a trimming - albeit temporary - of the regulation of this legal institution: on the one hand, it has been possible to resort to agile work in a simplified form from 23/02/2020 (ex d. PCM 23/02/2020¹²) and until 31/03/2022 for the private sector (ex d.l. n. 221/2021)¹³ until 31/07/2021 for the private sector (ex Law no. 87/2021¹⁴) and 31/12/2021 for the public sector (ex d.l. n. 56/2021¹⁵). In fact, the obligation of the individual agreement, under Article 18 of Law no. 81/2017, has been suspended, thus allowing the employer to arrange the recourse to agile work unilaterally; moreover, the information obligations, under Article 22 of Law no. 81/2017, have been electronically fulfilled by resorting to the document prepared by INAIL. On the other hand, coordination with the provisions on social distancing has been necessary since workers, obviously carrying out their work from home, have not been at liberty to choose their work location. It has been pointed out that, since the worker’s right to choose the work location during the emergency period has been replaced by the obligation to work from home, one could speak of ‘remote work’ (Giuliani, 2020) or ‘work from home’ (Maresca, 2020) rather than ‘agile work’.

According to one part of the doctrine (Bini, 2020), the emergency legislation has also made agile work “the result of the unilateral power of the employer”; according to others (Ferrara, 2020), unilateralism only concerns the choice of whether to activate agile work, while agreement for the other elements (disconnection, work times, exercise of the power of control) remains in place.

¹¹ Cassa Integrazione Guadagni Ordinaria (Ordinary Redundancy Fund)

¹² PCM Decree 23/02/2020, Implementing provisions of the decree-law 23 February 2020 n. 6, containing urgent measures regarding the containment and management of the epidemiological emergency from COVID-19.

¹³ Decree-Law 24/12/2021 n. 221 Extension of the state of national emergency and further measures to contain the spread of the COVID-19 epidemic.

¹⁴ Law 17/06/2021 n. 87 - Conversion into law, with amendments, of Legislative Decree 22/04/2021 n. 52.

¹⁵ Decree-Law No 56 of 30/04/2021, Urgent provisions on legislative deadlines.

Other critical issues, highlighted by the doctrine (Albi, 2020; Romei, 2020; Porcheddu, 2020; Busico, 2020) are related to the costs related to intensive recourse to agile work, the provision of meal vouchers - regarding which the Court of Venice¹⁶ has established the incompatibility of their use with this mode of work, and the more general aspect of the proper application of the principle of equal treatment for agile and non-agile workers. These issues have troubling indirect effects, such as an increased risk of litigation between workers and employers.

Generally speaking, legislative and administrative measures aimed at dealing with the health crisis soon followed. On the one hand, there have been repeated calls for agile work in the private sector (most recently, the Prime Ministerial Decree of 02/03/2021; l. 24/12/2021 n. 221 and joint circular 5/1/2022). On the other, initially established as a temporary obligation in the Pub Adm (except with unavoidable in-person activities) for ordinary work, it was subsequently defined as a normal work mode (Presidential Decree .C.M. 23/09/2021). The return in the presence of the staff of the P.A. was regulated by the decree of the Minister for Public Administration 8/10/2021, which identified the conditions and requirements, organizational and individual, necessary to use agile work. Finally, the Collective Agreement signed between Aran and the social partners of 21/12/2021, identified characteristics, methods, limits and protections of agile work in the public sector.

Regarding families, agile work has also been reinforced during the pandemic period for both the private and public sectors. Under specific conditions, working parents with minor children can have recourse to agile work in the child's presence during the suspension of teaching or educational activities, as well as for the duration of the SARS-CoV-2 infection or quarantine following contact wherever it occurred, or to take advantage of special parental leave or baby-sitting bonuses. The regulatory reference is to provisions of Article 2 of Law Decree no. 30/2021 (converted into Law 61/2021) and Article 21ter of Law Decree no. 104/2020¹⁷.

Besides recommending the maximum use, wherever possible, of agile or remote working modes by private employers, the Shared Protocol, signed by the Government and the social partners, in the updated version of 06/04/2021, explicitly refers to the use of agile work in point 8 among the measures of reorganisation of production and work. The Protocol defines agile work as a useful and adaptable prevention tool even in the phase of progressive reactivation of work, without prejudice to the need for the employer to guarantee adequate support conditions for the workers and their activities (assistance in using equipment, modulation of working time and breaks). Also emblematic is the replacement, in the body of the entire Protocol 06/04/2021, of the term *smart working* with the 'agile and remote work'.

¹⁶ Court of Venice decree 08/07/2020 n. 3463.

¹⁷ Decree-Law no. 104 of 14/08/2020, Urgent measures to support and relaunch the economy. Converted by Law 13/10/2020 no. 126.

In the wake of the virtuous experience of the Shared Protocols, for the private sector, of considerable importance was the signing on 7 December 2021 of the first "National Protocol on agile work" by the Ministry of Labour and the Social Partners.¹⁸

The key points of the Protocol are divided into 16 Articles, the first of which reaffirms adherence to agile work on a voluntary basis, subject to the subsistence of an individual agreement. Highlighting how the possible refusal of the worker to adhere or carry out his work in agile mode does not integrate the extremes of dismissal for just cause or justified reason, nor does it have relevance on the disciplinary level.

The individual agreement is reconfirmed as the fulcrum of the regularization of the methods of execution of the work performance.

With specific reference to the issue of health and safety in the workplace, the Protocol (Article 6) confirms the application to agile workers of the discipline referred to in Articles 18, 22 and 23, of the l. n. 81/2017. Highlighting that the obligations of health and safety at work referred to in Legislative Decree also apply. n. 81/2008 and to the services rendered outside the company premises, ie those relating to behavioral obligations, also with regard to IT technological equipment, where provided by the employer, for which the delivery of written information is foreseen. In this regard, it is reiterated that the employer must guarantee the health and safety of the worker who performs the service in agile working mode and must promptly provide that worker and the RLS or RLST with written information in which the general risks and the specific risks related to the particular mode of execution of the employment relationship are identified. The obligation for workers to cooperate in the implementation of prevention and protection measures to face the risks associated with the performance of agile work also remains unaffected. In addition, the performance of work in agile mode must be performed exclusively in suitable environments, in accordance with current legislation on health and safety and confidentiality of the data processed.

With regard to the application methods of d.lgs. n. 81/2008 on agile work, the Protocol refers to national and second-level collective bargaining.

It would therefore seem to be confirmed by the thesis, noted and prevalent in the labor doctrine, according to which the delivery of written information is a complementary fulfillment, but not exhaustive, of the employer's preventive obligation.

The document also reaffirms the right of the agile worker to protection against accidents at work and occupational diseases (art. 7)

If attention is also paid to the insurance/social security profile, considering the fact that the SARS-CoV-2 infection is equated with a work accident (under Article 42 of Law Decree no. 18/2020¹⁹), there are no reasons to exclude extension of this form of protection

¹⁸ Cgil, Cisl, Uil, Ugl, Confsal, Cisl, Usb, Confindustria, Confapi, Confcommercio, Confesercenti, Confartigianato, Cna, Casartigiani, Alleanza cooperative, Confagricoltura, Coldiretti, Cia, Copagri, Abi, Ania, Confprofessioni, Confservizi, Federdistribuzione, Confimi and Confetra.

¹⁹ Decree-Law no. 18 of 17/03/2020, Measures to strengthen the National Health Service and economic support for families, workers and businesses connected to the epidemiological emergency caused by COVID-19. Extension of terms for the adoption of legislative decrees. Converted by Law 24/04/2020 n. 27.

to the agile worker (also *in itinere*), on condition that the conditions required for the recognition of the insurance and indemnity benefits required by the sector regulations are met. Thus, we can see elements for an extension recognition of accidents at work carried out in agile mode on the insurance side. However, this could render verification of the circumstances of the injury by INAIL more complex and uncertain.

3. Agile working opportunities for fragile workers

During the epidemiological emergency, agile work has become a preventive measure to minimise the risk of contagion, mainly regarding “fragile” workers. These are workers considered particularly vulnerable for personal reasons related to health, age, disability, or the coexistence of several subjective vulnerability factors. Such workers require exceptional health surveillance beyond the traditional medical surveillance of workers as provided by our system.

The renewed *ratio* for the use of agile work during the pandemic period has facilitated the use of this tool, sometimes compulsorily, favouring the most vulnerable (or even the frailest), including new and more specific provisions for disabled workers into the general discipline. Lastly, at the time of writing, following the amendment provided for by Law Decree no. 41/2021²⁰ (Support Decree) to art. 26 of Law Decree no. 18/2020 (converted into Law no. 27/2020), it has been extended to the benefit of disabled workers. Finally, at the time of writing - following the change provided for by legislative decree no. Legislative Decree no. 221 of 24 December 2021-to art. 26 d.l. no. 18/2020 (converted into Law No. 27/2020) - the deadline by which fragile workers are entitled to carry out agile work, has been extended until 28/02/2022. This includes the use of different jobs included in the same category or area of classification as defined by the current collective agreements, or specific professional training activities even when carried out remotely. Still on the subject of agile work carried out by fragile subjects, Legislative Decree no. 221/2021 also provided that, on an interministerial decree, chronic diseases with little clinical compensation and with particular connotation of severity are identified, in the presence of which, until 28 February 2022, the work performance must normally be carried out in agile mode, also through the use of different tasks included in the same category or area of classification, as defined by the contracts in force, and specific professional training activities are carried out remotely.

Indicative are the very first judicial rulings which, summarily or on emergency grounds, granted the right to work in agile mode to disabled workers²¹ or workers with disabled family members (ex multis, Giuliani, 2020; Caruso, 2020; Albi, 2020; Stefanelli, Marinelli, 2020).

Facilitating access to agile work for workers in conditions of fragility and disability - also with a view to using this mode of work as a reasonable accommodation measure -

²⁰ Decree-Law No. 41 of 22/03/2021, converted into Law No. 69 of 21/05/2021.

²¹ Grosseto Court 23/04/2020 no. 203; Bologna Court 23/04/2020 no. 2759; Rome Court 21/01/2021 n. 5961.

is also the further commitment undertaken by the Ministry of Labor and the Social Partners with the "National Protocol on agile work" of 7/12/2021.

Therefore, there are interesting future implications in terms of both employment and protecting people with disabilities or chronic or disabling illnesses. As a concrete implementation of the precautionary principle for fragile subjects, agile working can facilitate their integration/reintegration into the world of work and guarantee them a healthy and safe working environment.

Since its inception, agile work has been conceived as a work-life balance tool for all workers, and even more so for disabled people (Marino Aimone, 2017) who, through its use, can remove or mitigate significant material and immaterial barriers. In this sense, part of the doctrine had also defined it as a new and interesting variation of reasonable accommodation rules (Fili, 2020; Zilli, 2020).

4. Post-emergency agile work: labour and relationship management profiles.

It is worth asking whether and to what extent the special use of agile work may affect its socio-legal function in the future and, consequently, its regulation, which is currently represented by a meagre body of rules that only outlines the perimeter of agile work, leaving the details to the individual agreement between employer and employee.

The SARS-CoV-2 pandemic has undoubtedly provided an opportunity to intensify risk co-management mechanisms by 'educating' social dialogue, especially at the company level and produce supplementary sources containing clear and detailed rules in compliance with super-ordinate sources and participatory control mechanisms.

In the field of labour this reflection appears even more interesting if the position of recent jurisprudence, which has noticed profiles of anti-union conduct in the Protocol's violation, be further pursued²² (Diamanti, 2020). Should this be confirmed, it could lead to an increase in opportunities to protect workers' rights and stronger employer responsibility. This issue, particularly evident in light of the current contagion risk, emerges in the progressive loosening of the space-time constraints of work performance typical of the many types of risk that characterise today's labour organisation. In fact, even regarding agile work, and to the prospects of its intensive use in the post-emergency context, the specific question of the sufficiency of the information on risks under Article 22, which deals with the exact fulfilment of the obligations of prevention, seems destined to crop up again. As noted above, this was already the case in its original, more residual, and not predominant use. Nor should it be forgotten that the increasing use of agile work has raised questions of excessive extension of employer responsibilities vis-à-vis non-compliance with the prevention forecasts in this area, given the loss of employer control over the effective compliance with safety measures by agile workers.

Thus, there is a need for more effective regulation of the exact fulfilment of the employer's obligation in the event of accidents or occupational diseases whose circumstances are beyond any sphere of control, since such events occur in contexts

²² Court of Treviso 02/07/2020 n. 2571.

outside the “legal availability” of the employer and, in any case, cannot be framed within the usual framework of the event *in itinere*. In this regard, a basis for reflection could be suggested; anchoring (currently in force under ex Art. 26 Legislative Decree 81/2008) the preventive obligations and the related guarantees regarding the contract to risks because of activities taking place either within the company, or its single production units, or its entire production cycle, provided the employer has the legal availability of the places. Although this is an interesting regulation technique, it is not without application criticality. With the necessary adaptations, it might lend itself to overseeing situations characterised by a marked dematerialisation of company *assets* and space-time constraints of work performance.

In this case too, negotiated regulation, through the enhancement of virtuous public-private *governance*, could help to better define these parameters in the wake of the experience of the Shared Protocols, while also helping to overcome the concept of remote working as a «niche institution» reserved for large companies and a few areas of activity (Caruso, 2020).

This «regulated self-regulation» from legislation (Perulli, 2020) - whether emergency or «ordinary» - can help the operator identify clearer and more precise provisions to facilitate assessment of employer responsibilities, his/her auxiliaries, and the workers themselves, even in the face of new and more complex types of risk that go beyond the classical conception of the workplace and call for a (reinforced) sharing of prevention obligations between *management* and employee.

In this sense, already in 2019, INL²³ and INPS²⁴ signed Protocols of Understanding with the trade unions, which set out to launch experimentation of agile work and, in compliance with the legislative and contractual provisions in force, agree on the rules for the application of agile work at INPS.

As anticipated above, on 7 December 2021 the first "National Protocol on agile work" by the Ministry of Labour and the Social Partners was signed, with which guidelines were provided to represent a reference framework - complementary to the provisions of Law no. 81 of 22 May 2017 - for future collective bargaining, national and corporate and / or territorial, which is entrusted with what is necessary for implementation in the different and specific production contexts.

In fact, collective bargaining - which has the merit of having experimented with the institution of agile work even before the legislative intervention, especially at company level (Dagnino, Tomassetti, Tourres, Tiraboschi, 2016) - can also play a supplementary role regarding the legal framework and individual negotiation agreements. Indeed, the enhancement of individual autonomy and the lack of express reference to collective bargaining in Law No 81/2017 do not imply a delegitimisation of the latter. A collective agreement may add, but not replace, individual agreement.

Among other things, in the light of the experiments that corporate collective bargaining has already carried out, in this period, industrial relations may prove to be

²³ Ispettorato Nazionale Lavoro (National Labour Inspectorate).

²⁴ Istituto nazionale della previdenza sociale (National Social Security Institute).

particularly proactive in taking on a supplementary role to the legal discipline. This is also in the light of the tax benefits that can be attributed to it²⁵ and the broader context of corporate welfare, especially the so-called organisational welfare.

There is no doubt that the health emergency has severely tested the organisational capacities of many companies. However, today more than ever, flexible working methods require the rapid overcoming of that managerial mentality based on the purely hierarchical and unilateral character of company organisation, which a rigid interpretation of Article 2086 of the Civil Code provides. Furthermore, where possible and in compliance with legal guarantees and collective agreements, the definitive overturning of the traditional space-time coordinates functional only a Fordist production approach is also essential.

Ultimately, by fostering a win-win relationship between management and workers that solicits the employee's proactive skills and full empowerment, the challenge is to loosen the restraints of the employer's exercise of managerial power based on purely top-down control of workers.

Some companies, especially the largest ones, have already tackled the most controversial application aspects in training and refresher courses that make up for the obsolescence of previous knowledge. These include compliance with health and safety regulations, the so-called "right to disconnect", and the need to involve agile workers who are struggling with the use of constantly evolving technological tools.

After these first years of "running in", it is therefore essential to seize the opportunities offered by the regulatory framework while also building on the experience of companies. Also, in the gradual post-emergency recovery of business activity, why abandon the efforts many companies that have made to forcibly reorganised their work in agile mode during the SARS-CoV-2 pandemic and developed those managerial and technological bases that can be exploited where possible?

Last, still within the framework of the prevention discipline, it should be noted that the massive recourse to agile work during the pandemic has simultaneously encouraged compulsory OSH training activities through the use of telematic tools, even waiving the legal provisions that normally allow the limited use of e-learning in this area of vocational training. This opens up the possibility of rethinking the rules on the subject, which also deserve a more decisive use of digital technologies, provided that tools are used that guarantee the quality and interactivity of the training, limiting face-to-face events to only those cases where they are strictly necessary.

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²⁵ Intermistarial decree. 25/03/ 2016, implementing Law 28/12/2015 no. 208; D.I. 22/09/2017.

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