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**Smart Working in Tetra Pak[®] Italy: Building an
Operational Model that Boosts Productivity and
Enables Work-life Balance**

Candidate:

Elisa Ombelli

Supervisor:

Prof. Iacopo Senatori

Co-Supervisor:

Prof. Edoardo Ales

Coordinator of the Doctoral Programme:

Prof.ssa Ylenia Curzi

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*'Prima di valutare se una risposta è esatta
si deve valutare se la domanda è corretta'*

*'Nessuno mi può costringere ad
essere felice a suo modo'*

Immanuel Kant

*'Il tempo è relativo: il suo unico
valore è dato da ciò che noi facciamo
mentre sta passando'*

Albert Einstein

Abstract (English)

The trigger of this industrial doctoral thesis is Tetra Pak® Italy's Journey towards flexible work, from telework to the 'Work Smart, Be Flexi Project', through which the HR Country Services function implemented agile work in Tetra Pak Italy in 2020. Agile work has been advertised both as a triple win solution, having positive effects on productivity, work-life balance and sustainability and as a cutting-edge Flexible Working Arrangement (FWA) based on trust, responsibility and accountability. However, plenty of doubts were raised by employees and managers following the project launch, which questioned the added value of this new way of working, even in a company which has been working flexibly for a long time. Following the full transition to post pandemic smart working, it is time to address both challenges and opportunities connected to flexible working. Hence, the research, embracing the continuous improvement approach, focuses on smart working in a post Covid-19 emergency scenario, and its purpose is to address the criticalities connected to this new way of working with a view to outlining a smart working operational model which is legally compliant and can result in increased productivity and improved work-life balance. Mainly qualitative methods have been used in the investigation, and the research has been divided into three parts. The first part describes Tetra Pak Italy journey towards agile work (from telework through emergency smart working to agile work) and the challenges connected to flexible working that the company had to face in the various phases of FWA implementation. The second part contains an overview of the legal framework related to remote work, with specific reference to the main fields where blind spots emerged in Tetra Pak Italy, namely working time, work-life balance, OHS protection, control and disciplinary power; based on the analysis carried out in part one and two, the third and last part of the research contains the outline of a smart working operational model meant to maximise productivity and to ensure a healthy work-life balance for employees. The outline of said Model, although born in relation with the specific nature of Flexible Working Arrangements deployed in Tetra Pak Italy over time, aims at addressing a big question mark connected to smart working as a new way of working, namely how to make sure flexible working arrangements and smart working in particular can truly benefit employees, companies and society, maximising productivity and sustainability without negatively affecting employees' health and work-life balance.

Abstract (Italian)

Questa tesi di dottorato industriale prende le mosse dal percorso di Tetra Pak® Italy verso lo smart working, partendo dal telelavoro fino ad arrivare al progetto ‘Work Smart, Be Flexi’, attraverso cui la funzione HR Country Services ha implementato il lavoro agile in Italia nel 2020, presentandolo sia come una soluzione vantaggiosa per tutte le parti coinvolte, ovvero vincente in termini di produttività, work-life balance e sostenibilità, sia come un Flexible Working Arrangement (FWA) all'avanguardia basato su fiducia e responsabilità. Sono però emersi molti dubbi tra dipendenti e manager dopo il lancio del progetto, che hanno messo in discussione il valore aggiunto di questo nuovo modo di lavorare, anche in un Gruppo che ha sempre incoraggiato il lavoro flessibile. Ora che l'azienda ha completato la transizione verso il lavoro agile propriamente detto, è giunto il momento di affrontare sfide ed opportunità connesse al modello misto. Il progetto di ricerca si concentra quindi sul lavoro agile post-emergenziale e il suo scopo è quello di affrontare le criticità connesse a questo nuovo modo di lavorare al fine di delineare un modello operativo che sia giuridicamente conforme e possa portare ad un aumento della produttività ed un migliore equilibrio tra lavoro e vita privata, in un'ottica di miglioramento continuo. La ricerca, nella quale sono stati utilizzati principalmente metodi qualitativi, è divisa in tre parti. La prima parte descrive il percorso di Tetra Pak Italy verso il lavoro agile (dal telelavoro attraverso lo smart working emergenziale fino all'implementazione del lavoro agile ex Legge No. 81/2017) e le sfide legate al lavoro flessibile che l'azienda ha dovuto affrontare nelle varie fasi di implementazione di forme di lavoro flessibile. La seconda parte contiene una panoramica del quadro normativo relativo al lavoro flessibile, con specifico riferimento ai principali ambiti in cui sono emerse criticità in Tetra Pak Italy, ovvero orario di lavoro, conciliazione vita-lavoro, protezione della salute e sicurezza dei lavoratori, potere di controllo e disciplinare; gli output dell'analisi contenuta nella prima e nella seconda parte della ricerca sono serviti per elaborare nella terza parte un modello operativo di lavoro agile pensato per massimizzare la produttività e garantire un sano equilibrio tra lavoro e vita privata. Lo sviluppo di tale Modello, pur prendendo le mosse dalle modalità di lavoro flessibile implementate in Tetra Pak in Italia nel corso del tempo, prova a dare una risposta ad un grande punto interrogativo legato allo smart working come nuovo modo di lavorare, ovvero come fare in modo che le modalità di lavoro flessibile in generale e lo smart working in particolare possano realmente avvantaggiare dipendenti, aziende e la società stessa, massimizzando la produttività e la sostenibilità, senza impattare negativamente sulla salute dei dipendenti e sull'equilibrio tra lavoro e vita privata.

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Introduction

In February 2020 an HR Country Services-led business transformation project called ‘*Work Smart, Be Flexi*’ was approved in Tetra Pak® Italy,¹ which targeted the implementation of a wide portfolio of Flexible Working Arrangements (FWAs) including Smart Working, Flexi Time, Part Time and Flexible Careers (sabbaticals and job rotations), to be deployed over a three-year time span by means of a dedicated platform to be set-up in order to automate the full approval process up until the signature of the *accordo individuale di adesione al lavoro agile* (individual smart working agreement from now on). The trigger for this project was the recommendation from the Central HR Function to offer Flexible Working Arrangements to employees worldwide, in compliance with local legislation on the subject, with a view to increasing employees’ productivity and improve their work-life balance.

A couple of days after the formal project approval, the outbreak of the Covid-19 pandemic forced the Company to rethink the concept of remote working and of flexible working in general, and this is when the idea for this research project was originated. Indeed, Tetra Pak Italy introduced emergency smart working as a social distancing measure to avoid gatherings on its premises, while at the same time training employees on the contents of the ‘*Work Smart, Be Flexi*’ project, by which the Company wished to implement its version of agile work, as ruled by Law No. 81/2017.²

The platform launch was targeted after the end of the governmental emergency status. Indeed, in the attempt to have all individual smart working agreements in place once emergency smart working would cease to be an option,³ there was a period when the above two forms of smart working coexisted in Tetra Pak Italy, so that emergency smart working, with all its limitations in flexibility, became a test for ‘proper’ agile work, and it gave rise to some doubts and many questions among employees and managers, which the HR Country Services function to which I belong has been trying to address ever since, in order to improve the overall flexible working experience.

¹ From now on, the label *Tetra Pak Italy* will refer to all five Italian legal entities, namely Tetra Pak Carta S.p.A., Tetra Pak Closures Italy S.r.l., Tetra Pak Food Engineering S.p.A., Tetra Pak Italiana S.p.A. and Tetra Pak Packaging Solutions S.p.A.

² Legge 22 maggio 2017, n. 81 recante Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato.

³ Leg. Decree No. 52/2021, article 11, paragraph 1 (in combination with conversion law No. 87/2021) enacted during Covid-19 emergency period provided for a temporary procedure, valid originally until 31st December 2021 and later extended until 31st March 2022, which allowed Companies taking advantage of remote working as a social distancing measure, to activate Smart Working without signing an individual smart working agreement with the employees, but simply by transmitting to the Ministry of Labour a list of remote workers. See *infra*, paragraph 2.2. [Emergency Smart Working - Smart Working as a Duty.](#)

All this considered, the purpose of the research is to tackle the criticalities in terms of flexible working emerged in Tetra Pak Italy, with particular reference to agile work, with a view to outlining an operational model that is, first of all, legally compliant and that can fulfil the intended purposes of agile work as defined by Law No. 81/2017, namely increasing competitiveness and improve employees' work life balance and well-being in the organisation. Mainly qualitative methods will be used in the investigation, and the research will be divided into three chapters. The first one will describe Tetra Pak Italy journey towards flexible work (from telework through emergency smart working to agile work) and the challenges connected to flexible working that the company had to face over the past few years and in some cases still is. The second chapter will contain an overview of the legal framework related to remote work, with specific reference to the main fields where blind spots emerged in Tetra Pak Italy, namely working time organisation, work-life balance, Occupational Health and Safety protection, control and disciplinary power. Based on the analysis carried out in the first two chapters, the third and last one will contain the outline of a smart working operational model intended to increase competitiveness and to ensure a healthy work-life balance for employees.

Topics of interest for chapter two have been selected both based on the frequently asked questions received via our ticketing system from employees and managers about emergency smart working and about the principles of the '*Work Smart, Be Flexi*' project and based on the main issues raised by line managers during the coaching sessions that were arranged to help them face the noteworthy organisational change represented by the introduction of smart working.

Before addressing the research topic, though, there is a necessary terminological preamble to make, which concerns the difference between smart working and agile work, two terms that will be extensively used in the following chapters. Although both started to appear in collective bargaining since 2012, they are not synonyms, despite what *Accademia della Crusca* states.⁴ Indeed, from a regulatory point of view, while smart working is mainly defined by company collective bargaining,⁵ which does not provide for a precise definition of this flexible working arrangement, nor does it provide straightforward rules for its implementation, agile work is specifically ruled by Law No. 81/2017. The very fact that Law No. 81/2017 rules about agile work and not about smart working should be read as an attempt of the legislator to make distance from the framework set up by collective bargaining in terms of flexible working

⁴ See Comunicato Stampa N. 3 dated 1 February 2016. Gruppo Incipit presso l'Accademia della Crusca. Available at: <https://accademiadellacrusca.it/sites/www.accademiadellacrusca.it/files/articoli/2016/02/02/cstampaincipit-3.pdf> (accessed 25/11/2023).

⁵ and company regulations, at least as far as Tetra Pak Italy is concerned.

and to introduce something new, whose main regulatory source is the individual agreement between the parties.⁶ It is known for a fact that Law No. 81/2017 does not assign a regulating role to collective bargaining as far as agile work is concerned, and this is due to the fact that the main purpose of the legislator is to improve work-life balance and increase competitiveness with specific reference to every single employment relationship, and the individual agreement is more fit for purpose than collective bargaining in that it can be a tailor-made solution addressing specific needs of the individual.⁷

Interestingly enough, the term ‘smart working’ was used in 2012 by Mariano Corso, Full Professor of Leadership and Innovation at the School of Management of Polytechnics di Milano and co-founder and member of the Scientific Committee of the Digital Innovation Observatories to define *‘a managerial philosophy based on giving back to the worker autonomy and flexibility in choosing the place, working hours and tools to be used, in the face of greater responsibility for the results.’*⁸ In other words, smart working is not a new contractual type, but rather a new way of performing work whose defining feature is time and space flexibility and whose declared aim is twofold: increase competitiveness and improve work-life balance.

All this notwithstanding, when describing Tetra Pak model in this doctoral thesis, the terms agile work and smart working will be used as synonyms, since in Tetra Pak Italy Law No. 81/2017 was enacted by means of a company regulation governing a peculiar model of agile work that matches the above definition of smart working given by Mariano Corso.

⁶ Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica.

⁷ Esposito, M. (2023) La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell’autonomia collettiva. Relazione alle Giornate di studio AIDLASS “Le dimensioni spazio-temporali dei lavori” (Campobasso 25-26 maggio 2023), dattiloscritto.

⁸ Senatori, I, Il lavoro agile in cerca di identità. Cronaca legislativa di un quadriennio travagliato (2017-2020). September 2, 2020. See also Dialoghi sul senso del lavoro. Puntata 9 del 30 Luglio 2024. A cura di Edoardo De Benedictis e Luigi Rucco. Ospite: Prof. Mariano Corso. Quali sono i benefici e rischi dello smart working? Luci e ombre del lavoro agile. Available at: https://youtu.be/rQ9D_h5FpsI?si=4nV3C-tZ6jM5M6-p. (Accessed on 23/09/2024). On the different labels given to flexible remote working see Albano, R., Parisi, T., & Tirabeni, L. (2019). Gli smart workers tra solitudine e collaborazione. Cambio Vol. 9, 61-73. Firenze University Press.

Chapter 1 Tetra Pak® Italy's Journey Towards Smart Working

CONTENTS: 1. About Tetra Pak. 2. About Flexible Working in Tetra Pak Italy. 2.1. Telework in Tetra Pak Italy. 2.2. Emergency Smart Working - Smart Working as a Duty. 2.3. The '*Work Smart, Be Flexi*' Project – Smart Working as a Choice. 2.3.3.1. Goals. 2.3.3.2. Working Anywhere.... 2.3.3.3 ... And Anytime? 2.3.3.4. Planning and Periodicity. 2.3.3.5. Withdrawal from the Individual Smart Working Agreement. 2.3.3.6. Supervision, Control and Disciplinary Measures. 3. Blind Spots of Smart Working or Opportunities?

1. About Tetra Pak

Tetra Pak is a food packaging and processing company that was founded in the early 1950s in Sweden by Ruben Rausing.⁹ It is part of the Tetra Laval Group, which consists of three industry groups, namely Tetra Pak, Sidel and DeLaval, all focused on technologies for the efficient production, packaging, and distribution of food.

To date,¹⁰ Tetra Pak includes three businesses, namely Packaging, Processing and Services. Indeed, Tetra Pak is not only the world's leading supplier of food packaging such as milk, soups, fruit juices and other liquid products, but it also is a manufacturer of machinery for food processing and packaging (homogenizers, mixers and standardisers, heat exchangers, system and plant components), as well as the provider of an assistance service during machine installation, start-up and maintenance (both scheduled and spot maintenance interventions) through a dedicated team of Service Delivery Engineers.

The company was founded on the idea that '*a package should save more than it costs.*'¹¹ Hence, Tetra Pak aims to deliver the most sustainable package to the world while minimising the impact on the climate and resources and while protecting people, be them its employees or its customers.

⁹ AB Tetra Pak was established in Lund by Ruben Rausing in 1951, and in December 1952 the first machine for one-decilitre cream packages started operations in the Lund Dairy Association.

¹⁰ January 2025.

¹¹ Tenet of Dr Ruben Rausing, founder of Tetra Pak.

In Italy, Tetra Pak currently counts five legal entities, namely Tetra Pak Carta S.p.A. (Rubiera, Emilia Romagna), Tetra Pak Italiana S.p.A. (Rubiera, Emilia Romagna), Tetra Pak Packaging Solutions S.p.A. (Modena, Emilia Romagna), Tetra Pak Food Engineering S.p.A. (Monza and Ambivere, Lombardy), and Tetra Pak Closures Italy S.r.l. (Sezzadio, Piedmont). Tetra Pak presence in Italy dates back to 1965, when production of packaging material commenced at a new plant in Rubiera, where the converting factory, Tetra Pak Carta S.p.A, is still located. In 1966 the market company, which is currently named Tetra Pak Italiana S.p.A., was founded in Modena and was later moved to Rubiera in 2002, where it is still based.

In the early 1980s, the production of filling machines and the Research & Development activities started on Modena site, which in the 1990s would become the headquarter for the research, development and production of the aseptic system for liquid food packaging (currently Tetra Pak Packaging Solutions S.p.A.). In 1991 Alfa-Laval, one of the world's largest suppliers of equipment and plants to the food industry, processing industries and agriculture was acquired, and Tetra Pak Food Engineering S.p.A. was established in Nova Milanese (MB), to be later transferred to Monza (MB) in April 2022, where it is currently located. Then, in 1999, Tetra Pak acquired the French company Novembal, which develops and markets package openings and closures, and Sezzadio's plant became part of the Group (currently Tetra Pak Closures Italy S.r.l.). In 2014 Tetra Pak acquired Miteco, a leading provider of production solutions for carbonated soft drinks based in Ambivere (BG), which was merged into Tetra Pak Food Engineering S.p.A.

As it clearly emerges from the above, Tetra Pak legal entities in Italy are engaged in diversified activities, and this results in different National Collective Bargaining Agreements (NCBA from now on) being applied. Indeed, Tetra Pak Carta S.p.A., the converting factory, applies both the NCBA for paper manufacturing industries and the NCBA for Industrial Executives. Tetra Pak Closures Italy S.r.l., the factory dealing with production of plastic caps, applies the NCBA for Rubber Plastic Industry, as well as the NCBA for industrial executives. Tetra Pak Packaging Solutions S.p.A. applies the NCBA for the metalworking industry and the NCBA for Industrial Executives. On the other hand, Tetra Pak Food Engineering S.p.A. and Tetra Pak Italiana S.p.A. both apply the NCBA for Trade and the NCBA for Trade Executives. On top of this, to complete the regulative framework, all Italian legal entities either already apply or are negotiating collective bargaining agreements at a company level (CCBAs from now on). The contents of said company collective agreements in terms of flexible working will be further analysed in the following sections.

2. About Flexible Working in Tetra Pak Italy

In its continuous effort to protect people, and its employees among them, and guided by one of its core values '*Freedom and Responsibility*', the Tetra Pak Group has always encouraged its employees to take advantage of flexible working arrangements, which are considered as enablers of inclusion and well-being. For instance, in Tetra Pak in Sweden a flexitime policy has been in place since 2001 that offers its employees the possibility to decide when to start and finish their working day, in agreement with their line manager, within set limits defined by the policy itself and by making sure that operations are not disrupted. Remote working was introduced in Sweden back in 2006, when Tetra Pak issued a local policy on telework, i.e., remote work carried out in a location other than the regular workplace, mainly at home.

Other countries followed suit, and in 2015 a global project was launched worldwide to collect local practices in terms of flexible working and to promote its implementation in compliance with the possibilities offered by local legislation on the subject. The evolution of flexible working in terms of flexitime and remote working in Italy followed various paths in the five legal entities, and this is mainly due to the diverse activities carried out in each of them, the peculiar evolution of collective bargaining and the differences in readiness for flexible working of the population in scope, as the following sections will illustrate.

2.1. Telework in Tetra Pak Italy

The first Italian legal entity to introduce flexible working for white collar employees was Tetra Pak Packaging Solutions S.p.A., which has been offering flexi time to its employees since the early 2000s. As regards remote work, in the early 2000s, a limited number of individual agreements were signed allowing employees to work remotely for personal reasons. These had a limited duration in time and ended up being terminated by the Company; yet, more requests for remote work were submitted by employees, so, in order to avoid managing ad hoc requests, and in the absence of a legal framework governing remote work, the HR function decided to issue a company regulation on the subject, which in its earliest edition only addressed the need for working place flexibility and contained no reference to working time flexibility.

Later on, Tetra Pak company regulation on telework was reviewed and the 'Teleworking (Distance Working) Policy' was enacted in 2007, in compliance with the Cross-

sectoral Agreement on Telework signed by Social Partners on 9th June 2004¹² to implement the European Framework Agreement on Telework¹³ in Italy. ‘Distance working’, meaning the possibility to work remotely outside the company premises, was subject to line managers’ approval, who would assess the organisational feasibility of the request and its business impact before approving it. Remote work was presented as an opportunity for both the company and the employees in that it was expected to bring about greater work satisfaction and, consequently, to have a positive impact on employees’ performance and efficiency, trust being the guiding principle.¹⁴ Following the approval by the line manager, remote work had to be implemented by means of a written agreement between the parties involved (employee, manager, company) outlining the agreed working schedule.

In line with the provision contained under article 8 of the aforementioned Cross-sectoral Agreement on Telework, stipulating that ‘*WITHIN the framework of applicable legislation, collective agreements and company rules, the teleworker manages the organisation of his/her working time*’, the company regulation foresaw working time flexibility alongside flexibility in the working place, in that it required the employee to work in the timeframe between 9 a.m. and 3 p.m. while allowing for discontinuous schedule outside this time band. An explicit provision was inserted according to which ‘distance working’ did not affect overtime treatment, which remained in place also when work was performed remotely. ‘Distance working’ had to be limited to a maximum of 40% of the employee’s standard working hours, while occasional ‘distance working’ (less than 20%) was possible based on an informal agreement with the manager.

As far as the remote workplace was concerned, the Policy referred mainly to the employee’s home (although the possibility to work elsewhere was not excluded), and it made it necessary for the employee to inform the employer about the selected workplace address. Indeed, the policy acknowledged that the employer was responsible for setting up necessary prevention and protection measures to make sure the chosen workplace was compliant with the Occupational Health and Safety legislation and suitable for work. As a result, the employer had the right to carry out inspections in the selected workplaces to assess said suitability.

¹² Accordo Interconfederale per il recepimento dell’accordo quadro europeo sul telelavoro concluso il 16 luglio 2002 tra UNIC/UEAPME, CEEP e CES. Available at https://www.bollettinoadapt.it/wp-content/uploads/2020/02/accordo_interconfederale_telelavoro_9_6_2004.pdf. For a thorough analysis on telework, see *infra* Chapter 2, section *2.1 Telework and its Unkept Promises of Flexibility*.

¹³ European Framework Agreement on Telework. Available at: https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf.

¹⁴ ‘Have faith in your colleagues and co-workers, we cannot function without trust’ (Ruben Rausing, 1963).

Nonetheless, the employee was asked to sign a declaration of conformity regarding tools and equipment used in the remote workplace.

With self-certification of attendance in place (manual punching systems in Tetra Pak Packaging Solutions S.p.A. were removed at the beginning of the 2000s), employees were requested to complete their timecard by inserting only deviations from the standard working hours, like absences and the teleworking time entry, the latter not needing a pre-emptive approval by the manager. This new way of working was considered an opportunity based on mutual trust, and its success was based on the shared principle according to which commitments taken had to be met, regardless of the place where work was performed.

It should be noted that in Tetra Pak Packaging Solutions S.p.A., the introduction of telework was not negotiated with Unions but rather deployed by means of a company regulation. This is mainly due to the fact that, when the discussion on remote work started, there was no reference legislation governing flexible work either across the EU or at a country level, and the company decided that a regulation was the most suitable way to offer flexible working to its employees. Then, subsequent updates followed this approach.

In contrast, other legal entities that introduced telework after 2004, negotiated it with Unions. For instance, Tetra Pak Italiana S.p.A., the market company based in Rubiera, started offering flexitime by means of company collective agreements: flexible entry time from 07:30 to 09:00 a.m. was introduced by means of CCBA in 2014 for the white-collar population, who could also take advantage of telework upon line manager's approval. Telework, at this stage, was intended as the possibility to work from home occasionally and working time had to mirror office working hours. One year later, in 2015, the above described 'Teleworking (Distance Working) Policy' was extended to Tetra Pak Italiana S.p.A as well, thus expanding the time flexibility connected to telework also in this legal entity. This approach paved the way to the introduction of telework in Tetra Pak Carta S.p.A., the converting factory based in Rubiera. Indeed, the CCBA signed in 2016 contained a generic paragraph on the possibility to activate telework for office workers under the same conditions applied in the market company, so in 2017 the 'Teleworking (Distance Working) Policy' became effective for white collars based in Tetra Pak Carta S.p.A. as well. By May 2019, all five Italian legal entities applied the Teleworking policy, with the extension of the policy to both Tetra Pak Closures Italy S.r.l. office workers and to Tetra Pak Food Engineering S.p.A. employees under the same conditions applying in Modena.¹⁵

¹⁵ Dedicated types of working time flexibility are in place in the factories for blue collar population, and are governed by company collective bargaining, but they are not in scope for the purpose of this project work.

In the meantime, Law No. 81/2017 came into force in Italy, triggering the debate about agile work. Indeed, a discussion started within the local HR Country Services function about both the need to shift from telework to smart working in order to take advantage of the opportunity offered by Italian legislation and how to implement agile work in the five Italian legal entities. The decision taken by the HR Country Committee¹⁶ was to enforce agile work by means of a company regulation, which would set the general framework for smart working implementation by defining some major (light) rules valid for all legal entities and organisations but would also empower line managers to define the best way to apply this flexible working arrangement in their teams and to ‘customise’ smart working agreements based on their team members diverse needs. Let us not forget that the target audience in scope for agile work was composed of approximately 1,000 white collar employees distributed over five legal entities applying different National Collective Bargaining Agreements and various Company Collective Agreements, as already seen above. Some of these legal entities encompassed different organisations with diverse business needs, meaning that a standardised approach was not ideal, and customised flexible working had to be designed to make sure it could be applicable to as many employees as possible, leaving line managers in charge of approving the request for flexibility based on their knowledge of the team and of the business.

2.2. Emergency Smart Working - Smart Working as a Duty

While discussions on agile work were ongoing, the outbreak of Covid-19 pandemic in Italy in February 2020 made it necessary to reconsider remote work urgently, since restrictions to company access had to be implemented to favour social distancing. Consequently, remote work moved from being an opportunity for flexible working offered to employees to becoming a health and safety measure adopted by the Company to favour social distancing in order to protect its employees’ health and safety. Hence, taking advantage of the possibility offered by the national emergency status and the related legislation enacted during the emergency period,¹⁷ in May 2020 the Company enforced specific guidelines at a country level aimed at

¹⁶ The HR Country Committee is a forum composed of HR Country Services Representatives and Managing Directors of the Italian legal entities.

¹⁷ Leg. Decree n. 6 dated 23.02.2020 converted by Law n. 13 05.03.2020, Prime Ministerial Decree 23.02.2020 and 25.02.2020, Prime Ministerial Decrees dated 1, 4, 8 and 11 March 2020, Legislative Decree n. 18 dated 17.03.2020 converted by Law n. 27 24.04.2020, Leg. Decree n. 34 dated 19 May 2020 converted by Law n. 77 17.07.2020, Leg. Decree n. 76 dated 16.07.2020, Prime Ministerial Decree 07.08.2020, Leg. Decree n. 104 dated 14.08.2020, Leg. Decree n. 111 dated 08.09.2020, Prime Ministerial Decree 24.10.2020, Prime Ministerial Decree 03.11.2020, Prime Ministerial Decree 03.12.2020, Leg. Decree n. 172 dated 18.12.2020 converted with amendments by Law n. 6 29.01.2021, Leg. Decree n. 30 dated 13.03.2021 converted

keeping the presence of staff onsite to the bare minimum necessary to guarantee operations. The local regulation ‘Working from Home (WFH) during Covid-19 Emergency’, issued in May 2020, which remained in force until 31st March 2022, ruled on emergency smart working, which can be defined as ‘smart working as a duty’ as opposed to ‘smart working as a choice’ (i.e., agile work ruled by an individual agreement). Said regulation applied to all white-collar employees legally employed in Italy who could execute their job (or tasks in their job) remotely, with a similar level of efficiency as they would be able to do if they were onsite.

Emergency smart working implemented by means of this regulation can be considered a form of hybrid smart working blending features of Tetra Pak ‘distance working’ as defined by the above described ‘Teleworking (Distance Working) Policy’ and features of agile work as defined by Law No. 81/2017. To begin with, emergency smart working was implemented without signing an agreement with employees; hence, it was not voluntary but rather it was put in place unilaterally by the Company as a social distancing measure. Moreover, restrictions to the choice of the location where to perform work were in place, as a consequence of limitations contained in legal provisions issued at a country and regional level during the emergency period; indeed, Tetra Pak emergency smart working allowed for remote work but mainly from an employee’s home or other homes where employees might be staying for a limited period of time (i.e. home of another family member, second homes and the like); public places and places located abroad were excluded. In addition to this, at least in an initial phase of the Covid-19 emergency, no alternation between onsite and offsite work was observed, since the Company required to go fully remote, when the kind of job permitted. On the other hand, though, the company regulation introduced some of the defining features of agile work, like work by objectives, working time flexibility (although a limited one) and disconnection, when stating that *‘the amount of time an Employee is expected to work will not change when working from home. Employees shall demonstrate responsibility and accountability, while remaining flexible and adapting to changing business needs. In addition, they shall manage their work so as to avoid excessive hours and health issues. Understanding goals, deliverables and priorities is key, as well as to maintain performance against individual and team objectives.’* Managers were invited to support a new way of working favouring the achievement of company outcomes and granting employees an increasing freedom in their working schedule, and they were asked

with amendments by Law n. 61 06.05.2021, Leg. Decree n. 52 dated 22.04.2021 converted with amendments by Law n. 87 17.06.2021. According to Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. Labor. Il lavoro nel diritto, 1, 25-58, a distinction can be made between ‘*lavoro agile fisiologico*’ [ruled by Law No. 81/2017] and ‘*lavoro agile patologico*’ ruled by legislation enacted during the emergency period.

to reward work and not time, to set clear goals and KPI's for individuals and teams and to communicate frequently to ensure all team members felt a sense of community. Another element that emergency smart working had in common with agile work was that employees working from home had the responsibility to cooperate with the Employer in the enactment of OHS prevention and protection measures set forth by the Employer, in order to face the risks connected with this new way of working, in compliance with the notice on agile work released by INAIL.¹⁸ As far as working time flexibility is concerned, employees working from home were allowed to work with a discontinuous schedule, if needed to take care of children or to attend any other domestic issue impacting on their working timetable, provided that this flexible schedule was agreed with their line manager. For instance, employees could start working earlier than the standard company working hours and finish later, taking time for family management in typically working hours. Alternatively, they could partially reduce the working hours in a week and recover them in the following one, if family management improved. In other words, employees working from home could manage flexibility in their working schedule on a daily and weekly basis, provided that this flexibility complied with the limits on working hours set forth by the legislation on working hours¹⁹ and that time bands of presence and/or co-presence with the team agreed with the managers were met. During these bands, Employees had to ensure they were reachable through company systems. Considering the hybrid nature of emergency smart working, though, the company regulation did not foresee changes in overtime treatment when working remotely under this FWA.

In terms of supervision, control and disciplinary measures, the company regulation stressed that also in case of remote work, the Company retained its management and organizational power, and the employees' duties of diligence, obedience, loyalty and confidentiality under art. 2104²⁰ and following of the Civil Code were confirmed. The Company also retained its disciplinary and control power over the performance rendered outside of its the premises, in accordance with Article 4 of Law No. 300 dated 20 May 1970, as amended by Legislative Decree 151/ 2015, as well as with applied collective bargaining agreements and in accordance with privacy legislation. NCBA provisions about disciplinary

¹⁸ Informativa sulla salute e sicurezza nel lavoro agile ai sensi dell'Art. 22, Comma 1, L. 81/2017 published on www.inail.it

¹⁹ Legislative Decree No. 66 dated 8 April 2003, transposing Directives 93/104/CE and 2000/34/CE regarding some aspects of working time organisation.

²⁰ 'Diligenza del prestatore di lavoro- Il prestatore di lavoro deve usare la diligenza richiesta dalla natura della prestazione dovuta, dall'interesse dell'impresa e da quello superiore della produzione nazionale. Deve inoltre osservare le disposizioni per l'esecuzione e per la disciplina del lavoro impartite dall'imprenditore e dai collaboratori di questo dai quali gerarchicamente dipende'.

conducts were reconfirmed as applicable also to remote workers, and any failure to comply with the contents of the company regulation could possibly give rise to disciplinary actions.

2.3. The ‘*Work Smart, Be Flexi*’ Project – Smart Working as a Choice

Agile work as defined by Law No. 81/2017 was officially introduced in Tetra Pak Italy in October 2020 and fully implemented from April 2022 when the ‘Flexible Working Arrangements (FWA) and Smart Working Implementation- Local Policy and Procedure’ became fully effective, following the end of the National Emergency Status linked to the pandemic. Indeed, the HR Country Services function launched the so called ‘*Work Smart, Be Flexi Project*’ in October 2020, presenting smart working to employees as a voluntary and reversible long-term flexible working arrangement meant to offering to all white-collar employees the opportunity to work flexibly both in terms of place and time, subject to line managers’ approval. The project meant to offer an extended portfolio of Flexible Working Arrangements to the employees of the five Italian legal entities, through the governance of a company regulation, which applied in full to all permanent employees and agency workers who had served their probation period. Flexible working arrangements offered by means of this regulation included also flexi time, smart part time (i.e. part time combined with smart working) and flexible careers like sabbaticals and job rotations across functions, yet this doctoral thesis will deal exclusively with smart working.

The following paragraphs will give an account of the main features of smart working in Tetra Pak Italy, by providing an overview of the main contents of the company regulation in terms of a) expressed goals, b) flexible workplace, c) flexible working time organisation, d) planning and periodicity e) withdrawal from the agreement and f) disciplinary measures.

2.3.3.1. Goals

To begin with, by means of the above-mentioned company regulation, Tetra Pak intended to comply with Italian Legislation in case of remote work while also favouring work-life balance and improving work satisfaction, work efficiency and productivity and increasing engagement levels, inclusion and equal opportunities. In other words, the company regulation on Flexible Working Arrangements in force, while guaranteeing compliance with Law No. 81/2017, also makes sure that Tetra Pak remains competitive in the areas of talent attraction and retention, is agile in responding to ever-changing business climates, and continues as a

leader in reducing environmental footprint. The introduction of agile work was in line with the Company's core value of *Freedom & Responsibility*, since through flexible working employees are empowered with the *Freedom* to choose where and when to work (within specific limits defined by the regulation itself), while demonstrating *Responsibility* in meeting the obligations of their position. Moreover, it was meant to make employees more productive, *productivity* being one of the enablers of Tetra Pak 2030 strategy together with *dynamism* and *capability*.

All in all, the Company encourages flexible working in all areas and business functions, provided that it is compatible with the job features and does not compromise business outcomes.

2.3.3.2. Working Anywhere ...

As far as flexible working place is concerned, the company regulation governing smart working in Italy does not establish a maximum number of days employees are allowed to work offsite, as long as the onsite-offsite alternation is guaranteed (not necessarily on a weekly basis) and as long as a minimum presence onsite is respected that ensures interaction with the Team and participation in activities that may require to be physically onsite. In other words, employees' presence onsite shall be defined in agreement with the line manager and presence outside agreed alternation must always be guaranteed, if requested by line manager with a notice of at least two working days.

Smart Workers can work from home but not limited to, for part of the day or a whole day, when opportunity permits it, on a regular basis, provided that the locations selected by the smart worker meet requirements set forth by local legislation (Italian and/or regional legislation), Tetra Pak Group and local policies, procedures and guidelines. Specifically, in compliance with INAIL circular document n. 48/2017 ²¹ and article 23 of Law No. 81/2017, the workplace that is chosen by the employee to perform smart working must meet security, confidentiality and data protection criteria, guarantee the necessary psycho-physical comfort, and be equipped with the necessary connectivity. Moreover, it must not introduce additional risks compared to those in the Company's premises. Employees can refer both to the written notice released by INAIL, which is attached to the individual smart working agreement and to the dedicated trainings delivered on the subject, which are meant to provide guidance in the selection of a compliant workplace and have to be completed before applying for smart

²¹Available at: <https://www.inail.it/portale/it/atti-e-documenti/note-provvedimenti-e-istruzioni-operative/normativa-circolari-inail/dettaglio.2017.11.circolare-n-48-del-2-novembre-2017.html>.

working. Once an individual smart working agreement is in place, refresh courses are going to be scheduled on a regular basis to keep agile workers' awareness on the topic high.

For operational reasons, the locations chosen by the worker to perform work shall be placed to such a distance to allow employees to return promptly to their contractual workplace in case of unexpected occurrences. Employees are not required to inform the company of the remote workplaces they choose and, to date,²² the only limitation concerning remote locations is that smart working from abroad is not allowed, since it may require a work permit and bring along tax and social security related compliance issues for both the company and the employee, as well as cause unforeseeable accident insurance related risks.

As briefly mentioned supra, since the employer must guarantee the health and safety of its smart workers, the Company has designed specific e-learning modules on operational health and safety in case of work performed outside the company premises. Moreover, in compliance with Law No. 81/2017, it provides employees and their Health and Safety Representatives (RLS) with a written notice about general and specific risks connected to smart working on a yearly basis. On the other hand, smart workers have the responsibility to cooperate with the employer in the enactment of prevention and protection measures set forth by the employer when working outside the company premises, based on the specific training received on the subject.

As per Law No. 81/2017 and above mentioned INAIL Circular n. 48/2017, smart workers are entitled to protection against occupational accidents and occupational diseases when work is performed outside the company premises. This protection is effective also in case of *in itinere* accidents occurred during the regular route either from/to employees' home or from/to the selected workplace, provided that the selection of the working place is connected to working needs and meets reasonable criteria. Indeed, INAIL clarified that the protection against work accidents in case of smart working is effective when accidents occurred in the selected working place are connected to the working activity. Having said that, the Company regulation highlights the employee's responsibility in the selection of a workplace that meets security, confidentiality, and data protection criteria and that does not introduce additional risks compared to those in the Company's premises.

Another important theme related to the selection of remote working place is data protection: since information is a valuable company asset and must be protected from unauthorized, incorrect or accidental access, use, modification, destruction or disclosure,

²² January 2025.

remote workers are required to keep both paper and electronic records secure at all times, as they will be held accountable for securing information by taking reasonable measures to safeguard it on a routine basis, according to relevant company regulations on the subject.²³

2.3.3.3. ... And Anytime?

According to Tetra Pak local policy on Flexible Working Arrangements, when an individual smart working agreement is in place, smart workers can work with a discontinuous schedule both when they work onsite and offsite,²⁴ the only limit being the compliance with

²³ The template of the individual smart working agreement currently in use in Tetra Pak Italy contains the following provisions:

[...] 6. *During the period of validity of this agreement, you will be allowed to perform work in a place other than the company premises located in [contractual workplace], but you will have to guarantee your onsite presence as agreed with your Line Manager and, in any case, in accordance with the business needs.*

7. *You are allowed to choose the working location within the national territory, provided that it is compliant in terms of security and confidentiality (please refer to the provisions under point 29 of this agreement and to the provisions of the local policy "Flexible Working Arrangements and Smart Working Implementation" in force).*

[...]

19. *To perform work in smart mode, you might be provided with the technological equipment owned by the Company according to Company policies in force. The Company will not provide any support for the preparation of a workspace outside the company premises. In any case, any equipment you use to perform work in smart mode constitutes a "work tool", as governed by paragraph 2 of article 4 of law no. 300/70.*

20. *The Company undertakes to provide you with adequate information and training on the use of the equipment, a correct workstation, general and specific risks, as well as optimal methods for carrying out your working activity in terms of health and safety.*

[...]

23. *The maintenance of Company equipment remains the responsibility of the Company.*

24. *Adhering to smart work shall be subject to legal obligations relating to mandatory safety training on general and specific risks.*

25. *As part of this individual agreement, the regulations on health and safety in the workplace provided for by Legislative Decree 81/2008 will be applied, as far as these are compatible, taking into account the specific nature of your work performance. The Company will guarantee all measures and actions aimed at protecting health within the framework of its legal and contractual obligations. In particular, the Company will provide you with a written notice identifying general and specific risks connected to the particular method of execution of the employment relationship.*

26. *The health and safety provisions on telework, pursuant to Legislative Decree no. 81/2008 and subsequent amendments, do not apply to smart work. It remains the responsibility of the worker to verify that the premises where smart work is performed, and the systems connected to it are compliant with the law and allow work to be carried out safely.*

27. *You have the right to protection against injuries in the workplace and occupational diseases related to the risks connected with the work performed outside company premises, up to the limits and under the conditions set out in Consolidated Law no. 1124/1965. You have the right to protection against accidents while travelling, up to the limits and under the conditions set out in Consolidated Law no. 1124/1965 and the current legislation on smart work. In the event of a work accident occurring during the performance of your smart working services, you must immediately notify your Line Manager, HRSC-Payroll and the person responsible for the prevention and protection service (RSPP) according to the procedures established by the Company, so that the internal work accident procedure can be activated, and you shall promptly send the accident certificate to HRSC-Payroll.*

28. *The Company cannot be held responsible for any injuries that you may incur, if these are attributable to an improper use of the equipment assigned to you that generates situations of risk in the workstation.*

29. *You undertake to comply with the minimum suitability requirements of the offsite working premises. In compliance with the law and the contract, you are bound to absolute confidentiality on Company data and information in your possession and / or which is available on the Company IT system. You shall therefore adopt any suitable measure to guarantee such confidentiality also when working in smart mode.*

²⁴ This is linked to the fact that in Tetra Pak, once a smart working agreement is in place, employees are considered smart workers regardless of where they work, meaning that they can work flexibly and with a discontinuous schedule also when they work onsite, provided that this is agreed with the line manager.

working hour limits set forth by Legislative Decree No. 66/2003.²⁵ For instance, employees could start working earlier than the standard company working hours and finish later and/or partially reduce the working hours in a week and extend them the following week. Yet, they need to comply with some restrictions, namely 1) as a general rule, smart working has to be performed in the daily timeframe 6:00-22:00; 2) smart workers are invited to keep work performed in time bands that make contact with other team members and line manager impossible to a minimum; 3) minimum one day of rest shall be observed every seven or two days every fourteen; 4) work on Sundays is generally not allowed, since it is day of rest, and disconnection shall be guaranteed; 5) work on public holidays is not permitted; 6) the minimum rest time of twelve hours between the end of a working day and the start of the following one shall be observed.²⁶

Employee and line manager shall agree on availability time bands and disconnection time bands. The former can be defined as a timeframe during which the employee guarantees to be reachable and contactable via company tools. These bands do not have to match contractual daily working hours and can be shorter of standard eight hours a day (or less, in case of part time), the assumption being that outside of these bands, the employee is working but might be doing so in a discontinuous way. In other words, smart workers are required to respect time bands of presence and/or co-presence with the team, which will be established in agreement with their managers, based on business needs. During these bands, employees ensure they are logged onto the company systems and that their Outlook calendar is up to date, while outside of the bands, they are allowed to self-organise their activities, even working discontinuously. The latter are those timeframes when the employee is off and cannot be contacted via company tools, like for instance lunch break and the end of the working day. Tetra Pak invites employees and line managers to define disconnection time bands in the individual smart working agreement, preferring a soft over a hard approach on the matter. Indeed, given the diversified needs of organisations and teams, a hard, standardised approach towards disconnection would have limited the flexibility of this working arrangement, which is why it is left to the parties to define the best way to arrange disconnection.

Given the flexibility in working hour scheduling, overtime is not an option when a smart working agreement is in place, regardless of the location where work is performed (be it onsite or offsite and also in case of business trip) and of the employee's contractual level. This

²⁵ Legislative Decree No. 66 dated 8 April 2003, transposing Directives 93/104/CE and 2000/34/CE regarding some aspects of working time organisation.

²⁶ This is more restrictive than the 11-hour daily rest foreseen by Legislative Decree No. 66/2003.

topic has been a controversial and much disputed subject between HR and employees, and a better-favour condition was approved in the summer of 2022 for a specific population with roles dependent on visiting customer sites to provide technical assistance (so-called “customer-based” employees). Given that this specific population has very little discretion in the self-determination of their working schedule and can take advantage of ad hoc flexibility treatments ruled by either dedicated company collective agreements or company regulations (on call, bank of hours, staggered hours, etc.), it was agreed that they are to be considered smart workers only when they are not working at customer sites. On those occasions, the provisions of the FWA company regulations applicable to “standard” smart working affect them as well, while when they are commanded on a mission at customer sites, the provisions of the dedicated company collective agreements and company regulations prevail, and they are entitled to overtime, if applicable.

2.3.3.4. Planning and Periodicity

With reference to flexible working planning and periodicity, it is worth reinforcing that agile work is voluntary and subject to line manager approval. Originally, the application process was digitized through a dedicated platform created for this specific project and integrated in the company intranet, through which employees were guided in the application flow.²⁷ In the platform they could take mandatory trainings on the subject (including the Organisational Health and Safety trainings mentioned *supra*), download the company regulation governing smart working, submit the application to their line manager and grandparent manager for approval and sign the long-term individual smart working agreement.

Following a pre-emptive discussion with the manager, the employee’s application for agile work must contain three mandatory pieces of information, namely, a) onsite/offsite alternation, b) availability time bands, 3) disconnection time bands. When considering agile work applications, line managers are invited to factor in several criteria including, but not limited to the suitability of the role for flexible working, that flexible working does not affect performance and quality of the output, the impact and effect of the proposed arrangement on other team members and the workload of the role. Originally, the FWA company regulation foresaw that requests coming from working parents within three years after the end of maternity

²⁷ The platform was dismissed at the end of October 2023, as the ‘*Work Smart, Be Flexi*’ business transformation project came to an end after its planned 3-year-long life cycle. More than 1,400 smart working agreements have been signed over the last 3 years, with a final coverage of ninety per cent of the eligible population. Since November 2023, Smart Working applications have become ‘business as usual’ and are now managed offline via the HR ticketing system.

leave, working parents of children with disabilities and employees approaching retirement had to be prioritised, as well as those filed by employees with proven serious disease and reduced working capacity. Following the enforcement of legislative decree No. 105/22 dated 30 June 2022 and in force since 13 August 2022, which changed the content of paragraph 3-bis of art. 18 of law No. 81/2017,²⁸ the policy was amended to align with the priorities established by Law.

Even if it is advisable for managers and employees to agree on a regular weekly calendar, the agreed weekly working schedule shall not be considered as fixed and binding, nor shall it limit the freedom and flexibility connected to smart working. Managers are invited to support a new way of working that favours the achievement of company outcomes and grants employees an increasing freedom in working schedule and place, provided that the guidelines contained in the regulation are complied with. This is the reason why the Company offers employees the possibility to re-discuss the contents of the flexibility agreed with their line manager and grandparent, and it even invites them to make the conversation on flexible working recurrent in their one-to-one sessions, in order to tackle possible hiccups in the deployment of flexibility and to adjust the agreed arrangement to better suit the needs of the Parties.

Interestingly enough, employees who sign an individual smart work agreement are assigned a dedicated timesheet for smart workers which is automatically filled in with a standard weekly presence of 40 hours (or less depending on contractual working hours applying), where they only have to input planned absences like holidays or protected absences like sick leave, maternity leave and so on. No pre-emptive approvals of days worked remotely is needed and no specific smart working time entry has to be entered in the timesheet, based on the assumption that smart workers are as such regardless of the place where work is performed.

²⁸ The new paragraph reads, *‘I datori di lavoro pubblici e privati che stipulano accordi per l’esecuzione della prestazione di lavoro in modalità agile sono tenuti in ogni caso a riconoscere priorità alle richieste di esecuzione del rapporto di lavoro in modalità agile formulate dalle lavoratrici e dai lavoratori con figli fino a dodici anni di età o senza alcun limite di età nel caso di figli in condizioni di disabilità ai sensi dell’articolo 3, comma 3, della legge 5 febbraio 1992, n. 104. La stessa priorità è riconosciuta da parte del datore di lavoro alle richieste dei lavoratori con disabilità in situazione di gravità accertata ai sensi dell’articolo 4, comma 1, della legge 5 febbraio 1992, n. 104 o che siano caregivers ai sensi dell’articolo 1, comma 255, della legge 27 dicembre 2017, n. 205. La lavoratrice o il lavoratore che richiede di fruire del lavoro agile non può essere sanzionato, demansionato, licenziato, trasferito o sottoposto ad altra misura organizzativa avente effetti negativi, diretti o indiretti, sulle condizioni di lavoro. Qualunque misura adottata in violazione del precedente periodo è da considerarsi ritorsiva o discriminatoria e, pertanto, nulla.’* In addition, Legislative Decree No. 105/2022 introduced paragraph 3 ter, reading, *‘Il rifiuto, l’opposizione o l’ostacolo alla fruizione del lavoro agile, secondo quanto disposto dal comma 3-bis, ove rilevati nei due anni antecedenti alla richiesta della certificazione della parità di genere di cui all’articolo 46-bis del D.Lgs. 11 aprile 2006, n. 198 o di analoghe certificazioni previste dalle regioni e dalle province autonome nei rispettivi ordinamenti, impediscono al datore di lavoro il conseguimento delle stesse certificazioni.’* For a detailed analysis of this topic, see *infra* Chapter 2 – Section [4.1. The Gender Dimension of Agile Work](#).

As already mentioned above, the company regulation in force in Italy does not provide for a minimum percentage of onsite presence, which needs to be agreed with line managers with the approval of the grandparent manager, making sure that a minimum onsite presence is guaranteed that allows to meet those targets of interactions and participation that the company deems very important.

The key message conveyed to people leaders when presenting the local regulation back in 2020 was that for smart working to really serve its intended purposes, a shift to a different management mindset was needed: from managing by presence to managing by outcome. Managers have been indeed invited to support a new way of working that favors the achievement of company outcomes and grants employees an increasing freedom in the arrangement of their working schedule and in the selection of the working place. Moreover, people leaders are expected to reward work and not time; in order to gain from flexibility, they are expected to develop clear goals and KPI's for individuals and teams, communicating frequently to ensure all team members feel a sense of community even when working from different locations. On the other hand, employees shall demonstrate responsibility and accountability, while remaining flexible and adapting to changing business needs. In addition, even in the realm of higher flexibility, they are invited to manage their work so as to avoid excessive hours and health issues. Regardless of the place of work and of the working hour patterns, any working activity must be carried out in compliance with the Law and Tetra Pak Group regulations, procedures and guidelines.

In other words, line managers and employees are invited to cooperate to make sure flexible working actually works. On the one hand, line managers have a key role in the process, since it is their responsibility to evaluate the value and the technical and organisational feasibility of any smart working application and to approve it. They are expected to consider every request for flexible working with the intention of enabling it and are responsible to ensure that operations needs are considered so that client's and customer's expectations are not compromised in case of flexible working. On the other hand, employees should show responsibility and accountability by complying with agreed availability and disconnection time bands, while also being ready to adapt to changing business needs.

2.3.3.5. Withdrawal from the Individual Smart Working Agreement

Another defining feature of agile work in Tetra Pak Italy is its reversibility. Indeed, the company regulation specifies that smart working is not an entitlement; hence, it is of the utmost

importance that, once it is approved, line managers keep assessing its effectiveness to ensure it meets the team and the business needs alongside the needs of the employee. Indeed, even though smart working in Tetra Pak Italy is a long-term agreement, the company reserves the right to revoke the authorization at its sole discretion, both in terms of policy changes or cancellation and in terms of termination of the individual smart working agreement, with a written notice of ninety days. Similarly, also employees can opt out of a smart working agreement with notice. Moreover, the Company reserves the right to review any approved smart working agreement at any time, without notice, in compliance with the legislation in force for any justified reason which may include -but is not limited to- change in legislation, change either in Tetra Pak global guidelines or in the role of the smart worker, failure of employees either to achieve the objectives set out in the annual performance plan or to comply with the obligations set out in the FWA local policy relating, by way of example, to workplace safety, confidentiality and security of company data and compliance with the agreed availability and disconnection time bands.

2.3.3.6. Supervision, Control and Disciplinary Measures

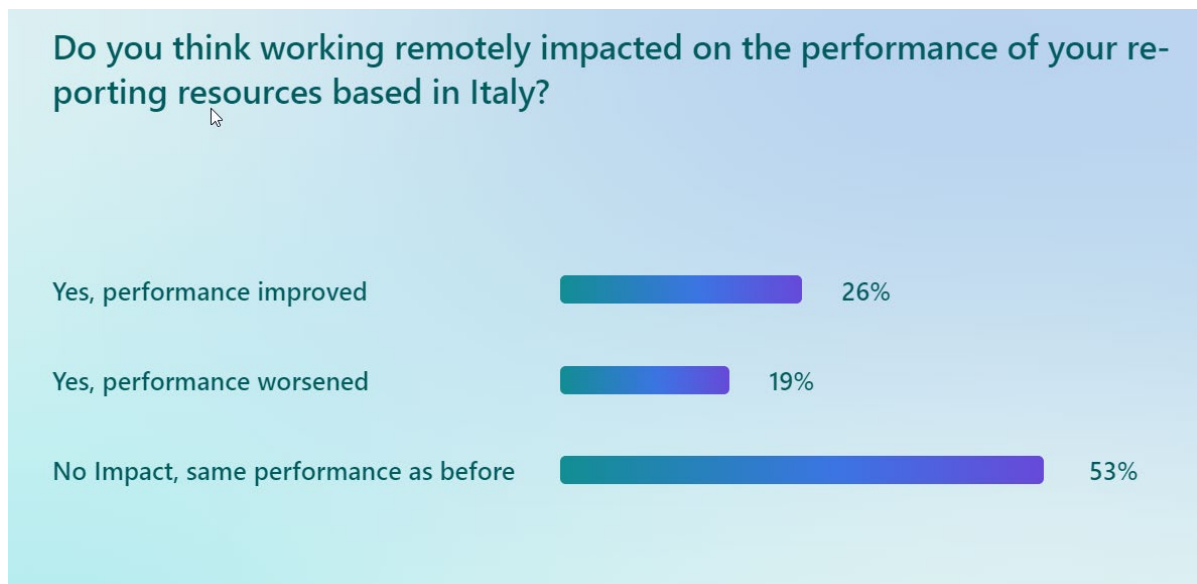
The company regulation governing smart working makes it crystal clear that in the event of smart working, the Company retains its managerial and organizational power, and the employees' duties of diligence, obedience, loyalty and confidentiality set forth by Article 2104²⁹ and following of the Italian Civil Code are reconfirmed. In addition, the Company also retains its disciplinary and control power over the performance rendered outside the premises of the Company in accordance both with Article 4 of Law No. 300 dated 20 May 1970, as amended by Legislative Decree No. 151/2015, with applied collective bargaining agreements and with data protection legislation. It goes without saying that NCBA provisions about disciplinary conducts apply also to smart workers. In particular, any breach of the smart working agreement and/or failure to comply with the contents of the company regulation, may give rise to disciplinary actions and to the termination of the smart working agreement itself.

²⁹ *‘Il prestatore di lavoro deve usare la diligenza richiesta dalla natura della prestazione dovuta, dall'interesse dell'impresa e da quello superiore della produzione nazionale’.*

3. Blind Spots of Smart Working or Opportunities?

With emergency smart working in place since May 2020 and agile work fully enacted since April 2022, work that was previously performed onsite moved offsite, at least for some of the time, and people discovered that working flexibly (and not only remotely) could be advantageous. Indeed, potential benefits of flexible working were generally reconfirmed during the pandemic, since in Tetra Pak Italy business could continue without major disruptions.

In June 2022, a survey titled *‘Emergency Smart Working in Italy: lessons learnt and food for thought’* was administered to line managers with reporting resources legally employed in Italy, with a view to identifying the main issues they had encountered with remote work during the pandemic and to address them during a dedicated coaching path that would be delivered during the following autumn.³⁰ When asked about the impact on performance of emergency smart working, the majority (53%) stated there were no changes, 19% flagged issues with it, while a significant 26% recognised an improvement in performance connected to remote working, as follows:

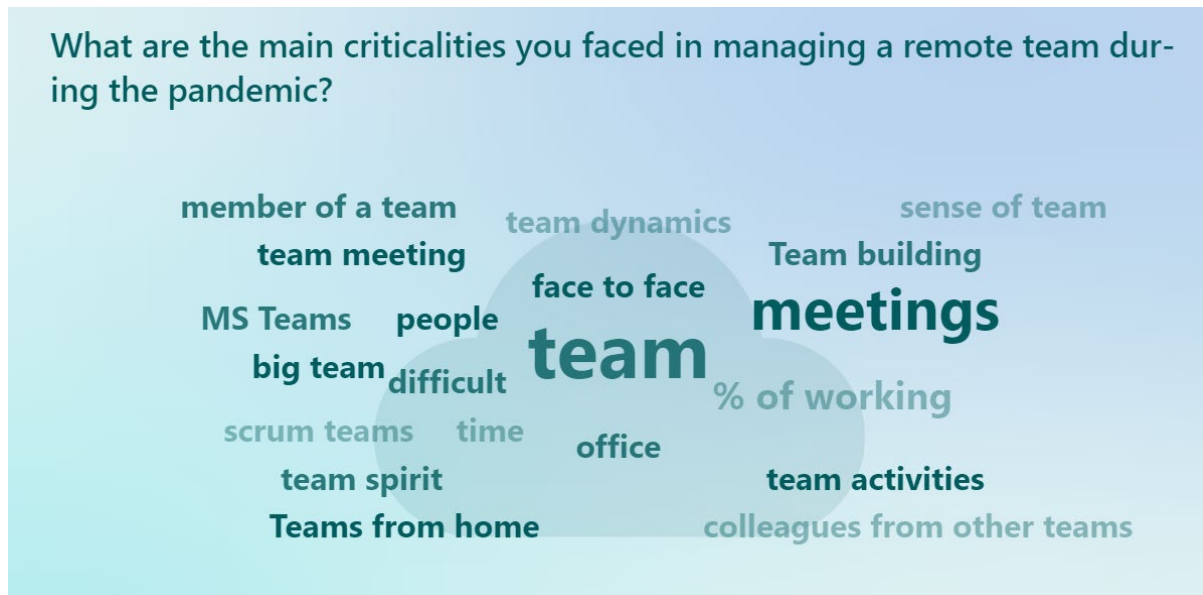


When asked to list a positive aspect of emergency smart working, respondents referred to improved work-life balance (*‘people enjoyed more flexibility with families and private life’*; *‘smart working has enabled a higher flexibility of the team, resulting in a better work-life*

³⁰ 101 managers were invited to take the survey, which was composed of 14 questions focusing on the emergency smart working experience. 58 out of 101 managers completed it, with an overall response rate of 57%.

balance and overall general satisfaction in the team'; 'each employee with children got the possibility to manage family life needs more efficiently') and time saving in commuting ('for responsible persons as they are this was the good possibility to save time on commuting'). On the other hand, when asked to list a negative aspect of emergency smart working, most respondents pointed out the loss of social interaction (mainly informal), leading to a loss of collective creativity and in some cases also of employees engagement, as there was 'less opportunity for spontaneous discussions that could generate new ideas', and 'there has been a loss of coordination and information exchange which most of the time happens in the informal connection in the office'. Some complained about the 'loss of the 'coffee chat' meeting with people that you have sporadic contact with, that allows you to exchange information that would not happen from home'.

During emergency smart working, many managers arranged regular remote team meetings to keep the team spirit alive, yet they reported that sometimes 'keeping the energy level high was difficult, especially with young people who value time with colleagues. I have found ways to mitigate the impact, but the team have missed the direct contact and the face-to-face meetings.' See the below word cloud for a visual representation of the above.



Another drawback of flexible working that was brought to the fore was the difficulty to disconnect after regular working hours and to take advantage of working time flexibility connected to smart working, 'People do not understand flexibility in full and feel guilty if they take extra time during working hours to attend personal stuff'; 'you tend to not have breaks or work longer'; 'it's difficult to disconnect and differentiate between Work and Home'.

For sure, most of the above feedback referred to an operational model of smart working that had very little to do with agile work as defined by Law No. 81/2017 and as implemented in the company once individual agile work agreements were restored as mandatory by the legislation. Even so, said feedback shed a light on potential blind spots of this new way of working, which had to be taken into consideration when transitioning to the new post-pandemic smart working. Indeed, when restrictions to the access to Company premises were lifted, Tetra Pak Italy moved to a hybrid remote working model favouring an alternation of onsite and offsite work, which allowed to overcome most of the criticalities flagged above in terms of isolation and lack of face-to-face interactions. Even so, the feedback collected on the subject became the starting point for the coaching sessions that were held from October 2022 to February 2023 for managers with reporting resources in Italy and that were meant to address the main challenges brought about by the new hybrid model implemented through the '*Work Smart, Be Flexi*' Project.

It can be maintained that, once emergency smart working was over, starting from April 2022, flexible working has not always been plain sailing, since not only does it require the right skills to perform it, but it also requires trust, cooperation, and effective and transparent communication both between employees and their managers and between onsite and offsite workers. No surprisingly, during the above-mentioned coaching sessions, managers shared some of their concerns related to time coordination in mixed teams with different needs in term of working time flexibility. Others needed to understand how to set boundaries on their reporting resources' requests for flexibility, still finding it hard to shift from managing by presence and by monitoring hours worked to managing by outcome. These coaching sessions also highlighted some unanswered questions, particularly with reference to a) working time organisation and right to disconnect, b) employees' well-being and work life balance, c) occupational safety and health obligations in terms of remote workplace and new psychosocial risks connected to flexible working and d) exercise of power of control and disciplinary power. From an employee's perspective, on the other hand, the most challenged feature of Tetra Pak Italy Smart Working model was the decision to remove overtime once a smart working agreement was in place, the main objection to this being that when telework³¹ and emergency smart working were in place, employees could work from home without an impact on their overtime treatment. Despite HR many attempts to explain the differences between the previous

³¹ This refers to Tetra Pak 'Distance Working' as described *infra* under paragraph [2.1. Telework in Tetra Pak Italy](#). Both Teleworking and Emergency Smart Working were superseded starting from April 2022, when signing an individual smart working agreement became the only way to be allowed to work remotely for compliance reasons.

FWA and Smart Working (also by means of dedicated mandatory e-learnings designed with the specific purpose of illustrating these differences) and in spite of the focus of internal communication campaigns on the broader flexibility offered by the new model in terms of working time if compared with the previous flexible working arrangements, which made overtime not compatible with the new model, right from the project launch it was clear that employees were questioning the working time flexibility connected to smart working and, at least in an initial phase, they would have preferred to stick to the kind of (limited but known) flexibility they were used to, namely working from home for one or two days a week maximum, with no impact on their overtime treatment. Also, the introduction of availability time bands was not well-received at first, as most of the smart working applications submitted contained (and sometimes still do) availability time bands either mirroring standard office hours or even exceeding them, with the concept of discontinuous working schedule and disconnection failing to stick.

Another widely opposed issue has been the company decision to exclude smart working from abroad as a form of protection for both the company and the employees against unforeseeable risks and liabilities connected to immigration, compliance with tax and social security, applicable labour law, healthcare and OHS.³²

To conclude, among the hottest issues that need to be tackled to make sure smart working fulfils its intended goals are how to make sure flexibility in working time can be managed without causing business disruption; how to manage overtime treatment in case of smart working; how to comply with disconnection in order to make sure people do disconnect, but without implementing standardised, hard disconnection measures that would hinder the flexibility connected to smart working; how to make sure employees choose a compliant remote workplace based on the sole trainings and information received on the subject, without any company assessment; how to make sure flexible working does fulfil its intended goal of improving work-life balance without turning into work-life blending. Last item to be approached concerns how to exert disciplinary power and power of control in case of smart working: since these powers are historically linked to onsite presence and working time recording, how can they be exerted if employees have moved out of the office for part of their working time and attendance is not recorded anymore and thus cannot be monitored?

The HR Country Services function to which I belong wants to find legally compliant answers to these questions, preferably outside collective bargaining, and this is because the

³² In January 2025 the possibility to allow smart working from abroad within the EU territory for a limited number of days per year and with a dedicated approval process is under investigation.

Company believes that tailor-made solutions addressing specific needs of the individual on the one hand and of the team/organisation in which employees work on the other (even if within a pre-set framework of light guidelines valid for all) are more likely to achieve the intended purpose of improved work-life balance and increased competitiveness that the Company is targeting with the implementation of agile work. Hence, this doctoral thesis aims at outlining an operational model that meets the above needs, the starting point being the literature review on the main topics listed above, which will be the subject of the next chapter.

Chapter 2 ‘Blind Spots’ of Flexible Working – A Literature Review

CONTENTS: 1. Regulating Working Time and Post Pandemic Perspectives. 2. Working Time Flexibility Connected with FWA. 2.1. Telework and its Unkept Promises of Flexibility. 2.2. Italian Smart Working: an Attempt to Boost Flexibility. 2.3. Italian Agile Work and Working Time Regulation. 3. Shaping the Right to Disconnect Within the Framework of Working Time Regulation in the European Union. 3.1. The European Union and the Right to Disconnect: no ‘One-Size-Fits All’ Approach. 3.2. The Approach of EU Member States Towards the Right to Disconnect. 3.3. The Italian Way Towards the Right to Disconnect. 4. Protecting Work-life Balance from Work-life Blending. 4.1. The Gender Dimension of Agile Work. 4.2. Agile Work as a Work-life Balance Enabler. 5.1. Applicable Legislative Framework: a Widely Debated Issue. 5.2. The Approach of Collective Bargaining. 5.3. What Protection for Agile Workers in Case of Work Accidents? 5.4. New Risks for Agile Workers’ Health and Safety. 6. Exerting Disciplinary Power and Power of Control. 7. Conclusion.

1. Regulating Working Time and Post Pandemic Perspectives

By way of introduction, it shall be noted that what the critical issues connected to smart working uncovered during the deployment of Tetra Pak Italy model mentioned in the previous Chapter have in common is that they are related to the exercise of managerial prerogatives that typify subordinate work.³³ Indeed, *‘one of the most important features of subordination is the exercise by the employer of managerial prerogatives at the agreed upon working place and during the predetermined working time, which give rise to the subordinated physical integration of the worker into somebody else’s organization.’*³⁴

There is a growing body of evidence to suggest that digitalisation is triggering a change of paradigm in the exercise of managerial powers due to physical separation of employers and employees on the one hand and to a *‘shift from a time-based to a result-oriented work*

³³ According to the Italian Civil Code (art. 2094), *‘È prestatore di lavoro subordinato chi si obbliga mediante retribuzione a collaborare nell’impresa, prestando il proprio lavoro intellettuale o manuale alle dipendenze e sotto la direzione dell’imprenditore.’*

³⁴ Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 11-28. Palgrave Macmillan, Cham.

*relationship' on the other.*³⁵ In this respect, although agile work as ruled in articles 18-23 of Law No. 81/2017 is by definition subordinate work,³⁶ it entails time and space flexibility, or to be more precise, the '*disembedding of the individual workstation from the standard working times and places of the formal organisation.*'³⁷ Indeed, '*agile workers are allowed a certain (varying) degree of discretion as far as where, when and how to work, i.e. how to get work done, and they can exert discretion over the time needed for the execution of primary tasks, since they can decide when to start, stop and finish their working activities.*'³⁸

However, while an increasingly digitalised working relationship is shifting from the traditional concept of working time as a predetermined period during which performance should be rendered towards work by objectives, working time regulation in the European Union is still governed by the European Working Time Directive (WTD),³⁹ which dates back to 2003 and entails a strict dichotomy between working time and rest period, with no third category in between. In this binary system, *tertium non datur*, as there is no reference to those grey areas '*between full work under the control of the employer on the one hand of the scale and full free time of the employee without any constraints on the other hand.*'⁴⁰

Similarly, in Italy working time is ruled by Legislative Decree No. 66/2003 of 8 April 2003, issued in execution of Article 22 of Law No. 39 of 1 March 2002, with a view to rearranging previous measures on the subject, where working time is defined as any period of time in which the worker is at work, at the employer's disposal and engaged in working activities, while rest period is, by contrast, any period of time outside working hours. Normal working hours are set at forty hours per week (art. 3), while the average duration of weekly working time cannot exceed forty-eight hours, including overtime, over a period of four months, which can be extended up to six and twelve months by collective agreements (art. 4).

³⁵ On the relationship between agile work and managerial prerogatives see *infra* paragraph [6. Exerting Disciplinary Power and Power of Control](#).

³⁶ Article 18, paragraph 1 of Law No. 81/2017 reads '*Le disposizioni del presente capo, allo scopo di incrementare la competitività e agevolare la conciliazione dei tempi di vita e di lavoro, promuovono il lavoro agile quale modalità di esecuzione del rapporto di lavoro subordinato stabilita mediante accordo tra le parti, anche con forme di organizzazione per fasi, cicli e obiettivi e senza precisi vincoli di orario o di luogo di lavoro, con il possibile utilizzo di strumenti tecnologici per lo svolgimento dell'attività lavorativa. [...]*'.

³⁷ Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 93-222. Palgrave Macmillan, Cham. Fabbri, T. (2018). Digital work: an organizational perspective. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 29-38. Palgrave Macmillan, Cham.

³⁸ *Idem*.

³⁹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088>.

⁴⁰ Krause, R. (2018). "Always-on": The Collapse of the Work–Life Separation in Recent Developments, Deficits and Counter-Strategies. Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 223-248. Palgrave Macmillan.

No maximum daily limit is set forth, yet it can be inferred a *contraris* at twelve hours and forty minutes, given the minimum daily rest time of eleven consecutive hours every twenty-four set forth by article 7 and considering the right to ten-minute pauses every six hours worked set forth by article 8. Overtime, which is defined as work performed outside normal working hours, shall be occasional and shall not exceed two-hundred fifty hours per year (art. 5). Collective bargaining can, in any case, envisage exceptions *in melius*. A specific discipline for pauses, weekly rest periods and night work duration is contained in articles 8, 9, 12 and 13 respectively. Article 17, on the other hand, sets forth derogations to the discipline regarding daily rests, pauses, night work and maximum weekly duration for specific categories of workers, and in particular paragraph 5 states that *'the provisions of articles 3, 4, 5, 7, 8 12 and 13 shall not apply to workers whose working time, due to the type of activity performed, is not measured, predetermined, or cannot be predetermined by the workers themselves and when it concerns a) managers, managerial staff of companies or other people with autonomous decision-making powers [...]'*. Interestingly enough, telework is mentioned under art. 17 among the derogatory hypotheses of working time regulation.

It is a shared belief⁴¹ that working time regulations in force both at a European and at a country level entailing a strict dichotomy between working hours and rest times are outdated and not fit for purpose, given the dramatic changes in working time conditions experienced in recent years and triggered by the fourth industrial revolution.⁴² Indeed, the spread of digital technology has made it possible for many to work anytime and anywhere, and the flexibilisation of work has now reached such an extent that the traditional relationship between

⁴¹ See for instance, Krause, R. (2018). "Always-on": The Collapse of the Work–Life Separation in Recent Developments, Deficits and Counter-Strategies. Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 223-248. Palgrave Macmillan.

⁴² For a detailed analysis of the concept of Fourth Industrial Revolution see Paba, S., & Solinas, G. (2018). In favour of machines (but not forgetting the workers): some considerations on the Fourth Industrial Revolution. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 39-63. Palgrave Macmillan, Cham. According to the authors, the term originally appeared in a report published in 2013 by a German working Group named Platform Industrie 4.0 composed of scholars and members from the federal government who defined it as *'the technical integration of Cyber-Physical Production Systems (CPS) into manufacturing and logistics and the use of the Internet of Things and Services in industrial Processes'* (see Kagermann et al. 2013, p.14, Recommendations for Implementing the Strategic Initiative Industrie 4.0 Working Group, April 2013). Other definitions include *'Digital transformation of industrial production'* and *'Application of digital technologies to the manufacturing sector'*. See also Spinelli, C. (2018), Tecnologie digitali e lavoro agile, Cacucci. In this respect, see also Moscaritolo, I. (2017). "Time Porosity": una chiave di lettura per la nuova realtà del tempo di lavoro. Bollettino ADAPT 13 febbraio 2017, n. 2. According to the Author, *'i nuovi trend dell'organizzazione del lavoro, influenzati da un crescente progresso tecnologico e da una maggiore richiesta di flessibilità oraria, richiedono di porre l'attenzione sulla difficile delineazione dei confini tra tempi di lavoro e tempi personali. Da qui l'esigenza di interrogarsi sulla perdurante validità della tradizionale concezione di orario di lavoro, che parrebbe essere non più adeguata a rispondere alle moderne dinamiche riguardanti i tempi di lavoro e i tempi personali. In questo scenario scaturisce un dato chiaro: la definizione dell'orario di lavoro appare ormai desueta e inadeguata a rispondere alle mutate esigenze, in cui il lento superamento del modello capitalista della subordinazione è evidente. La 'Porosità del Tempo' e la conseguente interferenza tra il tempo di lavoro e il tempo personale, non è riflessa nelle regolamentazioni dei diversi Paesi'*.

work and time has been torn apart.⁴³ The concepts of working place and working time as defining elements of subordination have progressively been questioned by remote work on the one hand and by work by objectives on the other,⁴⁴ so that ‘time porosity’,⁴⁵ which can be defined as the interference of working time into personal time, has become a recurrent feature of modern times. Indeed, due to the pervasiveness of Information and Communication Technologies (ICT) and of work-extending technologies in the labour market, nowadays employees are networked thanks to the basic toolkit they are equipped with, namely internet connection, emails, and mobile phones.⁴⁶ As a result of this, work has intensified, information exchange speed and volume have increased, and work rhythm has become faster paced. Consequently, the boundaries between work life and private life have become blurred, thus increasing the risk of an overlap between time devoted to work and time for rest.⁴⁷

This trend has been taken to extremes during the pandemic, when, according to recent studies,⁴⁸ regular home working has resulted in increased worked hours and reduced rest times, with consequent associated negative effects on workers’ work-life balance and well-being.⁴⁹ In this regard, the 2021 European Working Conditions Telephone Survey (EWCTS)⁵⁰ highlighted that 35% of full-time home workers worked long hours during the pandemic and also during their free time; in addition, regular remote workers claimed they experienced difficulties in disconnecting from work among the negative effects associated with this working

⁴³ Wajcman, J. (2020). *La tirannia del tempo. L'accelerazione della vita nel capitalismo digitale*, Treccani.

⁴⁴ Poletti, D. (2013). Il cd diritto alla disconnessione nel contesto dei «diritti digitali», cit. C. Rapisarda Sasson, *Inibitoria*, in *Dig. Disc. Priv. Sez. Civ.*, IX, 474.

⁴⁵ The concept was theorised by Genin, É. (2016). Proposal for a theoretical framework for the analysis of time porosity. *International Journal of Comparative Labour Law and Industrial Relations*, 32(3).

⁴⁶ Krause, R. (2018). ‘Always-on’: The Collapse of the Work–Life Separation in Recent Developments, Deficits and Counter-Strategies. *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 223-248. Palgrave Macmillan. On the subject see also Albano, R., Parisi, T., & Tirabeni, L. (2019). *Gli smart workers tra solitudine e collaborazione*. *Cambio* Vol. 9, 61-73. Firenze University Press.

⁴⁷ Moscaritolo, I. (2017). “Time Porosity”: una chiave di lettura per la nuova realtà del tempo di lavoro. *Bollettino ADAPT* 13 febbraio 2017, n. 2. According to the author, *‘la definizione dell’orario di lavoro appare ormai desueta e inadeguata a rispondere alle mutate esigenze, in cui il lento superamento del modello capitalista della subordinazione è evidente. La “Porosità del Tempo” e la conseguente interferenza tra il tempo di lavoro e il tempo personale, non è riflessa nelle regolamentazioni dei diversi Paesi’*. On the subject, see also Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). *DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies*. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham. See also Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI.

⁴⁸ See Eurofound (2020), *Living, working and COVID-19*, COVID-19 series, Publications Office of the European Union, Luxembourg.

⁴⁹ See for instance the results of the survey carried out by the National Bureau of Economics Research (NBER) during the pandemic and by Banca d’Italia (2021), flagging an increase of working hours due to extended remote working during the pandemic. Quoted in Pesenti S., Scansani G. (2021). *Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie*, Galli Edizioni, Varese. See also Albano, R., Parisi, T., & Tirabeni, L. (2019). *Gli smart workers tra solitudine e collaborazione*. *Cambio* Vol. 9, 61-73. Firenze University Press. The topic is extensively analysed *infra* under section [4. Protecting Work Life Balance from Work Life Blending](#).

⁵⁰ Eurofound (2021), *European working Conditions Telephone Survey (EWCTS)*, Publications Office of the European Union, Luxembourg. Available at: https://www.eurofound.europa.eu/en/data-catalogue/european-working-conditions-telephone-survey-2021-0?load_page=ReportSection531f02309ca830c77084

arrangement.⁵¹ Similarly, a research project focusing on remote work in a post-pandemic phase carried out by scholars of Università degli Studi di Milano, highlighted that 78% of the interviewees claimed to be working longer hours when working remotely than when working in the office, and to be experiencing difficulties in disconnecting outside of normal working hours, mainly due to excessive workload and strict deadlines forcing them to extend their working commitments to weekends, night time and even sick leave.⁵²

As we have seen in the previous Chapter, this difficulty in setting boundaries and the risk of work encroaching on private life was listed among the drawback of emergency smart working also by Tetra Pak line managers with resources legally employed in Tetra Pak Italian legal entities.

All this considered, in a post-pandemic scenario in which remote working and flexible working in general are most likely to become a permanent feature of the employment relationship, it becomes key to rethink the concept of working time and to overcome the strict binary system mentioned above, since the standard nine to five pattern seems outdated, meaning that an increasing number of employees might not be observing (or accepting to observe) the traditional nine to five, five-day-a-week working hour schedule, but many (and increasingly more so) are rather likely to opt for discontinuous work and to prefer employers that allow such flexibility over those who do not.

2. Working Time Flexibility Connected with FWA

If we accept that digitalisation of employment relations is leading to an increasing spatial and temporal disembedding from the formal organisation, not only does the location where work is performed lose relevance, but the time required to complete it also diminishes in importance, as the focus shifts to results.

The following paragraphs offer an overview on the evolution of working time flexibility connected to the most relevant types of Flexible Working Arrangements for Tetra Pak Italy, namely telework, smart working and agile work, with which the Company crossed path at some point in time.

⁵¹ Eurofound (2023), The future of telework and hybrid work, Publications Office of the European Union, Luxembourg.

⁵² See Ingraio, A., Fiorucci. (2024) Flessibilità oraria e disconnessione nel lavoro da remoto post-emergenziale: evidenze empiriche di una ricerca nell'area milanese. In Corazza, L., Di Salvatore, L., Tantillo, F., Zucaro, R. (a cura di) (2024) Smart working, tempi di vita e del lavoro e riequilibrio demografico dei territori. Quaderno n. 66. Fondazione Giacomo Brodolini. Available at: <https://www.fondazionebrodolini.it/pubblicazioni/i-quaderni/smart-working-tempi-vita-lavoro-riequilibrio-demografico-territori>.

2.1. Telework and its Unkept Promises of Flexibility

Telework is a flexible way of working that entails regular remote working performed by means of Information and Communication Technology.⁵³ It was born in California (US), in the 1970s, and landed in Europe at the end of the 1980s to later become the subject of a widespread debate among social partners at a European level in the 1990s, as there were great expectations about its potential ability to make Europe more competitive in the global market, since it was expected to increase productivity, flexibility and to reduce costs for the companies. In addition, it was also considered to have a positive impact on sustainability⁵⁴ insofar as it could decrease traffic and energy consumption and consequently help in reducing environmental pollution.⁵⁵

Telework means distance working, i.e. work rendered from a distance, outside the company premises and by means of ICT. By definition, it entails regular distance work, meaning either full time telework or telework carried out on a regular basis,⁵⁶ and it qualifies as a flexible working arrangement both in terms of working place and working time, as well as a tool of work-life balance and equal opportunity that allows teleworkers to self-manage their working time. Indeed, the European Framework Agreement on Telework (EFAOT from now on), the first document officially defining telework at a EU level that was signed on 16 July 2002 and negotiated by social partners, clearly states that *'the social partners see telework both as a way for companies and public service organisations to modernise work organisation, and*

⁵³ 2002 EU social partners' Framework agreement defines teleworking as *'a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work that could be performed at the employer's premises is carried out away from those premises on a regular basis.'*

⁵⁴ Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica on article 9 of EFAOT. See also Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). The Future of Remote Work. ETUI. In Chapter 2 Una Rani provides an overview of remote work in its various forms, among which is telework. The author recalls how the term 'telecommuting' was coined in the 1970s in California in connection with fuel scarcity, which this new flexible working arrangement tried to address by reducing commuting.

⁵⁵ In Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). The Future of Remote Work. ETUI., ETUI researchers highlight that the positive effect of remote working on the environment remains an open question, since literature on the subject is still emerging and existing studies mainly focus on its effects on terms of CO₂ emissions. Indeed, although remote work is proven to reduce commuting time and consequently CO₂ emissions into the atmosphere, it cannot be overlooked that modified working arrangements due to augmented flexibility have increased other (leisure) activities, which may have an environmental impact as well, like for instance travels for recreational purposes, increased consumption overall and other activities that undoubtedly have an environmental footprint. Moreover, remote working may bring along an increase in energy consumption in private households where work is performed, without a parallel reduction in energy consumptions in offices. This is identified as a field worth of further investigation.

⁵⁶ For a detailed examination of the meaning of "regular" teleworking see Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414; Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica; Senatori I., Spinelli C. (2021). ICT-enhanced remote and mobile work. National Report on Italy. Available at: <https://irel.fmb.unimore.it/download/italy-ict-enhanced-remote-and-mobile-work/>; Esposito, M. (2023) La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva. Relazione alle Giornate di studio AIDLASS "Le dimensioni spazio-temporali dei lavori" (Campobasso 25-26 maggio 2023), dattiloscritto; Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

as a way for workers to reconcile work and social life and giving them greater autonomy in the accomplishment of their tasks.’⁵⁷ As briefly mentioned *supra*,⁵⁸ working time flexibility is dealt with under article 9 of EFAOT called ‘Organisation of Work’, which stipulates that ‘*WITHIN the framework of applicable legislation, collective agreements and company rules, the teleworker manages the organisation of his/her working time*’. However, social partners also made it clear in the document that said autonomy could be exerted within the limits set by ‘*applicable legislation, collective agreements and company rules.*’⁵⁹

It is important to stress that the EFAOT governing telework at an EU level is not a hard-law mechanism, but rather an autonomous agreement between the social partners,⁶⁰ i.e. a soft law tool that invites social partners in all Member States to negotiate telework at a country/company level on a voluntary basis.⁶¹ In other words, telework is neither a right nor an entitlement, but rather an option.⁶² Most Member States did enact legislation to implement it,⁶³ while others, like Cyprus and Ireland did not.⁶⁴ As far as Italy is concerned, telework in the public sector is ruled by a well-defined legal framework,⁶⁵ while, as for its deployment in the private sector, many draft bills were discussed by political parties between the 1990s and early 2000s, but none made it to Parliament. Hence, in Italy telework has ended up being governed by collective bargaining at a company level,⁶⁶ with most of the Company Collective Bargaining Agreements dealing with this topic defining telework as home working and providing for a very limited working time flexibility. Indeed, according to most CCBA, remote working schedule in case of telework has to mirror standard office hours, and only in

⁵⁷ European Framework Agreement on Telework. Available at: https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf.

⁵⁸ See *supra*, Chapter 1, section 2.1 *Telework in Tetra Pak Italy*.

⁵⁹ Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica.

⁶⁰ European Agency for Safety and Health at Work (EU-OSHA) (2023). *Hybrid work: new opportunities and challenges for Occupational Safety and Health*. Discussion Paper. Available at: <https://osha.europa.eu/en/publications/hybrid-work-new-opportunities-and-challenges-occupational-safety-and-health> (accessed 20/03/2024).

⁶¹ According to Tufo (*idem*), the EFAOT is the telling example of the shift from hard law to soft law at European level, resulting from the difficulties of the EU in ruling on social matters, given the different interests at stake in the Member States.

⁶² Interestingly enough, in the EFAOT teleworking is defined as ‘*a way of modernising work organisation, and a way for workers to reconcile work and social life and giving them greater autonomy in the accomplishment of their tasks*’, which is a recurrent theme of flexible working up until agile work.

⁶³ See for instance Portugal, which implemented it by means of Law No. 99/2003 of 27 August

⁶⁴ See Eurofound (2022), *Telework in the EU: Regulatory frameworks and recent updates*, Publications Office of the European Union, Luxembourg.

⁶⁵ Law n. 191 26/06/1998 (“Bassanini Ter”), followed by DPR n. 70 08/03/1999.

⁶⁶ See Passarelli, G. S. (2017). *Lavoro eterorganizzato, coordinato, agile e il telelavoro: un puzzle non facile da comporre in un’impresa in via di trasformazione* WP CSDL “Massimo D’Antona”. IT, 327, 6. Moreover, in Esposito, M. (2023) *La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell’autonomia collettiva*. Relazione alle Giornate di studio AIDLASS “Le dimensioni spazio-temporali dei lavori” (Campobasso 25-26 maggio 2023), dattiloscritto, the Author highlights that, in spite of the primary role of collective bargaining in providing governance for telework, individual autonomy plays a key role in determining the details of the deployment of telework.

very limited cases have some additional forms of time flexibility been introduced by means of availability time bands.⁶⁷

On 9th June 2004, the Cross-sectoral Agreement on Telework was signed by Social Partners to implement the EFAOT in Italy. The document basically mirrors the contents of the European Framework Agreement on Telework, and it contains the same reference to working time flexibility already present in the EFAOT (see above) under article 8, which is called ‘Organizzazione del Lavoro’, and reads, *‘nell’ambito della legislazione, dei contratti collettivi e delle direttive aziendali applicabili, il telelavoratore gestisce l’organizzazione del proprio tempo di lavoro.’* It has been observed that the Cross-sectoral Agreement in question, while empowering collective bargaining with the deployment of telework, also attributes a key role to individual autonomy, in charge of defining the details of its implementation.⁶⁸

In essence, telework was introduced in Europe in the early 2000s by means of a voluntary agreement between Social Partners; hence, EU Member States were empowered with the freedom to decide whether and how to implement it, within the limits set by local legislation and collective bargaining, the latter becoming the main regulatory source of telework in Italy. This FWA ended up having very little impact on the private sector and very limited time flexibility allowed in its implementation, despite the possibilities offered by the 2002 EFAOT, by the 2004 cross-sectoral agreement on telework and by Legislative Decree No. 66/2003 which, by mentioning telework under article 17 as a working arrangement that is not subject to working hour limits (including maximum duration limits), assesses its extremely flexible nature and the possibility for teleworkers to determine working time with a wide margin of autonomy. Recently, the Social Partners at a European level have agreed on the need to update the 2002 EFAOT to acknowledge the new scenario offered by the post-pandemic world.⁶⁹

⁶⁷ A fully comprehensive analysis on telework is offered by Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica and by De Masi, D. (2020). *Smart working: La rivoluzione del lavoro intelligente*. Marsilio Editori S.p.A. On the subject of telework, see also Santoro Passarelli, G. (2017). *Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro*. *Rivista italiana di diritto del lavoro*, 36(3), 369-395; Passarelli, G. S. (2017). *Lavoro eterorganizzato, coordinato, agile e il telelavoro: un puzzle non facile da comporre in un’impresa in via di trasformazione* WP CSDLE “Massimo D’Antona”. IT, 327, 6 and Senatori I., Spinelli C. (2021). *ICT-enhanced remote and mobile work*. National Report on Italy. Available at: <https://irel.fmb.unimore.it/download/italy-ict-enhanced-remote-and-mobile-work/>; Notaro, F. (2018). *Il lavoro agile nel quadro della vecchia (o nuova?) subordinazione*. *Lavoro Diritti Europa*, 1.

⁶⁸ Esposito, M. (2023) *La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell’autonomia collettiva*. Relazione alle Giornate di studio AIDLASS “Le dimensioni spazio-temporali dei lavori” (Campobasso 25-26 maggio 2023), dattiloscritto.

⁶⁹ See *infra* in this chapter [Section 3.1. The European Union and the Right to Disconnect: No ‘One-Size-Fits All’ Approach](#).

2.2. Italian Smart Working: an Attempt to Boost Flexibility

Whatever the reason, telework failed to stick in Italy, yet the need for flexible working led companies to look for alternative arrangements through collective bargaining, and that is how smart working began to appear in CCBAs starting from 2012, Nestlé being the first company to introduce it.⁷⁰

Before Law No. 81/2017 ruling on agile work came into force, different labels were used in company collective agreements to define flexible working arrangements, namely smart working, agile work, flexible working, remote working, etc.⁷¹ According to the definition given by the Chartered Institute of Personnel and Development (CIPD) in 2008, smart working is ‘*an approach to organising work that aims to drive greater efficiency and effectiveness in achieving job outcomes through a combination of flexibility, autonomy and collaboration, in parallel with optimising tools and working environment for employees.*’⁷²

In other words, smart working does not qualify as a new contractual type, but rather as a way of performing work whose defining feature is time and space flexibility and whose declared aim is twofold: increase competitiveness and improve work-life balance. However, it can be maintained that, despite the call for flexibility and the focus on results, collective bargaining before 2017 failed in setting smart working free from the predetermination of working hours.⁷³ Indeed, even though in company collective bargaining dealing with smart working, there is a variety of different scenarios both in terms of places where work can be performed and of time flexibility allowed, in most of them working hours in case of remote

⁷⁰ See Nestlé: Accordo smart working, 12 ottobre 2012, Barilla 02.03.2015; Gruppo Zurich Italia 01.06.2016; Eni 06.02.2017. For a detailed examination of the subject, refer to Tiraboschi, M., Dagnino, E., Tomassetti, P., & Tourres, C. (2016). Il “lavoro agile” nella contrattazione collettiva oggi. Working Paper n. 2/2016. @ADAPT University Press, and to Dagnino E., Menegotto M., Pelusi L.M., Tiraboschi M. (2017). Guida pratica al lavoro agile dopo la legge n. 81/2017. Formule contrattuali – Schemi operativi- Mappatura della contrattazione collettiva. Adapt University Press.

⁷¹ According to Eurofound (2023), in 2017 smart working was not so common in Italy, which ranked very low among EU countries in the diffusion of smart working, with the pandemic working as a trigger for this new way of working. Based on data collected by Smart Working Observatory of Politecnico di Milano, in 2019 the number of smart workers in Italy increased in comparison with the previous year, and in 2020 it reached a peak of almost 7 million employees (97 per cent of private companies and 58 per cent of SME), equivalent to an increase by 1050 per cent. Following a gradual reduction in 2021 and 2022, in 2023 the number of remote workers increased in comparison with the previous year, and reached 3.58 million people, equivalent to +541% than pre-covid figure. (Osservatori.net). Recent studies carried out by Smart Working Observatory of Politecnico di Milano refer to 3,55 million smart workers in Italy in 2024 out of 18 million subordinate workers (see Lo Smart Working non si ferma: 3,55 milioni di lavoratori nel 2024. Available at: https://www.osservatori.net/smart-working/comunicato-smart-working-italia-numeri-trend/?utm_source=linkedin&utm_medium=social&utm_campaign=cs_osw24. Accessed on 30/09/2024).

⁷² CIPD (2008). Smart working. The impact of work organisation and job design. Research Insight, London, quoted in Pesenti S., Scansani G. (2021). Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie, Galli Edizioni, Varese.

⁷³ Dagnino, E., Tomassetti, P., Tourres, C., & Tiraboschi, M. (2016). Il “lavoro agile” nella contrattazione collettiva oggi. WP Adapt, 2; Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. Labor. Il lavoro nel diritto, 1, 25-58.

working have to mirror the standard office hours.⁷⁴ Overtime is generally not allowed (nor is night work or work performed during bank holidays), or to be more precise, overtime is generally possible when working onsite, while it is excluded while working remotely.

As reported by Dagnino, Tomassetti, Tourres and Tiraboschi in 2016,⁷⁵ smart working ruled in the company collective agreements signed during the 2012–2015 time span did not exactly entail a broad time flexibility, as it was mainly intended as a form of remote working other than telework that foresaw an alternation between onsite and offsite working, with a prevalence of onsite working. In other words, smart working as ruled by the company collective agreements taken into consideration by the authors was very similar to telework in its least flexible form.⁷⁶

The above-mentioned forms of flexible working made it to Parliament starting from 2014, the trigger being both the shared belief among political parties that telework had been underutilised due to its rigidity especially in terms of OHS obligations for the employer and the consequent need to overcome said rigidity to make sure flexible working thrived in the private sector, the main pain point having been the obligation for the employer to carry out remote workplaces inspections to assess their suitability for work purposes.⁷⁷

The so called ‘Mosca Bill’ in 2014⁷⁸ and the ‘Sacconi Bill’ later in 2016⁷⁹ mirrored the main contents of the company collective bargaining agreements that had ruled on smart working up to that time, the latter being an invitation to consider the big transformation that the fourth industrial revolution was bringing along. The document, indeed, suggested that the standard conception of subordinate employment relationship be overcome in order to acknowledge a new scenario where long-term working relationship was replaced by frequent career transitions, and it was the first official document to introduce the reference to work by objectives, cycles, phases, etc., which can be considered the main difference between agile work and telework.⁸⁰ Hence, it has been suggested that the ‘Sacconi Bill’ was not just a

⁷⁴ Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414. The author highlights how most of the early attempts at smart working ruled by company collective agreements set offsite working hours in alignment with office hours. However, some ruled about the absence of working hours when granting workers full autonomy in organising their work performance, although within set time bands (see AXA 12 April 2016 and Zurich 23 September 2015).

⁷⁵ Dagnino, E., Tomassetti, P., Tourres, C., & Tiraboschi, M. (2016). Il “lavoro agile” nella contrattazione collettiva oggi. *WP Adapt*, 2.

⁷⁶ On this subject see also Senatori, I, *Il lavoro agile in cerca di identità*. *Cronaca legislativa di un quadriennio travagliato (2017-2020)*. September 2, 2020; Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58.

⁷⁷ Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414.

⁷⁸ DDL n. 2014 29 January 2014 contenente disposizioni per la promozione di forme flessibili e semplificate di telelavoro.

⁷⁹ DDL n. 2229 3 February 2016- Adattamento negoziale delle modalità di lavoro agile nella quarta rivoluzione industriale.

⁸⁰ Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica and Ludovico, G. (2023). *Lavori agili e subordinazioni*. *Studi di Diritto Privato*. Università degli Studi di Milano, 178. Giuffrè editore.

proposal of flexible working, but rather a fully-fledged discipline to be applied to employment relationships in the fourth industrial revolution.⁸¹

On 28th January 2016 a new draft bill⁸² was submitted on the topic, which, following the approval by the Senate on 3 November 2016, became effective on 14 June 2017 as Law No. 81 of 22 May 2017.

To summarise, starting from 2012 and before the enactment of Law No. 81/2017, smart working began to be ruled by collective bargaining as a flexible working arrangement allowing for time and space flexibility without the rigidity and the bureaucracy connected to telework, especially with regard to employer's OHS duties. Although very different scenarios in terms of working time flexibility can be observed in collective bargaining signed at company level, these early attempts at smart working entailed a very limited working time flexibility, and this was the case at least until Law No. 81/2017 came into effect, and in some cases even afterwards.

2.3. Italian Agile Work and Working Time Regulation

Moving to the analysis of working time flexibility connected to agile work, this section will focus on the controversial relationship between this flexible working arrangement and Italian working time regulation, which represents a debated issue both among academics⁸³ and social partners, the starting point of the analysis being the apparently contradictory definition of agile work given by Law No. 81/2017 as *'[...] a mode of execution of the subordinate employment relationship established by agreement between the parties, including forms of organisation 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 is performed partly inside company premises and partly outside without a fixed workstation, within the limits of the maximum daily and weekly working hours, deriving from the law and collective bargaining.'*⁸⁴

⁸¹ Dagnino E., Menegotto M., Pelusi L.M., Tiraboschi M. (2017). Guida pratica al lavoro agile dopo la legge n. 81/2017. Formule contrattuali – Schemi operativi- Mappatura della contrattazione collettiva. Adapt University Press; Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica.

⁸² Bill n. 2233 containing 'Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato a tempo indeterminato'.

⁸³ On the subject see, among others, Patrizi, A., Ebreo, A. (2021), L'innovazione tecnologica e la riconfigurazione del tempo di lavoro nel lavoro agile. Smart Working. Disciplina e scenari, Giuffrè Editore, Lecce, V. (2020). Lavoro agile e misurazione della Durata dell'orario per finalità di tutela della salute: Rivista Giuridica del Lavoro, 3, p. 428, Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

⁸⁴ Legge 22 maggio 2017, n. 81 recante 'Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato'.

It is often maintained that this definition of agile work is contradictory because, while the norm openly excludes the applicability of time constraints (agile work, by definition, does not involve them), it nonetheless confirms the applicability of daily and weekly working hour limits (it should be performed within set working hours limits).⁸⁵ An alternative standpoint would suggest that there is no contradiction in the definition of agile work provided by the law.⁸⁶ Indeed, since the primary aim of working hour regulation is to protect subordinate workers' health, and agile workers are subordinate employees who deserve protection,⁸⁷ applying working hour regulation to them is in line with the main goal of said regulation, namely protecting workers by making sure that they are not in a status of 'permanent availability'.⁸⁸

As highlighted *supra*, agile work ruled by company agreements is still very much linked to the traditional concept of standard working hours,⁸⁹ and this opinion is supported by the fact that agile workers are often required to keep recording attendance by means of virtual punching⁹⁰ and, in most cases, to record overtime. This raises a burning question, namely are working time recording and overtime regulation still applicable to agile workers, given the flexible nature of this new way of working?⁹¹ If we accept that agile workers have by definition the right to self-determine their working schedule⁹², we can assume that they fall under the derogations to the discipline of working hours contained in article 17 of legislative decree No. 66/2003 and applicable to workers whose working performance duration cannot be measured

⁸⁵ See Passarelli, G. S. (2017). Lavoro eterorganizzato, coordinato, agile e il telelavoro: un puzzle non facile da comporre in un'impresa in via di trasformazione. WP CSDLE "Massimo D'Antona". IT, 327, 6; Donini, A. (2018). I confini della prestazione agile: tra diritto alla disconnessione e obblighi di risultato. Verzaro M. (a cura di), Il lavoro agile nella disciplina legale collettiva e individuale, Napoli, Jovene, 111-132; Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica.

⁸⁶ Patrizi, A., Ebreo, A. (2021), L'innovazione tecnologica e la riconfigurazione del tempo di lavoro nel lavoro agile, in Smart Working. Disciplina e scenari, Giuffrè Editore; Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

⁸⁷ On the relationship between agile work and subordination see *infra*, section [6. Exerting Disciplinary Power and Power of Control](#).

⁸⁸ Patrizi, A., Ebreo, A. (2021), L'innovazione tecnologica e la riconfigurazione del tempo di lavoro nel lavoro agile, in Smart Working. Disciplina e scenari, Giuffrè Editore; Leccese, V. (2020). Lavoro agile e misurazione della durata dell'orario per finalità di tutela della salute: Rivista Giuridica del Lavoro, 3/2020, p. 428

⁸⁹ See Esposito, M. (2023) La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva. Relazione alle Giornate di studio AIDLASS "Le dimensioni spazio-temporali dei lavori" (Campobasso 25-26 maggio 2023), dattiloscritto. According to the author, '*I contenuti degli accordi non mostrano in linea di massima la diffusione di una particolare capacità di leggere l'innovazione insita nella modalità agile; essi in molti casi si muovono lungo tracce tradizionali; talvolta addirittura provando a contenere la relazione lavorativa negli schemi usuali del lavoro in presenza. Si avverte un'ansia da controllo, ambivalente, e talvolta un tentativo di normalizzazione*'.

⁹⁰ Poste Italiane S.p.A (23 January 2019), Hbg Gaming (3 February 2020).

⁹¹ On the subject of working time recording, it is worth mentioning the judgment of the European Court of Justice (ECJ) on case C-55/18 of 14 May 2019 (Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE). According to this judgement, the legal systems of the Member States must have a provision that mandates employers to objectively record the working hours performed by employees, although with the necessary exceptions (for instance, for those employees who can self-determine their own working hours).

⁹² in Pesenti S., Scansani G. (2021). Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie, Galli Edizioni, Varese., the authors claim that in the intention of Law No. 81/2017, agile workers should be able to self-determine their working schedule, organizing their working day and meeting the availability bands agreed with their manager, within the sole limits of maximum working hours foreseen by the legislation.

or pre-determined,⁹³ meaning that neither working time recording nor overtime regulation is applicable to them. This belief is supported also by the National Protocol on Agile Work in the private sector signed on 7 December 2021,⁹⁴ which states under article 3, paragraph 4 that ‘*unless otherwise ruled by collective agreements at sectoral or company level, overtime is not foreseen when working in smart mode*’.⁹⁵ This was the guiding principle in the implementation of the smart working model applied in Tetra Pak® Italy after the pandemic.

In contrast, one argument put forward to contradict this interpretation is that the derogations outlined under article 17 of Legislative Decree No. 66/2003 may apply to agile workers, but only provided that they are truly empowered with the possibility to self-determine their working schedule. If no real autonomy is granted to them in terms of time flexibility, working time rules (and overtime) still have to apply. Hence, it is only when company collective agreements and individual smart working agreements clearly foresee agile workers’ autonomy in self-determining their working schedule that agile workers are actually working by objectives and thus can be aligned to managers and managerial employees; on the contrary, when their working hour pattern simply mirrors the one of office workers, it seems questionable not to apply working time recording and overtime regulation to them.⁹⁶

In other words, the very skinny law regulating agile work allows for many different scenarios, also in terms of time flexibility, and it is left to the parties’ autonomy to define the most suitable working hour pattern for agile work, based both on business and workers’ needs.⁹⁷ To further elaborate on this, Mezzacapo⁹⁸ provides an interesting point of view on the possible differences in flexibility connected to smart working when stating that Law No. 81/2017 does not replace pre-existing forms of smart working ruled by collective bargaining, which remain in place and valid, and this is because, being a skinny and agile rule,⁹⁹ it allows for the coexistence of different forms of agile work. To be more precise, as we have already mentioned in Chapter 1, the fact that Law No. 81/2017 rules about agile work and not about

⁹³ See *supra*, Chapter 2, section 1. *Regulating Working Time and Post Pandemic Perspectives*

⁹⁴ Protocollo Nazionale sul Lavoro Agile nel settore privato. Available at: <https://www.lavoro.gov.it/notizie/Documents/PROTOCOLLO-NAZIONALE-LAVORO-AGILE-07122021-RV.pdf> (accessed 23/09/2023).

⁹⁵ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore. According to the author article 17 of legislative decree No. 66/2003 applies only if workers are free to self-determine the quantum of their working performance and its schedule. In all other cases, performance duration can be measured, so working hour limits shall apply. According to the author, if said derogations apply, they should be extended to the full working performance, regardless of where it is rendered.

⁹⁶ Leccese, V. (2020). *Lavoro agile e misurazione della Durata dell’orario per finalità di tutela della salute*: Rivista Giuridica del Lavoro, 3.

⁹⁷ *Idem*.

⁹⁸ Mezzacapo, D. (2017). *Il lavoro agile ex legge n. 81/2017: note minime e problemi aperti*. Biblioteca ‘20 Maggio’- Collective Volumes.

⁹⁹ Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica.

smart working should be read as an attempt of the legislator to make distance from the framework set up by collective bargaining in terms of flexible working and to introduce something new, whose main regulatory source is the agreement between the parties.¹⁰⁰

Given the above, since agile work can be implemented in various forms in terms of time flexibility at both company and individual level, an advisable approach would be to carry out a case-by-case assessment before deciding whether the above derogations apply or not.¹⁰¹ Indeed, stating that agile workers can self-determine their working time in theory is not enough; rather, it is necessary to verify whether this is actually the case in reality.¹⁰² For instance, if workers are allowed some kind of time flexibility in their work performance but its *quantum* remains unchanged, although they have greater flexibility in the organization of their working schedule, the duration of the service they render must be measured, in order to be able to verify compliance with the daily, weekly and maximum working time limits. Conversely, if agile work is implemented as work by objectives and workers are totally free to self-determine not only where and when to work but also the *quantum* of their performance, then the duration of working time *'in its entirety is not measured and/or predetermined or can be determined by the workers themselves.'*¹⁰³ As a result, agile work may fall within the derogations provided for by Article 17 of Legislative Decree No. 66/2003.

Going back to Law No. 81/2017 and to the apparent paradox it contains in terms of working hours, it is interesting to distinguish between essential and non-essential elements of agile work.¹⁰⁴ Among the essential elements of agile work are the agreement signed by the parties, the onsite/offsite alternation and the compliance with the daily and weekly maximum working hour limits. Among non-essential elements are the absence of precise working time constraints, the work by objectives and the use of digital technologies. It is therefore interesting to note that, according to Mezzacapo,¹⁰⁵ compliance with the maximum duration limits is an essential element of agile work, while the absence of precise time constraints is only a possible

¹⁰⁰ Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica.

¹⁰¹ Idem.

¹⁰² Idem. See also Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore, *'Qualunque discorso in merito all'applicabilità delle deroghe di cui all'art. 17 non può prescindere [...] da un'attenta verifica circa l'effettiva sussistenza, nel concreto atteggiarsi del rapporto, della facoltà del lavoratore di determinare la durata e la distribuzione oraria della prestazione. Un presupposto, questo, che deve essere verificato caso per caso in quanto non automaticamente presente nel lavoro agile [...]'*.

¹⁰³ Leccese, V. (2020). Lavoro agile e misurazione della durata dell'orario per finalità di tutela della salute: Rivista Giuridica del Lavoro, 3, p. 428

¹⁰⁴ See Senatori, I, Il lavoro agile in cerca di identità. Cronaca legislativa di un quadriennio travagliato (2017-2020). September 2, 2020; Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica; Mezzacapo, D. (2017). Il lavoro agile ex legge n. 81/2017: note minime e problemi aperti. Biblioteca '20 Maggio'- Collective Volumes; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. Diritto della sicurezza sul lavoro, (1), 1-29.

¹⁰⁵ Mezzacapo, D. (2017). Il lavoro agile ex legge n. 81/2017: note minime e problemi aperti. Biblioteca '20 Maggio'- Collective Volumes.

element, like working by objectives.¹⁰⁶ In his interpretation of the norm, in fact, the author states that *‘[...] qualche vincolo riferito all’orario sembra doversi necessariamente prevedere, se non altro per la necessità di rispettare comunque i limiti di durata massima giornalieri e settimanali. Tali limiti sono riferiti alla durata complessiva della prestazione, sia quella interna che quella esterna[...]’*¹⁰⁷ As regards time flexibility connected to agile work, the author further clarifies that *‘[...] le ore di lavoro agile sono solitamente predeterminate ex ante sulla base del normale orario di lavoro. L’agilità si sostanzia nella possibilità per il lavoratore di scegliere liberamente la collocazione temporale della prestazione agile, alternando tempi di lavoro e di non lavoro in un arco temporale predeterminato, diversamente da quanto avviene per la prestazione svolta all’interno dell’azienda.’*¹⁰⁸

Also Donini¹⁰⁹ shares a similar point of view on time flexibility connected to agile work, when asserting that it is on the performance rendered outside of the company premises that said flexibility applies.¹¹⁰ She agrees that the coordination between Law No. 81/2017 and legislative decree No. 66/2003 in terms of working hours is not clearly defined, and this depends on the fact that two contradictory goals are at stake. On the one hand, there is the need to provide workers with more organisational autonomy; on the other hand, there is the need for the company to use working hours as a framework for the correct application of contractual terms and condition and for compensation purposes. The author also wonders whether the concept of normal working hours is still applicable to agile work and concludes that both a minimalist and a maximalist interpretation of the norm can be provided. According to a minimalist interpretation, standard working hours apply to agile work, given its subordinate nature. On the other hand, according to a maximalist interpretation, given the true nature of agile work, work performance should be untied to the constraint of standard working hours, in that it allows by definition for a more flexible arrangement of the work performance, whose sole limits are represented by daily and weekly maximum limits. If we accept this approach, then we also accept that the individual smart working agreement signed by the parties can overcome the concept of working hours as a defining criterion for subordination. Performance

¹⁰⁶ In Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica, the Author claims that the possible organisation of work for phases, cycles and objectives (result oriented), which is typical of agile work, is not part of the definition of telework, and this is the main difference between the two flexible working arrangements.

¹⁰⁷ Mezzacapo, D. (2017). *Il lavoro agile ex legge n. 81/2017: note minime e problemi aperti*. Biblioteca ‘20 Maggio’- Collective Volumes.

¹⁰⁸ Idem.

¹⁰⁹ Donini, A. (2018). *I confini della prestazione agile: tra diritto alla disconnessione e obblighi di risultato*. Verzaro M. (a cura di), *Il lavoro agile nella disciplina legale collettiva e individuale*, Napoli, Jovene, 111-132.

¹¹⁰ As we have seen in Chapter 1, Tetra Pak has adopted a different approach to the subject, as the working time flexibility connected to smart working may apply to onsite work as well, the underlying philosophy being that once a smart working agreement is in place, workers can work smart regardless of where performance is rendered.

and contractual fulfilment are measured against results achieved and not against time spent to perform the task. This interpretation also allows to overcome the concept of overtime, because if work commitment cannot be measured, overtime premiums are not applicable.

It is worth noticing that, if most of the Company Collective Bargaining Agreements signed in Italy during 2022 and ruling about smart working did not introduce significant changes neither in the working time duration nor in its collocation in case of smart working,¹¹¹ in 2023 a new trend emerged, also in line with a new interest rising worldwide under the umbrella of the 4 Day Week Global Campaign for the four-day working week.¹¹² Indeed, Intesa San Paolo signed a company collective agreement on 26 May 2023 introducing the compressed workweek ('settimana corta'), i.e., the possibility to distribute standard contractual working hours over a four-day week.¹¹³ On 30 November 2023, EssilorLuxottica signed a CCBA offering to its employees, starting from 2024, a pilot programme for the four-day working week for a maximum of twenty weeks per year and no impact on their salary. Acceptance of the new pattern is on a voluntary basis and working time reduction is to be realised by absorbing five days from employees' permit accrual, while the remaining fifteen days will be at the employer's expense.¹¹⁴ In December 2023 Lamborghini followed suit by introducing the four-day working week (mainly) for the blue-collar population working in shifts;¹¹⁵ similarly,

¹¹¹ See Porcheddu, D. (2023). Si può lavorare meno a parità di salario? Alcuni aggiornamenti dalla Germania. Bollettino ADAPT 2 ottobre 2023, n. 33. Available at: <https://www.bollettinoadapt.it/si-puo-lavorare-meno-a-parita-di-salario-alcuni-aggiornamenti-dalla-germania/> (Accessed 04/10/2023).

¹¹² On the topic of working week reduction see Gomes, P. (2021). Friday is the new Saturday: How a four-day working week will save the economy. The History Press; Porcheddu, D. (2023). Si può lavorare meno a parità di salario? Alcuni aggiornamenti dalla Germania. Bollettino ADAPT 2 ottobre 2023, n. 33. Available at: <https://www.bollettinoadapt.it/si-puo-lavorare-meno-a-parita-di-salario-alcuni-aggiornamenti-dalla-germania/> (Accessed 04/10/2023); Bersin, Josh (2023). The Four-Day Work Week: An Idea Whose Time Has Come. Published November 29, 2023. Updated December 1, 2023. Available at: <https://joshbersin.com/2023/11/the-four-day-work-week-an-idea-whose-time-has-come/> (Accessed 05/12/2023); <https://documenti.camera.it/leg19/documentiAcquisiti/COM11/Audizioni/leg19.com11.Audizioni.Memoria.PUBBLICO.ideGes.37606.22-05-2024-09-11-36.910.pdf> (accessed 29/06/2024); Piasna, A., Cetrulo, A., Moro, A. (2024). Negotiating working time reduction, Working Paper 2024.12, ETUI. To be more precise, the 4 Day Week Global Campaign, a movement founded in 2019 in New Zealand by Charlotte Lockhart and Andrew Barns, advocates for the 100-80-100 Model, that is to say 100 per cent pay for 80 per cent working time and 100 per cent productivity. Based on the results presented by the Smart Working Observatory of Politecnico di Milano on 29th October 2024, in Italy less than 1 in 10 companies have implemented the four-day week, and, in most cases, it is not the 100-80-100 model, but rather a compressed workweek (same pay and same weekly working hours but spread on 4 working days).

¹¹³ Intesa Sanpaolo - Verbale di accordo su smart working e settimana corta - Bollettino Adapt. Available at: <https://www.bollettinoadapt.it/intesa-sanpaolo-verbale-di-accordo-su-smart-working-e-settimana-corta/> (Accessed 04/10/2023). On the subject, see also Esposito, M. (2023) La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva. Relazione alle Giornate di studio AIDLASS "Le dimensioni spazio-temporali dei lavori" (Campobasso 25-26 maggio 2023), dattiloscritto, who mentions a 4 day week trial carried out in the UK in the second half of 2022 among 61 companies belonging to various sectors. At the end of the trial 56 companies chose to keep the 4-day working pattern instead of the traditional 5-day.

¹¹⁴ Agreement signed by Luxottica and FILCTEM-CGIL, FEMCA-CISL, UILTEC-UIL. Available at: <https://femcacisl.it/ajax/page/doFile/post/2212/1/IL%20COMUNICATO%20STAMPA>: <https://femcacisl.it/news/settimana-corta-in-luxottica-firmato-il-nuovo-integrativo-aziendale-2024-2026-stabilizzati-oltre-1500-lavoratori> (Accessed 08/12/2023)

¹¹⁵ Available at: <https://www.fiom-cgil.it/net/attachments/article/10769/com%20stampa%20Integrativo%20Lamborghini.pdf> (Accessed 08/12/2023)

Leonardo S.p.A., in its CCBA signed on 20 December 2023 introduced pilot projects of working hour reduction.¹¹⁶

These are interesting attempts at flexible working ruled collectively; yet, the flexibility offered by these models is far from the ideal flexibility connected to smart working and leading to work by objectives for a number of reasons. To begin with, the compressed workweek is mainly realised within a rigid framework that does not allow workers to self-determine their working time. Indeed, the preferred targets of the compressed workweek are blue collars who are required to comply with pre-set working shifts by definitions. In addition, even when it is addressed also to white collar population, working time reduction in the above cases still has an impact on pay to some extent, as it is realised by affecting employee's permits accrual. Moreover, the quantum of the work performance remains linked to the traditional concept of normal working hours, which is still the benchmark against which performance is measured. Hence, although the above-mentioned company collective agreements represent a wind of change and are triggering an interesting discussion on flexible working, they can barely be considered a reference point for the flexible model that Tetra Pak Italy is willing to implement.

In essence, the relationship between agile work and working time is not straightforward and is still open to interpretation. Indeed, there is an ongoing debate regarding whether agile work shall be considered a kind of work performance without working time constraints, given its apparently contradictory definition contained in Law No. 81/2017, where the absence of precise working time constraints coexists with the need to comply with the maximum working hour duration limits. Whether the reference to the maximum duration of daily and weekly working hours contained in Law No. 81/2017 means that agile work cannot be considered among performances whose duration cannot be measured or pre-determined ex article 17 of Legislative Decree n. 66/2003 or it implicitly also recalls the derogations to it is still a debatable subject.¹¹⁷ It may be claimed that since there is no such thing as a universal type of smart working, companies can customise the kind of flexibility they want to grant to their employees in terms of working hours, so there is not one straightforward answer to the above question and assessments need to be done on a case-by-case basis, without any prejudice to the obligation of the employer to protect agile workers' health and safety by avoiding that they are on a status of 'permanent availability'. While a case-by-case assessment is undoubtedly the most prudent and reliable method for determining the applicability of overtime premiums in the context of

¹¹⁶ Available at: [CS Leonardo Rinnovo Contratto Integrativo 20122023 ITA.pdf](#) (Accessed 29/06/2024).

¹¹⁷ See, among others, Allamprese, A., Pascucci, F. (2017). La tutela della salute e della sicurezza del lavoratore «agile». *Rivista giuridica del lavoro e della previdenza sociale*, (2), 307-330 and Tufo, M. (2021). *Il lavoro digitale a distanza*, Editoriale Scientifica.

smart working, its implementation may pose challenges within large corporations. These organizations often require a degree of standardization in their processes to ensure that flexible working arrangements are managed effectively, including from an administrative perspective. In addition, applying different overtime treatments to different teams and organisations within the company may be perceived as unfair by employees. Hence, it may be necessary to strike a balance between a tailor-made flexibility and the need for simplification that is key for the governance of this FWA.

All this considered, it is generally accepted¹¹⁸ that agile work has taken a further step in questioning the standard working hour pattern, and it will be interesting to keep an eye on collective bargaining and company regulations in the future to see how time flexibility is addressed with respect to working hours, especially following the most recent attempts at working time reduction involving the four-day week introduced by company collective bargaining at company level.

3. Shaping the Right to Disconnect Within the Framework of Working Time Regulation in the European Union

Given the scenario depicted in the above sections, disconnection becomes key to ensure there is an alternation between time devoted to work and time devoted to rest to ensure that the workers' health and safety is safeguarded against the risks of hyper-connection and of spillover of work life into private life. Indeed, studies by Eurofound and ILO¹¹⁹ have shown that, while remote work allows for a reduction of commuting times and an increase of organisational autonomy, work performance tends to intensify, with a real risk of blurred boundaries between time devoted to work and time devoted to personal life.¹²⁰ It is small wonder that, following the pandemic, there has been an increasing need to protect workers against the risk of becoming the target of requests from the employer beyond the contractual working hours, a phenomenon

¹¹⁸ In addition to the authors mentioned in the section, also see Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham.

¹¹⁹ The Eurofound is the European Foundation for the Improvement of Living and Working Conditions, while the International Labour Organization (ILO) is a United Nations Agency whose mandate is to advance social and economic justice through setting international labour standards. Relevant studies in this respect are Eurofound and the International Labour Office (2017), *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, Eurofound (2021), *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg, and Eurofound (2023), *Right to disconnect: Implementation and impact at company level*, Publications Office of the European Union, Luxembourg.

¹²⁰ Donini, A. (2018), *I confini della prestazione agile: tra diritto alla disconnessione e obblighi di risultato*. Verzaro, M. (a cura di), *Il lavoro agile nella disciplina legale collettiva e individuale*, Napoli, Jovene, 111-132.

that is amplified by the constant availability brought about by ICT. Workers, it may seem, are at risk of experiencing ‘*an unsustainable state of reactive alertness due to the possibility of being contacted*’.¹²¹

All this considered, it comes as no surprise that the right to disconnect has recently become a highly debated topic both in the European Union and across Member States. Disconnection is broadly defined as the right to switch off from technological devices and from work-related activities during non-work hours. It is the right to interrupt contacts with the employer without disciplinary sanctions.¹²²

The aim of the following sections is to provide an overview of the current discussion on the right to disconnect, with a focus on how it is ruled in the European Union and in selected Member States, with a deep dive on Italy. The sections, which will include a reflection on how both Italian legislation on agile work and collective agreements deal with the right to disconnect, follow a case-study design, in that they provide both a high-level overview of selected EU Member State legislation and collective agreements dealing with working time regulation and the right to disconnect and a deeper analysis focused on the contents of collective bargaining agreements signed both at a sectoral and company level in Italy.

3.1. The European Union and the Right to Disconnect: no ‘One-Size-Fits-All’ Approach

While, to date,¹²³ there is no dedicated European Union law on the workers’ right to disconnect from digital tools, there are nonetheless various EU legislative texts touching on the subject and highlighting the challenges connected to ICT-based flexible working, including hyper connection and technostress¹²⁴. According to these texts, working hour regulation is necessary to protect workers from health risks connected to excess of online availability; hence,

¹²¹ D’Aponte, M. (2022). Evoluzione dei sistemi organizzativi nell’impresa e tutela dei diritti dei lavoratori nel quadro della regolamentazione europea: dal diritto alla “disconnessione”, al lavoro “per obiettivi”. *Massimario di Giurisprudenza del Lavoro*, 1, 29-50. [Original quotation in Italian. Translation by the Author].

¹²² Spinelli, C. (2018), *Tecnologie digitali e agile work*, Cacucci. See also Di Meo, R. (2017). Il diritto alla disconnessione nella prospettiva italiana e comparata. *Labour & Law Issues*, 3(2), 17-38, who defines the right to disconnect as the right for workers to be untraceable, uncontactable and not to be asked any kind of work performance by the employer, without negative impact on the compensation or the continuation of the employment relationship.

¹²³ January 2025.

¹²⁴ Among these are Council Directive 89/391/EEC (Framework Directive on Safety and Health at Work), Council Directive 89/654 EEC (Directive concerning the minimum safety and Health requirements for the Workplace), Directive 2003/88/EC (Working Time Directive), Directive (EU) 2019/1152 (Transparency Directive), Directive (EU) 2019/1158 (Work-Life Balance Directive), etc. On this subject, see Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore, claiming that disconnection qualifies as ‘*diritto attuativo e integrativo non solo delle direttive in materia di sicurezza e salute sui luoghi di lavoro [...] e organizzazione dell’orario di lavoro [...], ma anche di quelle relative a condizioni di lavoro trasparenti e prevedibili [...] ed equilibrio tra attività professionale e vita familiare*’.

disconnection is mainly treated as an Occupational Health and Safety issue.¹²⁵ In this regard, it cannot be overlooked that the right to limitation of maximum working hours and to rest periods is considered a fundamental right by the Charter of Fundamental Rights of the European Union.¹²⁶

The European Social Partners Framework Agreement on Digitalisation (EFAD)¹²⁷ signed on 22 June 2020 by ETUC (European Trade Union Confederation) and trade associations at a European level (BusinessEurope, Ceep, Sme United) contains an attempt to address the topic of disconnection across the EU as a necessary health and safety protection measure, and it affirms that it is necessary to *‘[...] provide guidance and information for employers and workers on how to respect working time rules and teleworking and mobile work rules including on how to use digital tools, e.g. emails, including the risks of being overly connected particularly for health and safety. [...] The achievement of organisational objectives should not require out of hours connection. With full respect for working time legislation and working time provisions in collective agreements and contractual arrangements, for any additional out of hours contacting of workers by employers, the worker is not obliged to be contactable [...].’* There is a general consensus in literature that said document lacks provisions with normative content with reference to disconnection. As a matter of fact, rather than providing EU Member States with normative standards to be followed, it contains guidelines for national social partners on how to tackle the pitfalls of digitalisation.¹²⁸

Given the above, it is the European Parliament Resolution of 21 January 2021¹²⁹ that can be considered as the first attempt of the European Union to outline the right to disconnect.¹³⁰ Said Resolution, which recommends that the European Commission submit a proposal for an act on the right to disconnect, may have been triggered also by the considerable increase of remote work during the pandemic, which resulted in a general increase in daily worked hours and in the consequent worsening of workers’ health. The document defines the right to

¹²⁵ See Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873. ‘Always on’ employees are subject to risks like burnout, which has been recognized as a syndrome since May 2019 and can be defined as *‘the result of undergoing chronic stress that has not been successfully managed’*, and technostress, meaning a *‘stress syndrome caused by the excessive use of information technologies.’* The latter has been recognized as an occupational disease in 2007 by a judgment of the Turin court, and currently is one of the risks to be considered in the risk assessment to be carried out in compliance with Leg. Decree No. 81/2008.

¹²⁶ 2000/C 364/01 Charter of Fundamental Rights of the European Union.

¹²⁷ Available at: https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf. Accessed 20/05/2023.

¹²⁸ Purificato, I., Senatori, I. (2024). Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect. *Diritti Lavori Mercati International* n.1-2024, 285-303

¹²⁹ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

¹³⁰ Bossotto, L. (2021), Diritto alla Disconnessione: verso la definizione europea di un nuovo diritto fondamentale dei Lavoratori? *Il Quotidiano Giuridico*, online.

disconnect as ‘*a fundamental right which is an inseparable part of the new working patterns in the new digital era, [...] an important social policy instrument at Union level to ensure protection of the rights of all workers; [...] of particular importance to the most vulnerable workers and those with caring responsibilities.*’ The Resolution further defines the right to disconnect as the right for ‘*workers to refrain from engaging in work-related tasks, activities, and electronic communication, such as phone calls, emails and other messages, outside their working time, including during rest periods, official and annual holidays maternity, paternity and parental leave, and other types of leave, without facing any adverse consequence.*’¹³¹

According to this Resolution, Member States shall define the practicalities connected to the implementation of the right to disconnect by means of collective bargaining; in other words, Member States are invited to adopt proper measures to ensure compliance, among which are, for instance, the adoption of a monitoring system to record worked hours¹³² and the outline of a system of penalties to be applied in case of violation of the right to disconnect.¹³³ Empowering Member States with this responsibility is linked to the fact that two interests are at stake as far as the right to disconnect is concerned; on the one hand, there is the need to protect workers’ health and safety (as well as privacy¹³⁴ and work-life balance), but on the other hand, there is also the need to enable work flexibility, for which both companies and workers advocate in the digital era. Hence, it is of the utmost importance to have an EU legislative framework on the subject, as long as each Country is allowed to outline specific tailor-made solutions to regulate the right to disconnect by means of collective bargaining (both at sectoral and company level).¹³⁵

¹³¹ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

¹³² As seen supra, based on the judgment of the European Court of Justice (ECJ) on case C-55/18 of 14 May 2019 (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*), employers across the EU are required to objectively record employees’ working hours. Exemptions may apply for some categories of employees, like for instance those who can self-determine their working schedule. As of January 2025, some EU Member States, among which are Germany and Denmark, have already introduced draft legislation to implement said requirement. Interestingly enough, the UK government is planning to introduce specific legislation to clarify that said ruling will not apply in the UK. See U.K./EU: The U.K. and EU are parting ways on recording of work time - WTW. Available at: <https://www.wtwco.com/en-gb/insights/2023/12/uk-eu-the-uk-and-eu-are-parting-ways-on-recording-of-work-time> (accessed 14/03/2024).

¹³³ D'Aponte, M. (2022). *Evoluzione dei sistemi organizzativi nell'impresa e tutela dei diritti dei lavoratori nel quadro della regolamentazione europea: dal diritto alla "disconnessione", al lavoro "per obiettivi"*. *Massimario di Giurisprudenza del Lavoro*, 1, 29-50. The author explains that the 2021 resolution meant to invite the European Commission to issue a directive through which member states should rule on the right to disconnect and on how to enforce it in detail (with practical suggestions). Interestingly enough, the resolution hints to the need to provide for a system of penalties in case of violation of said obligation. All of the above was meant to harmonise the legislation on disconnection in the different Member States.

¹³⁴ ‘*Se il problema della disconnessione [...] debba essere inquadrato entro le coordinate della tutela della privacy del lavoratore anziché entro le categorie della tutela della sua salute non sembra un problema che debba essere posto in termini di alternatività, trattandosi piuttosto di due prospettive parimenti attuali, concrete e convincenti, per quanto non possa tacersi una preminente esigenza di tutela della salute*’. D'Aponte, M. (2022). *Evoluzione dei sistemi organizzativi nell'impresa e tutela dei diritti dei lavoratori nel quadro della regolamentazione europea: dal diritto alla "disconnessione", al lavoro "per obiettivi"*. *Massimario di Giurisprudenza del Lavoro*, 1, 29-50.

¹³⁵ Eurofound (2021), *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg.

To date,¹³⁶ no Directive has been issued by the Commission in response to the Resolution; yet, in 2021 the European Commission called on social partners ‘*to find commonly agreed solutions to address the challenges raised by telework, digitalisation and the right to disconnect. The Commission will assess existing practices and rules related to the right to disconnect and will proactively support social partners in their endeavour, facilitating discussions and the identification of best practices.*’¹³⁷ EU Social Partners have consequently agreed on the need to update the 2002 EU social partners’ Framework Agreement on Telework, and the introduction of the “right to disconnect” is on the agenda.¹³⁸

Moreover, on 6 September 2023 the final draft of the Guiding Principles on Implementing Workers’ Right to Disconnect¹³⁹ was approved by the European Law Institute (ELI). These guidelines are targeting all European legal systems and propose a right to disconnect (R2D) applicable to all workers, with the declared objective not only of protecting their health and safety but also of helping promoting gender equality and work-life balance by ensuring predictability of working schedules.¹⁴⁰ All workers, be them office-based or remote workers and including managers, are in scope, regardless of companies’ size, workers’ employment status and contractual arrangements, the underlying philosophy being that the scope of application shall be the same as that of working time and health and safety regulations. Although the document supports a unified regulation of the right to disconnect applicable to all Member States and workers, its implementation is primarily delegated either to collective bargaining or to company regulations and individual agreements. This approach may result in diversified disconnection policies across Europe, applying in different sectors and companies and taking into consideration different types of employees. It is worth noting that Guiding Principle 7: MONITORING AND ENFORCING encourages regular monitoring of the implementation of the right to disconnect by external bodies like labour inspectorate, while compliance self-assessment is considered unreliable. The most ground-breaking aspect of the

¹³⁶ January 2025.

¹³⁷ European Commission (2021), The European Pillar of Social Rights Action Plans, COM (2021)102 final, Brussels. Available at: <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/> (accessed 09/12/2023).

¹³⁸ In Purificato, I., Senatori, I. (2024). Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect. *Diritti Lavori Mercati International* n.1-2024, 285-303, the Authors highlight that the European social partners’ 2022-2024 work programme, in which European Social Partners announced an update of the 2002 Telework Agreement to be implemented via a Directive, contains an explicit reference to the qualification of disconnection as a right, meaning that in a more recent EU document than the EFAD, disconnection does qualify as a right, in contrast with the EFAD but in alignment with the stance taken by the European Parliament in the well-know 2021 Resolution mentioned *supra*.

¹³⁹ Available at :

https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Guiding_Principles_Workers_Right_to_Disconnect.pdf (accessed 14/10/2023).

¹⁴⁰ A detailed examination of the right to disconnect as a key enabler of work-life balance is contained *infra* under section [4. Protecting Work-Life Balance from Work-Life Blending](#).

document is the introduction of Guiding Principle 8: SANCTIONS, stating that ‘*a violation of the R2D shall lead to specific sanctions, including administrative fines that are effective, proportionate and dissuasive*’.

Another relevant EU document touching on disconnection is the 2023 European Declaration on Digital Rights and Principles,¹⁴¹ which represents ‘*the EU’s commitment to a secure, safe and sustainable digital transformation that puts people at the centre, in line with EU core values and fundamental rights.*’¹⁴² Said document contains a reference to the right to disconnect in its ‘Fair and Just Working Conditions’ section among the commitments undertaken¹⁴³ by the signatories, i.e. ‘*We commit to: a. ensuring that everyone is able to disconnect and benefit from safeguards for work-life balance in a digital environment; [...]*’.

3.2. The Approach of EU Member States Towards the Right to Disconnect

The research carried out by the Eurofound in 2021¹⁴⁴ highlights that by mid-2021, only France, Spain, Belgium and Italy had a legislation in place on the right to disconnect; in Ireland a Code of Practice for Employers and Employees on the Right to Disconnect was approved in 2021, which did not have the status of law but could serve as a guideline to Court when deciding on a case, while Slovakia and Greece were amending their labour codes to introduce it. In the Netherlands and in Portugal legislative proposals on the subject were under discussion, while Finland, Germany, Lithuania, Slovenia, Sweden, Luxembourg and Malta had initiated discussions on the topic. In the updated report issued by Eurofound in 2023,¹⁴⁵ 9 member states were reported to have legislation in place setting forth the right to disconnect in June 2023, namely Belgium, Croatia, France, Greece, Italy, Luxembourg, Portugal, Slovakia and Spain.¹⁴⁶ Other countries initiated the debate on the subject, among which are Cyprus and Romania.¹⁴⁷

¹⁴¹ Available at: <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles> (accessed 14/10/2023).

¹⁴² Idem.

¹⁴³ Idem.

¹⁴⁴ Eurofound (2021), Right to disconnect: Exploring company practices, Publications Office of the European Union, Luxembourg.

¹⁴⁵ Eurofound (2023), Right to disconnect: Implementation and impact at company level, Publications Office of the European Union, Luxembourg.

¹⁴⁶ Labour code reform (76/2021) passed in Slovakia through Law No. 76/2021 Coll, which entered into force on 1 March 2021; Law n. 4808-19-06-2021 was enacted in Greece and entered into force on 1 January 2023; in December 2021 the Portuguese Government ratified Law No. 83/2021 of 6 December 2021, a Law on remote work dealing with disconnection. In Luxembourg an amendment of the Labour Code introducing a provision about the right to disconnect passed in June 2023.

¹⁴⁷ Eurofound (2022), Telework in the EU: Regulatory frameworks and recent updates, Publications Office of the European Union, Luxembourg.

The EU Member States with the longest experience of legislative provisions in the area of disconnection are France, Italy, Belgium and Spain.¹⁴⁸ In France, the first country to introduce the right to disconnect back in 2016,¹⁴⁹ said right must be implemented by means of an agreement with Trade Unions in all companies with more than fifty employees. If social partners fail to reach an agreement, employers have to write a charter that outlines procedures on how to exercise the right to disconnect. In Italy, although a soft legislative framework is offered by Law No. 81/2017, disconnection is governed either by decisions taken by social partners at a sectoral and company level or by the signatories of the individual smart working agreements, while in Belgium, a Law was adopted in 2018¹⁵⁰ that is applicable to all companies with more than twenty employees and requires employers to consult and negotiate with the workplace Health and Safety Committee about the right to disconnect from ICT tools.¹⁵¹ Moreover, several sectoral collective agreements and company agreements address the right to disconnect, thus extending the coverage beyond companies with more than twenty employees. In addition, since 1st February 2022 the Law has established the right to disconnect for all federal civil servants in the public sector. In Spain the right to disconnect, which applies to all workers, was introduced in 2018 by Article 88 of *órganica* Law 3/2018 of 3 December 2018, which states that the right to disconnect shall be implemented by means of collective bargaining. Moreover, the Royal-Decree Law 28/2020 strengthened the protection of the right to disconnect by focusing on its enforcement and introducing fines for non-compliance. In particular, the lack of a disconnection policy can be sanctioned if the connection is proven between the lack of regulation and psychosocial risks such as stress and burnout.¹⁵²

¹⁴⁸ Eurofound (2021), Right to disconnect: Exploring company practices, Publications Office of the European Union, Luxembourg. Eurofound (2023), Right to disconnect: Implementation and impact at company level, Publications Office of the European Union, Luxembourg.

¹⁴⁹ Law no. 2016-1088 of 8 August 2016 (Article L2242-17). See Moscaritolo, I. (2017). "Time Porosity": una chiave di lettura per la nuova realtà del tempo di lavoro. Bollettino ADAPT 13 febbraio 2017, n. 2: *'La "Porosità del Tempo" e la conseguente interferenza tra il tempo di lavoro e il tempo personale, non è riflessa nelle regolamentazioni dei diversi Paesi. Nonostante ciò, alcuni legislatori hanno cominciato ad interessarsi della tematica, come ad esempio nel caso francese, in cui, a partire dal 1° gennaio scorso, è in vigore il c.d. "diritto alla disconnessione". Si tratta di un diritto che non è il risultato di una mera "invenzione legislativa", bensì istituzionalizza pratiche aziendali già preesistenti, ed ha come fine quello di delimitare i confini tra tempo di lavoro e tempo personale, dovuti anche all'onnipresenza della tecnologia, che consente di essere sempre connessi, e quindi disponibili [...]'*.

¹⁵⁰ See changes made on provisions in the existing Law on Economic Growth and Social Cohesion of 26 March 2018 (art. 18) in order to implement the right to disconnect from 1st January 2023. <https://www.loyensloeff.com/insights/news--events/news/labour-deal-shapes-right-to-disconnect-for-employees/>

¹⁵¹ Available at: <https://www.loyensloeff.com/insights/news--events/news/labour-deal-shapes-right-to-disconnect-for-employees/> (accessed 02/10/2023).

¹⁵² European Agency for Safety and Health at Work (EU-OSHA) (2023). Regulating telework in a post COVID-19 Europe: recent developments. Publications Office of the European Union, Luxembourg. Available at: <https://osha.europa.eu/en/publications/regulating-telework-post-covid-19-europe> (accessed 20/03/2024).

A different approach governs disconnection in Portugal.¹⁵³ Indeed, while in France, Belgium and Spain disconnection is governed by collective negotiation, in Portugal a recent regulation on remote work was implemented by the enactment of Law No. 83/2021 of 6 December 2021 which, among other provisions, introduced in the Labour Code the employer's duty not to contact employees during rest periods, unless in case of *force majeure*.¹⁵⁴ This has become a general legal rule applicable not only to remote workers but to employees of any kind, and the employer's failure to comply with said provision is considered a serious administrative offence that can justify the intervention of the Labour Inspectorate. In other words, by defining disconnection as an employer's duty rather than an employee's right, the legislator has tried to '*increase the efficiency of its protection*'.¹⁵⁵

In the lack of a well-defined legislative framework dealing with the subject, collective bargaining, both at a sectoral and company level, is playing an important role in shaping the right to disconnect in the EU.¹⁵⁶ Focusing on those Member States that have adopted measures to rule the right to disconnect, the analysis carried out by the Eurofound in 2021¹⁵⁷ has considered twelve case studies of companies and sectors that had introduced different ways of implementing disconnection measures, showing that two different approaches to the right to disconnect are in place in the EU, namely a hard one and a soft one.

In case hard disconnection applies, the decision not to engage in work-related communication outside of working hours is not in the hands of the employee: rather, it is the company that sets up measures to hinder communication from being performed under certain circumstances, like for instance server shutdown after close of business, block of email delivery scheduled after a certain time, mobile phones set up so that only the telephone function is working at weekends, obligation to leave smartphones at the workplace when the working day/week is over, etc. In case a soft approach applies, instead, it is the workers' responsibility to disconnect and to protect their own health and safety. When a soft approach is in place, the Company adopts awareness-raising techniques on the need to ensure disconnection and provides training and guidelines on best practices to manage out-of-hours communication. Among these practices could be either a specific software set-up to remind users of

¹⁵³ De Oliveira Carvalho, C. (2023). The New Regulation of Telework and Remote Work in Portugal: Considerations and Prospects. E-Journal of International and Comparative Labour Studies, 11(3). Accessed on 10/04/2023

¹⁵⁴ According the 2023 Guiding Principles on Implementing Workers' Right to Disconnect by the European Law Institute (ELI), the request to reconnect must be exceptional (standard business needs are not enough) and must be adequately compensated as overtime.

¹⁵⁵ De Oliveira Carvalho, C. (2023). The New Regulation of Telework and Remote Work in Portugal: Considerations and Prospects. E-Journal of International and Comparative Labour Studies, 11(3).

¹⁵⁶ Eurofound (2021). Right to disconnect: Exploring company practices, Publications Office of the European Union, Luxembourg.

¹⁵⁷ Idem.

conventional working hours (for example by means of Office Outlook warning messages that pop up when writing emails during weekends inviting employees to send emails during most recipients' working hours, then providing schedule send suggestions for a delayed send), and working hour limits or a communication campaign to favour disconnection. When a soft approach is adopted, line managers leading by example are a powerful tool to guarantee the right to disconnect is ensured. This approach was followed by Banco Santander, BMW, Enel, Solvay and most of the case studies considered by Eurofound.¹⁵⁸

Another telling example of a soft approach to disconnection in the European Union is offered by the Renault Group, which rules on disconnection in the 'Addendum to the global framework agreement on developing life at work of 9 July 2019, setting out the conditions for remote working by Renault Group employees.'¹⁵⁹ By means of this addendum, the Group offers to employees working remotely the possibility to adopt a flexible working time in agreement with their managers and provided that a) they share the adjustment to working time with their co-workers and b) they make sure that hours of availability are complied with. The addendum stresses the need to safeguard the boundary between work and personal life, recognising a shared responsibility of all parties involved in making sure that rest time and working time are respected.

As far as connection times and (consequently) disconnection times are concerned, the Renault Group reaffirms *'each employee's right to choose whether to connect outside of their usual working times and during their leave, their connections being limited to use within the applicable time periods for carrying out their professional duties. During those same periods, they are not required to respond to any emails or phone calls they receive and should do their best to limit their own messages and calls to exceptional emergencies, relating exclusively to the security of employees and/or customers'*.

It can be maintained that, while a hard approach may be ideal for those situations when the employee feels compelled to remain connected either to show commitment or to align with a company culture that favours hyper connection, it can be seen both by entrepreneurs and workers as limiting flexibility. Let us think, for example, of a multinational company working across time-zones (like Tetra Pak) in which communication flow via emails is interrupted during nighttime. Introducing a server shutdown after close of business could be detrimental for the company as well as for its employees, who may perceive this measure as limiting their

¹⁵⁸ Eurofound (2021). Right to disconnect: Exploring company practices, Publications Office of the European Union, Luxembourg.

¹⁵⁹ Renault Group - Addendum ACM 2019- Projet de texte final. Available online at https://www.industrial-union.org/sites/default/files/uploads/documents/2021/FRANCE/addendum_english.pdf (accessed on 25/02/2023).

discretion in self-determining their working schedule. On the contrary, a soft approach may ensure that a level of flexibility connected with the ‘working anytime, anywhere’ approach is safeguarded, but it can also be seen as putting too much emphasis on employees’ responsibility. Moreover, a soft approach can only be successful if employees do feel empowered to disconnect without fearing either retaliation or a negative impact on their career progression. Sometimes a soft approach to disconnection may result contradictory when companies grant access to their ICT around the clock, since this builds up expectations among employees of seamless availability.¹⁶⁰

All this considered, it comes as no surprise that in Europe sectoral and company level agreements dealing with the right to disconnect tend to favour a soft approach to disconnection. Among the twelve case studies considered in the 2021 research by Eurofound,¹⁶¹ only Volkswagen (Germany) still adopts a hard approach towards disconnection by interrupting communication between servers and smartphones after close of business, while Groupe JLO (France) moved from server shutdown (hard approach) to disconnection recommendations (soft approach).

3.3. The Italian Way Towards the Right to Disconnect

The aim of this section is to explore how the right to disconnect is dealt with by Italian legislation and by company agreements signed at both sectoral and company level. In Italy disconnection in the private sector is currently ruled exclusively within the legislative framework of agile work in three different norms. Firstly, article 19 of Law No. 81/2017 states that *‘the individual agreement also identifies the rest times of the worker as well as the technical and organisational measures necessary to ensure the disconnection of the worker from the ICT tools’*,¹⁶² assessing the need to identify measures that ensure disconnection but leaving the stipulating parties of the individual smart working agreement in charge of defining them.¹⁶³ Secondly, article 2 of legislative decree No. 30 dated 13 March 2021, converted by law no. 61 dated 6 May 2021 (and in force until 31 March 2022) rules on *‘the right to disconnect from technological equipment and IT platforms, in compliance with any agreements*

¹⁶⁰ Wajcman, J. (2020). *La tirannia del tempo. L'accelerazione della vita nel capitalismo digitale*, Treccani.

¹⁶¹ Eurofound (2021). *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg.

¹⁶² [Translation by the Author]

¹⁶³ Cataudella, M. C. (2021). *Tempo di lavoro e tempo di disconnessione*. *Massimario di giurisprudenza del lavoro*, 4, 853-873. It is worth observing that, according to the author, since the Law does not set forth criteria and constraints governing disconnection, nor does it define the consequences of not identifying such measures in the individual agreement, disconnection cannot be considered an essential requirement of the agile work agreement (pursuant to Article 1325 of the civil code).

signed by the parties and without prejudice to any agreed periods of availability,¹⁶⁴ further clarifying that the exercise of the right to disconnect, necessary to protect rest times and workers' health, cannot have repercussions on the employment relationship or on remuneration (paragraph 1 ter).¹⁶⁵ Thirdly, the National Protocol on Agile Work dated 7 December 2021 also deals with disconnection, when stipulating that *'work performed in smart mode can be structured in time bands, identifying, in any case, in compliance with the current legal provisions, a disconnection timeframe during which the employee does not perform work. Specific technical and/or organisational measures must be adopted to ensure disconnection.'*¹⁶⁶

From the above overview, it clearly emerges that the Italian Law shows a different approach towards disconnection than the one adopted by other EU Member States in many ways. To begin with, unlike Spanish and French Law, Italian Law does not qualify disconnection as a right for the generality of workers. Indeed, being ruled within the legislative framework of agile work, disconnection does not concern all subordinate employees but agile workers only.¹⁶⁷ In addition, unlike Portuguese and Spanish Law, Italian Law does not provide for any fine in case of non-compliance, also considering that it is very difficult to tell what non-compliance would mean based on the contents of the provisions dealing with disconnection.¹⁶⁸ Indeed, if Law No. 81/2017 only provides for a soft legislative framework on the subject, leaving the stipulating parties of the individual agreement in charge to define disconnection measures, a similar approach is followed by the above mentioned National Protocol on Agile Work in the private sector, which reinforces the need for the individual agreement to identify the technical and organisational measures necessary to ensure disconnection, with a view to protecting employees from hyper-connection on the one hand and from the employer's

¹⁶⁴ [Translation by the Author]

¹⁶⁵ Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873. The legislative decree is part of the emergency smart working regulation, and it is the first norm to qualify disconnection as a right.

¹⁶⁶ Protocollo Nazionale sul Lavoro Agile nel settore privato, Article 3 paragraph 2. Available at: <https://www.lavoro.gov.it/notizie/Documents/PROTOCOLLO-NAZIONALE-LAVORO-AGILE-07122021-RV.pdf> (accessed 23/09/2023). [Translation by the Author].

¹⁶⁷ Russo, Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata, in *Dir. Rel. Ind.*, fasc. 3, 2020, p. 682; Poletti, D. (2013). Il cd diritto alla disconnessione nel contesto dei «diritti digitali», cit. C. Rapisarda Sasson, *Inibitoria*, in *Dig. Disc. Priv. Sez. Civ.*, IX, 474.

¹⁶⁸ In October 2024 a group of Parliamentarians belonging to the Democratic Party (PD) has submitted a legislative proposal aimed at formalizing employees' right to disconnect beyond standard working hours. The proposal foresees fines for the employer that tries to engage the employee in out of hour communication up to Euros 3,000. See *Diritto alla disconnessione, il dibattito arriva in Italia. Cosa prevede la proposta di legge del Pd - la Repubblica*. Available at https://www.repubblica.it/tecnologia/2024/10/01/news/diritto_disconnessione_proposta_legge_internet_smartphone_mail-423528922/. Accessed on 21/10/2024. See also *Diritto alla disconnessione, cosa prevede la proposta di legge: sanzioni fino a 3mila euro per mail e chiamate oltre l'orario di lavoro*. Available at: <https://www.lexplain.it/diritto-alla-disconnessione-cosa-prevede-la-proposta-di-legge-sanzioni-fino-a-3mila-euro-per-mail-e-chiamate-oltre-lorario-di-lavoro/>. Accessed 21/10/2024.

intrusion on their private life on the other, but does not foresee any consequence in case of failure to do so.

According to some,¹⁶⁹ the fact that Law No. 81/2017 is not providing for unique and straightforward measures to implement disconnection is linked to the fact that it would not prove effective if it provided a standardised solution, given the diversity of its addressees. In addition, introducing strict guidelines in a norm that is governing a flexible working arrangement would result contradictory versus the flexibility the norm means to promote.¹⁷⁰ Hence, the norm empowers the stipulating parties of the individual smart working agreement with the opportunity to find the best way to ensure disconnection, based on the specific needs of the company itself and of its employees.¹⁷¹ As a result, if we want to investigate how disconnection is ruled in Italy, the focus needs to shift to collective agreements.

Especially during the pandemic period, national sectoral agreements¹⁷² have started to incorporate guidelines on the implementation of agile work, but it is mainly in the agreements signed at corporate level that we find tailor-made rules related to working time flexibility and disconnection. At a national level, the renewal of sectoral agreement of food industry signed on 31 July 2020 (article 21 ter) states that the worker has the right to disconnect from ICT devices outside of working hours, while the renewal of sectoral collective agreement textile and clothing signed on 28 July 2021 (article 41) only stresses the need to monitor how agile work is implemented at a company level by setting up a dedicated bipartite group. Similarly, the renewal agreement for Metalworkers signed on 5 February 2021, provides for the set-up of a bipartite commission in charge of drafting a specific regulatory framework dealing, among other things, with disconnection, privacy and trade union right of agile workers. The latest renewal of the plastic and rubber agreement signed on 26 January 2023 contains a provision according to which the National Protocol on Agile Work in the private sector dated 7 December 2021 signed by the Ministry of Labour and the Social Partners will be inserted in a dedicated annex. Interestingly enough, the 2024 long-awaited renewal of the NCBA Trade expired at the end of 2019 goes above and beyond and attaches the National Protocol on Agile Work to the contractual text, claiming that its contents are fully received.

¹⁶⁹ Dagnino, E. (2021), La regolazione dell'orario di lavoro nell'era del working anytime, anywhere. Spunti dalla disciplina italiana del lavoro agile e del diritto alla disconnessione. Working Paper n. 5/2021; Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica. According to the authors, it is in the best interest of every single company to find the best way to ensure disconnection, based on the specific needs of the parties involved.

¹⁷⁰ Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica. According to the author, it is in the best interest of every single company to find the best way to ensure disconnection, based on the specific needs of the parties involved.

¹⁷¹ Tufo, M. (2021). Il lavoro digitale a distanza, Editoriale Scientifica; Poletti, D. (2013). Il cd diritto alla disconnessione nel contesto dei «diritti digitali», cit. C. Rapisarda Sasson, Inibitoria, in Dig. Disc. Priv. Sez. Civ., IX, 474.

¹⁷² See, for instance, NCBA Abbigliamento e confezione aziende industriali, NCBA Alimentari aziende industriali – accordo di rinnovo del 31.07.2020, NCBA Metalworking industry – accordo di rinnovo del 05.02.21

Moving to company agreements, it is worth reinforcing that forms of agile work started to be introduced in Italy before the enactment of Law No. 81/2017 by means of pioneering company collective agreements, from which the Law drew inspiration. It is common knowledge that time flexibility connected with agile work may entail the lack of time constraints, although within the maximum daily and weekly working hour limits set by law. As we have seen *supra*,¹⁷³ though, it is known for a fact that time flexibility is not often well received by company collective agreements, which tend to focus on space flexibility, by allowing a maximum number of remote working days during the month on which workers are invited either to mirror standard working hours or to meet agreed availability time bands. Outside of these bands, they are allowed to adopt a discontinuous schedule; yet, agreed contactability time bands when not overlapping with standard office working hours, are nonetheless extremely broad, so that there is limited room left for discontinuous work.

All this considered, it comes as no surprise that in these early attempts to regulate smart working at a company level, disconnection is either overlooked or connected to rest time outside regular working hours. For example, the company collective agreement signed by Nestlé on 12 October 2012, the first one to introduce smart working, affirms that employees shall be contactable during regular working hours, meaning that outside of those bands, they are not obliged to keep contact with the employer, so disconnection becomes the rule outside of normal working hours when workers are free to unplug and to focus on their personal life.¹⁷⁴ A similar approach can be found in the company collective agreements signed by Zurich (23 September 2015), Barilla (12 November 2015), Randstad (2 February 2016), Enel (4 April 2017) and Siemens (6 June 2017), as none of them contains specific disconnection measures, and in most cases, the agreements only refer to the need to comply with maximum working hour limits when working remotely and to be connected to technological devices only during working hours. A company collective agreement that is worth considering is the one signed by Johnson & Johnson Medical S.p.A. on 18 April 2019, which allows an outstanding working time flexibility if compared with other pre-pandemic agreements, in that smart workers can self-determine their working time; yet, it forbids night work and recommends compliance with Legislative Decree No. 66/2003, thus considering disconnection complied with when rest times are observed.

It is only after 2020, when disconnection became a concern due to the proven detrimental effects of extended remote working on work-life balance, that company collective

¹⁷³ See *supra*, paragraph 2.2. *Smart Working: an Attempt to Boost Flexibility*.

¹⁷⁴ Di Meo, R. (2017). Il diritto alla disconnessione nella prospettiva italiana e comparata. *Labour & Law Issues*, 3(2), 17-38.

agreements started to focus on disconnection more explicitly, preferring a soft approach over a hard one, in line with the trends emerged across Europe.¹⁷⁵ Indeed, no automatism were introduced to force disconnection (like for instance server shutdown after close of business), but, rather, there was an attempt to promote best practices by introducing guidelines on a responsible use of emails during non-work hours. An illustrative example of this approach is provided by the company agreement signed by TIM S.p.A. on 4 August 2020 where we can find a full paragraph on disconnection, which is seen as key to ensure that the boundaries between working and private life are respected, in order to protect workers' health. The text contains a generic recommendation to workers to act responsibly and to adopt good practices to make sure that disconnection is implemented. Quite interestingly, ING Bank NV, in the agreement signed on the very same date as TIM S.p.A's, also adopts a soft approach towards disconnection, but it provides for more precise guidelines by making clear reference to the obligation for the employee to meet rest time. Moreover, the agreement clearly states that during disconnection time bands, workers need to switch off their devices and are not expected to answer to e-mails. While the maximum length for online meetings is set at forty-five minutes, no conference calls can be scheduled either after six p.m. or during lunch break, when workers are also encouraged to block their calendars.

From the above analysis, it emerges that even when no specific guidelines on how to implement disconnection are provided by company agreements (either at a sectoral or at a company level), disconnection is considered achieved when workers comply at least with minimum daily rest of eleven consecutive hours.¹⁷⁶ This leads us to deal with a common belief among scholars according to which, even though there is no specific law governing the right to disconnect in Italy, protection is already guaranteed by other norms.¹⁷⁷ First of all, as already seen *supra*,¹⁷⁸ disconnection is strictly linked to the general discipline of working hours.¹⁷⁹ Hence, if workers are required by the employer to work outside standard working hours, they are entitled to overtime premiums, and if work performance is not rendered in compliance with

¹⁷⁵ Senatori, I., Spinelli C. (2021), (Re)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian Experience.

¹⁷⁶ Di Meo, R. (2017). Il diritto alla disconnessione nella prospettiva italiana e comparata. *Labour & Law Issues*, 3(2), 17-38; Pesenti S. – Scansani G. (2021), *Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie*, Galli Edizioni, Varese.

¹⁷⁷ Senatori I., Spinelli C. (2021). ICT-enhanced remote and mobile work. National Report on Italy. Available at: <https://irel.fmb.unimore.it/download/italy-ict-enhanced-remote-and-mobile-work/>. According to the authors, the right to disconnect can be considered as a 'technological version of the right to rest', which is protected both across the EU and at a national level.

¹⁷⁸ See *supra* paragraph 3. *Shaping the Right to Disconnect Within the Framework of Working Time Regulation in the EU*.

¹⁷⁹ Di Meo, R. (2017). Il diritto alla disconnessione nella prospettiva italiana e comparata. *Labour & Law Issues*, 3(2), 17-38.

rest periods and maximum working hours limits, article 2087 of the civil code¹⁸⁰ is being violated and damages can be claimed.¹⁸¹ Second, if we accept that disconnection is based on the principle of separation between working and personal life for health and safety purposes, protection already comes from both the Italian Constitution and European Law. Indeed, article 36 of the Italian Constitution reads that *‘workers shall have the right to a weekly rest day and paid yearly holidays. They may not waive this right’*, and article 24 of the Universal Declaration of Human Rights (1948) states that *‘everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay’*.¹⁸²

Based on the above, disconnection seems to be already protected in Italy, in spite of the lack of a specific norm dealing with it¹⁸³ so that the role of collective bargaining becomes that of defining a tailor-made way of implementing disconnection, based on unique business needs. Indeed, if we accept that *‘the problem is not the lack of regulations but the lack of effective enforcement of the existing regulations, [...] legislative actions have to be accompanied by concrete measures of social partners mainly at the plant level in order to make the abstract regulations workable and to ensure the compliance with protective regulations in the day-to-day operations at firms.’*¹⁸⁴

So far, we have focused on disconnection as an employee’s right. Yet, it cannot be overlooked that disconnection is also an employee’s duty, since employees need to understand the importance of rest to recover their energies, not only to safeguard their health and well-being, but also with a view to performing better,¹⁸⁵ and consequently they need to cooperate

¹⁸⁰ *“The entrepreneur is obliged to take measures in the exercise of the business which, according to the particular nature of the work, experience and technique, are necessary to protect the physical integrity and moral personality of the employees”*.

¹⁸¹ Russo, M. (2020). Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche*, 30 (3), 682-701.

¹⁸² See Russo, M. (2020). Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche*, 30(3), 682-701; Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873 and Poletti, D. (2013). Il cd diritto alla disconnessione nel contesto dei «diritti digitali», cit. C. Rapisarda Sasson, *Inibitoria*, in *Dig. Disc. Priv. Sez. Civ.*, IX, 474; in Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58, the Authors claim that *‘il diritto alla disconnessione è nient’altro che l’adattamento in chiave 4.0 del diritto al riposo e del diritto alla riservatezza.’*

¹⁸³ A different point of view is provided by Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873, who highlights the shortcomings of Italian legislation when it comes to the right to disconnect.

¹⁸⁴ Krause, R. (2018). ‘Always-on’: The Collapse of the Work–Life Separation in Recent Developments, Deficits and Counter-Strategies. *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 223-248. Palgrave Macmillan. On the subject see also Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873. According to the author, *‘il riconoscimento dell’esistenza di un diritto alla disconnessione non è sufficiente a garantirlo’*.

¹⁸⁵ See Russo, M. (2020). Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche*, 30(3), 682-701; Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873, Notaro, F. (2018). Il lavoro agile nel quadro della vecchia (o nuova?) subordinazione. *Lavoro Diritti Europa*, 1.

with the employer to guarantee disconnection.¹⁸⁶ This leads us to reflect on the exact meaning of disconnection, which shall be considered not only as the right to rest but also as the right not to be contacted or, in other words, to keep working and private life separate, thus avoiding phenomena like work-life blending and time porosity. Hence, ensuring disconnection means not only safeguarding employees' health and safety, but also protecting their work-life balance and, consequently, improving their productivity and efficiency.¹⁸⁷

In this respect, it comes as no surprise that collective agreements signed either during the pandemic or immediately after the end of the emergency period have started to show a stronger focus on disconnection¹⁸⁸ intended as a work-life balance enabler and have addressed the employees' sense of responsibility in guaranteeing disconnection.¹⁸⁹ For instance, the company collective agreement signed by Wind (Wind Tre, Wind Tre Italia and Wind Tre Retail) on 3 February 2021 recommends that employees and managers manage breaks and activities based on their sense of responsibility and mutual fairness, without managers imposing any hard measure top down. Standard working hours remain the reference for smart working and overtime is excluded. On the other hand, SNAM S.p.A. in the agreement signed on 25 March 2021 devotes a detailed section to the right to disconnect with the explicit goal of guaranteeing the best possible work-life balance by recommending behaviours and modes of execution based, once again, on the sense of responsibility of employees, colleagues and

¹⁸⁶ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore claims that workers have a right to disconnect as well as a duty to meet the relevant measures in order to safeguard their health and safety.

¹⁸⁷ On the topic see Poletti, D. (2013). *Il cd diritto alla disconnessione nel contesto dei «diritti digitali»*, cit. C. Rapisarda Sasson, *Inibitoria*, in *Dig. Disc. Priv. Sez. Civ.*, IX, 474; Russo, M. (2020). *Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata*. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricche*, 30(3), 682-701. In addition, see also Cataudella, M. C. (2021). *Tempo di lavoro e tempo di disconnessione*. *Massimario di giurisprudenza del lavoro*, 4, 853-873. According to the Author, if we assume that care responsibilities are mainly borne by women, the right to disconnect, being an enabler of work life balance, can play a key role in also fulfilling gender balance. An extensive analysis of the nature of the right to disconnect is contained also in Purificato, I., Senatori, I. (2024). *Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect*. *Diritti Lavori Mercati International* n.1-2024, 285-303. The authors claim that disconnection can be interpreted by following either a minimalist or an extensive approach. According to the former, disconnection is linked to the protection of workers' health and safety; hence, it is considered accomplished once rest time is met. On the other hand, according to the latter, disconnection is meant to protect workers' time sovereignty, so it can be interpreted as a new right linked to the protection of workers' well-being in a broader sense. Both the 2020 European Social Partners Framework Agreement on Digitalisation (EFAD) at a European Level and the 2021 National Protocol on Agile work at a national level embrace a minimalist interpretation of disconnection, while the legislative initiative put forward by the European Parliament in the 2021 Resolution mentioned supra adheres to an extensive definition of disconnection. The minimalist stance is also prevalent in the more than fifty collective bargaining agreements (both sectoral and company ones) signed in 2022 and 2023 that the Authors analysed in order to understand if and how social partners in Italy were implementing the guidelines contained in the EFAD. In those agreements, disconnection is mainly linked to non-working time.

¹⁸⁸ Interestingly enough, as Ludovico shows in Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore, Company Collective Agreement signed after December 2021 still show models with limited autonomy for workers, in that they include quite a rigid scheduling of working hours (still connected to regular working hours) and a limited numbers of days of remote working per week/month. On the other hand, overtime is generally excluded, in compliance with the provisions of the National Protocol on agile work signed on 7 December 2021.

¹⁸⁹ Fenoglio, A. (2022). *Tempo e subordinazione: riflessioni intorno al lavoro agile*. *Labour & Law Issues*, 8 (1), 182-206.

managers. Time bands are provided during which employees can exercise their right to disconnect, and general recommendations are provided regarding best practices in conference calls planning, in order to ensure disconnection. The company collective agreement signed by Gruppo Generali on 27 July 2021 moves further in the definition of best practices to ensure disconnection by providing quite a detailed list of recommended behaviours or ‘*comportamenti di buona convivenza*’, ranging from meeting planning within a well-defined timeframe to delayed dispatch of emails sent outside of standard working hours. A similar approach is followed by SIAE in the company collective agreement signed on 22 December 2021 and by Leonardo S.p.A. in the agreement signed on 8 March 2022, the latter containing the explicit definition of a disconnection time band from 07:30 p.m. to 08:00 a.m. during which employees are not required either to perform work or to be contactable. As regards the CCBA signed by Intesa San Paolo in May 2023 and already mentioned *supra* for the introduction of the compressed workweek¹⁹⁰, it is interesting to notice that disconnection is guaranteed outside of working hours (that is to say from the end of a working day until work is resumed on the following one), unless specific urgencies arise, in which case the employee can exceptionally be contacted through company tools with the clear indication that the matter requires immediate evaluation. The novelty in this case is represented by the possibility for employees to flag behaviours that are non-compliant with the above best practices by channelling complaints to a dedicated inbox called ‘Iosegnalo’.

4. Protecting Work-life Balance from Work-life Blending

4.1. The Gender Dimension of Agile Work

As briefly mentioned *supra*, pandemic remote working has questioned the positive relation between flexible working and work-life balance, and this is especially true for women.¹⁹¹ As a matter of fact, the results of the survey on Living, working and COVID-19 carried out by Eurofound¹⁹² showed that people working from home during the pandemic did

¹⁹⁰ See *supra* section 2.3 *Italian Agile Work and Working Time Regulation*.

¹⁹¹ European Agency for Safety and Health at Work (EU-OSHA) (2023). Hybrid work: new opportunities and challenges for Occupational Safety and Health. Discussion Paper. Available at: <https://osha.europa.eu/en/publications/hybrid-work-new-opportunities-and-challenges-occupational-safety-and-health> (accessed 20/03/2024). In this paper the authors devote a paragraph to gender inequalities connected to remote work, providing evidence that while women tend to reinvest time saved from commuting in household or parental activities, men either spend it for themselves or to be with their children. As a result, women are more likely to flag worsened work-life balance in surveys on remote work.

¹⁹² Eurofound (2020), Living, working and COVID-19, COVID-19 series, Publications Office of the European Union, Luxembourg. Available at: <https://www.eurofound.europa.eu/publications/report/2020/living-working-and-covid-19>.

ensure business continuity but also experienced a significant increase in work pressure and struggled to balance work and personal life, reporting extended working hours, an increase in overtime and difficulties in disconnecting once the working day was over. This is notably applicable to women with children, who had to combine work and childcare during the closure of educational facilities.

Pandemic aside, it cannot be overlooked that the way in which working time is organised has an impact on workers' life quality and a relevant gender dimension as well.¹⁹³ Current working time legislation both at a European and Italian level has been in force since 2003 and is considered to be outdated not only because of the strict dichotomy between work and rest it promotes,¹⁹⁴ which is hardly compatible with the flexibility connected to the current working scenario, but also because it is substantially modelled around the standard male worker with no care responsibilities who never needs to object to the employer's request either to work longer hours or to change schedule unexpectedly.¹⁹⁵ Over the past decades, attempts to revise said approach towards a more flexible working time organisation that could take into consideration (female and male) workers' personal needs were put forward but never resulted in an amendment of working time legislation.¹⁹⁶ Rather, regulatory provisions were introduced regarding (parental) leaves of absence and part-time contracts, which targeted working mothers by focusing on working time reduction instead of promoting a flexible working time organization.¹⁹⁷

However, recently, the negative effects of the digitalisation of employment relations on work-life balance -and of the lack of predetermination of the part of the day qualified as

¹⁹³ See paper by Militello, M., *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, p. 41-66 in Alessi, C., Bonardi, O., Calafà, L., D'Onghia, M., Militello, M., Saracini, P., & Vallauri, M. L. (2023). *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE* In *Quaderno della Rivista Diritti Lavori Mercati*, 14. Editoriale Scientifica. The gender dimension of the experience of time and of the sense of control over time is also addressed and identified as a field of further research in Sullivan, C., & Lewis, S. (2001). *Home-based telework, gender, and the synchronization of work and family: perspectives of teleworkers and their co-residents*. *Gender, Work & Organization*, 8(2), 123-145.

¹⁹⁴ See *infra*, chapter 2 *section 1. Regulating Working Time and Post Pandemic Perspectives*.

¹⁹⁵ See contribution by Militello, M., *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, p. 41-66 in Alessi, C., Bonardi, O., Calafà, L., D'Onghia, M., Militello, M., Saracini, P., & Vallauri, M. L. (2023). *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE* In *Quaderno della Rivista Diritti Lavori Mercati*, 14. Editoriale Scientifica. See also Militello, M. (2020). *Conciliare vita e lavoro. Strategie e tecniche di regolazione*. G Giappichelli Editore.

¹⁹⁶ Among these is the proposal of amendment of EU Directive 2003/88 submitted in 2008 by the European Parliament and opposed both by the European Council and by the Commission. See Contribution by Militello, M., *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, p. 41-66 in Alessi, C., Bonardi, O., Calafà, L., D'Onghia, M., Militello, M., Saracini, P., & Vallauri, M. L. (2023). *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE* In *Quaderno della Rivista Diritti Lavori Mercati*, 14.

¹⁹⁷ Although this project work will not focus on parental leave, see Directive 2010/18 introduced in Italy with Legislative Decree 80/2015 and Law 53/2000.

working time in particular-, with the risk of work life encroaching on private life,¹⁹⁸ have become a sensitive topic across the EU to such an extent that in 2017 the European Parliament advocated for a solid European Pillar that could positively affect the living conditions of the EU citizens in a rapidly evolving society facing both upsides and downsides of this digital spree. As a result, the European Pillar of Social Rights (EPSR) was set out in 2017 with its 20 principles covering three main areas: (1) equal opportunities and access to the labour market, (2) fair working conditions and (3) social protection and inclusion.¹⁹⁹ Among these, principle n. 9 concerns work-life balance and stipulates that *‘parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way’*.

The European Pillar of Social Rights triggered the Work-life balance Directive²⁰⁰ in 2019, whose main aim was to *‘lay down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers.’*²⁰¹ Parental leaves and flexible working are presented as the main enablers to achieve the intended goal. With particular reference to flexible working,²⁰² article 9 stipulates that *‘Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation’*. Moreover, *‘employers shall consider and respond to requests for flexible working arrangements [...] within a reasonable period of*

¹⁹⁸ Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 11-28. Palgrave Macmillan, Cham. See also Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham, according to whom, *‘the cost of flexibility seems to be the colonization of private life, which individuals partially manage to control but which causes some indirect effects, especially when colleagues’ and superiors’ implicit expectations reduce workers’ organizational discretion in their choice of when and where they should be engaged with work-related communications.’*

¹⁹⁹ The European Pillar of Social Rights. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017C1213%2801%29> (accessed 21/08/2023). The preamble recalls the main objectives of the European Union, stated in the European Union Treaty (art. 3), namely the promotion of the well-being of its citizens, Europe Sustainable Development and environmental protection. Social partners are empowered with the responsibility to develop and implement the principles contained in the pillar. As regards its main goal, it is worth quoting point 11 in the preamble, reading, *‘[...] the establishment of a European Pillar of Social Rights should be part of wider efforts to build a more inclusive and sustainable growth model by improving Europe’s competitiveness and making it a better place to invest, create jobs and foster social cohesion’*.

²⁰⁰ Directive EU 2019/1158 on work-life balance for parents and carers dated 20 June 2019.

²⁰¹ Art 1, Directive EU 2019/1158 on work-life balance for parents and carers dated 20 June 2019.

²⁰² Under article 3 f) *‘flexible working arrangements’ means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.’*

time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.'

Said Directive can be considered a milestone in many ways. To begin with, it shows how European legislation has started to focus on flexible working as the main enabler not only of work-life balance but also of gender equality, guiding national legislation as well as collective bargaining in this direction,²⁰³ with the twofold intended effect of supporting women access (and long-term stay) in the labour market and of favouring a shared conciliation that overcomes the traditional breadwinner male/ female caregiver dichotomy in favour of the 'dual earner dual carer family model' and thus moving towards a more equal distribution of caring responsibilities between men and women.²⁰⁴ Moreover, this Directive represents a valuable tool to question the standardised notion of working hours, traditionally modelled around the typical male worker with no family responsibility.²⁰⁵ Clearly, the Directive, when acknowledging the relationship between working time organisation and work-life balance, paves the way to the possibility of modelling working time patterns based on the assumption that workers either have to deal with care burdens of any kind or, in any case, have a life outside of their job whose value is at least as important as the organisational needs of the employer.²⁰⁶

The 2019 Work-Life Balance Directive was later complemented by the Guiding Principles on Implementing Workers' Right to Disconnect released in September 2023, which, having the intended purpose of promoting gender equality and work-life balance, also by ensuring a predictable working schedule, attributes a relevant gender dimension to the right to disconnect, which can favour a better balance between family life and work life.²⁰⁷

²⁰³ Senatori, I. (2022). La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 596-611, and Pasquarella, V. (2017). 'Work-life balance: esiste un modello italiano di conciliazione condivisa' dopo il Jobs act?' *Rivista Italiana di Diritto del Lavoro*, 1, 41-75.

²⁰⁴ Pasquarella, V. (2017). Work-life balance: esiste un modello italiano di conciliazione condivisa' dopo il Jobs Act?, *Rivista Italiana di Diritto del Lavoro*, 1, 41-75. According to the Author, conciliation shall not be considered a problem regarding only women as mothers, but it should rather address parents. Hence, shared conciliation can be considered the first step towards a more equal distribution of care responsibilities between male and female, thus being also a first step in tackling gender disparity in general and gender pay gap in particular by promoting the 'dual earner dual carer' model. Among deployable tools to implement this new dual earner dual carer gender arrangement can be paid parental leave and flexible working. According to the author, national legislation still considers conciliation a female affair. Indeed, most of the measures introduced by Jobs Act are meant to favour conciliation of the different roles played by working mothers/wives rather than to promote shared care responsibilities between working parents. As a result, Italy is still behind in the implementation of the dual earner-dual carer model.

²⁰⁵ Militello, M. (2020). *Conciliare vita e lavoro. Strategie e tecniche di regolazione*. G Giappichelli Editore. Pasquarella, v. (2017). 'Work-life balance: esiste un modello italiano di conciliazione condivisa' dopo il Jobs act?.' *Rivista Italiana di Diritto del Lavoro*, 1, 41-75.

²⁰⁶ Idem.

²⁰⁷ Available at: <https://www.europeanlawinstitute.eu/news-events/news-contd/news/guiding-principles-on-implementing-workers-right-to-disconnect-are-available-online/>. On the subject, see also Russo, M. (2023) *Il datore di lavoro agile. Il potere direttivo nello smart working* (Vol. 19, pp. 1-304). ESI. According to the author, predictable working schedules are key to

There is considerable evidence that the gender implications of remote work (and of home working in particular) are twofold, or, as Sullivan & Lewis put it, *‘telework may both increase opportunities for flexibility, and in doing so also contribute to and perpetuate the disadvantage of women.’*²⁰⁸ Clearly, on the one hand, women are more likely to be negatively affected by the drawbacks of remote work, and this is because, when work moves from a standardised working place (the office) to an individualised one (mainly the worker’s home), there might be other constraints claiming workers’ attention and time, like for instance (unpaid) care responsibilities, which to date are still primarily undertaken by women, thus resulting, among other things, in an increase of said unpaid responsibilities due to the possibility to undertake them alongside (home) working. This may lead to more frequent interruptions and even to a worsened work-life conflict, with negative impact on mental and physical health. Furthermore, since women, especially those with children or caring responsibilities in general, are more likely to spend part of their working time working remotely, there is a concrete risk that their reduced presence onsite makes them less visible and thus hinders their development and career opportunities. On the other hand, though, it is generally accepted that remote work (supposedly being flexible work) could have a positive impact on women work-life balance and benefit them, for instance by increasing their participation in the labour market and their income, due to the possibility to combine paid work with care responsibilities.²⁰⁹

In this respect, it is also interesting to observe how *‘home-based work is carried out by both men and women and therefore has the potential to bring about change in both organizations and families. However, the reasons for taking up this kind of work and the ways in which it is used to manage the work-family interface are highly gendered. Teleworking may be family friendly in the sense of enabling women to combine work and family, but it is not necessarily gender-equitable in its operation and effects.’*²¹⁰

Given the above, there is a general consensus that flexible working can have a positive impact for women only if it is supported by a regulatory framework giving well-deserved recognition to both paid and unpaid work carried out in the household and favouring an equal

ensure work life balance. This belief is shared also by Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 11-28. Palgrave Macmillan, Cham, who maintains that *‘problems usually arise, in terms of work-life balance, if the employer asks the worker to connect at any time without predetermining the period of the day qualified as working time’*.

²⁰⁸ Sullivan, C., & Lewis, S. (2001). Home-based telework, gender, and the synchronization of work and family: perspectives of teleworkers and their co-residents. *Gender, Work & Organization*, 8(2), 123-145.

²⁰⁹ Idem.

²¹⁰ Idem. Empirical evidence shows that also reasons given by men and women for teleworking are gendered, meaning that women are mainly motivated by childcare, while men are not, as their main drivers for preferring remote work are either work-related or individual reasons.

distribution of caring responsibilities between men and women,²¹¹ and this is because although ‘home-based work may have the potential to re-converge work and family [...], it does not in itself facilitate the breakdown of traditional gender roles nor alter the gendered allocation of domestic work and childcare.’²¹²

In Italy, the above-mentioned 2019 Work-life balance Directive was adopted through legislative decree No. 105/22 dated 30 June 2022 and in force since 13 August 2022. Quite surprisingly, the Italian legislator, instead of introducing the right to flexible working time as ruled under art. 9 of the Directive 1158/2019 it was transposing,²¹³ only changed the content of paragraph 3-bis of art. 18 of Law No. 81/2017,²¹⁴ and imposed on employers activating smart working both in the public and private sector to prioritise requests coming from working parents with children up to 12 years old, or regardless of children age in case of disability.²¹⁵

It must be stressed that the legislative decree in question stipulates about a priority not a right, meaning that, priority is granted only if the employer intends to introduce smart working in the organisation; if this is not the case, no priority comes into play. Although granting priority in the access to agile work to working parents can be read as a measure aimed at meeting the interests of the workers, it is also true that it turns agile work into an entitlement for pre-set categories of workers, thus also questioning its reversibility for those categories. In addition, said priority could be linked to the misleading belief according to which agile work (and the focus is on the word ‘work’) is equivalent to a leave of absence (i.e., abstention from

²¹¹ See the contribution by Arabadjieva K. and Franklin P. (Chapter 4, Home-based telework, gender and the public-private divide) in Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI.

²¹² Sullivan, C., & Lewis, S. (2001). Home-based telework, gender, and the synchronization of work and family: perspectives of teleworkers and their co-residents. *Gender, Work & Organization*, 8(2), 123-145.

²¹³ Article 9, par. 1 of Directive 1158/2019/EU reads ‘Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.’

²¹⁴ The new paragraph reads, ‘I datori di lavoro pubblici e privati che stipulano accordi per l’esecuzione della prestazione di lavoro in modalità agile sono tenuti in ogni caso a riconoscere priorità alle richieste di esecuzione del rapporto di lavoro in modalità agile formulate dalle lavoratrici e dai lavoratori con figli fino a dodici anni di età o senza alcun limite di età nel caso di figli in condizioni di disabilità ai sensi dell’articolo 3, comma 3, della legge 5 febbraio 1992, n. 104. La stessa priorità è riconosciuta da parte del datore di lavoro alle richieste dei lavoratori con disabilità in situazione di gravità accertata ai sensi dell’articolo 4, comma 1, della legge 5 febbraio 1992, n. 104 o che siano caregivers ai sensi dell’articolo 1, comma 255, della legge 27 dicembre 2017, n. 205. La lavoratrice o il lavoratore che richiede di fruire del lavoro agile non può essere sanzionato, demansionato, licenziato, trasferito o sottoposto ad altra misura organizzativa avente effetti negativi, diretti o indiretti, sulle condizioni di lavoro. Qualunque misura adottata in violazione del precedente periodo è da considerarsi ritorsiva o discriminatoria e, pertanto, nulla.’ In addition, Legislative Decree No. 105/2022 introduced paragraph 3 ter, reading, ‘Il rifiuto, l’opposizione o l’ostacolo alla fruizione del lavoro agile, secondo quanto disposto dal comma 3-bis, ove rilevati nei due anni antecedenti alla richiesta della certificazione della parità di genere di cui all’articolo 46-bis del D.Lgs. 11 aprile 2006, n. 198 o di analoghe certificazioni previste dalle regioni e dalle province autonome nei rispettivi ordinamenti, impediscono al datore di lavoro il conseguimento delle stesse certificazioni.’

²¹⁵ See Di Rosa, D. (2022). Work-life balance: dal 13 agosto nuove tutele per i genitori lavoratori – Infografica. Ipsoa. Available at: <https://www.ipsoa.it/documents/quotidiano/2022/08/05/work-life-balance-13-agosto-nuove-tutele-genitori-lavoratori-infografica> (accessed 15/10/2023) and Camera, R. (2023). Smart working con accesso prioritario: a chi spetta e quali sono le sanzioni per mancata attivazione. Ipsoa. Available at: <https://www.ipsoa.it/documents/quotidiano/2022/09/07/smart-working-accesso-prioritario-spetta-sanzioni-mancata-attivazione> (accessed 15/10/2023).

work), implying that working from home and being on a leave of absence could have the same impact on work-life balance.²¹⁶ In any case, it can be maintained that the Italian legislator weakened the scope of the right to flexible working time introduced by the EU Work-life balance Directive in the transposing regulations contained in Legislative Decree No. 105/2022.²¹⁷

Some scholars suggest that, given the current scenario, collective bargaining could take the lead in promoting the right for flexible working to improve work-life balance.²¹⁸ The problem with this view, however, is that collective bargaining is weak in this area, considering the difficulty of bringing into the sphere of collective representation an issue, that of work-life balance, which is strongly influenced by individual needs.²¹⁹ All this considered, agile work would seem to be the tool through which the Italian legislator intends to promote flexible working with a view to improving (shared) conciliation in our system.

4.2. Agile Work as a Work-life Balance Enabler

Although we can all agree that pandemic home working can barely be defined as flexible (let alone smart) working,²²⁰ given the constraints under which it had to be exercised, it is generally accepted that flexible working may represent a work-life balance enabler, in that it allows workers to save commuting time and to free time to devote to personal activities.²²¹

²¹⁶ See Militello, M. (2020). *Conciliare vita e lavoro. Strategie e tecniche di regolazione*. G Giappichelli Editore. The author refers to paragraph 3 added to art 18 Law No. 81/2017 by article 1, paragraph 486 Law No. 145 dated 30 December 2018, introducing priority to the access to agile work to working mothers during the three years following the end of their maternity leave. Similar considerations can apply for this renewed revision of article 18 of Law No. 81/2017, although a step forward has been made in that priority is now granted not only to working mothers but to working parents.

²¹⁷ On this, see contribution by Militello, M., *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, p. 41-66 and by Alessi, C., *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d. Lgs. 30 giugno 2022 n. 105*, p. 85-102 in Alessi, C., Bonardi, O., Calafà, L., D'Onghia, M., Militello, M., Saracini, P., & Vallauri, M. L. (2023). *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE* In *Quaderno della Rivista Diritti Lavori Mercati*, 14.

²¹⁸ On this topic see contribution by Militello, M., *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, p. 41-66 and by Alessi, C., *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d. Lgs. 30 giugno 2022 n. 105*, p. 85-102 in Alessi, C., Bonardi, O., Calafà, L., D'Onghia, M., Militello, M., Saracini, P., & Vallauri, M. L. (2023). *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE* In *Quaderno della Rivista Diritti Lavori Mercati*, 14.

²¹⁹ See the analysis carried out on approximately 50 Collective Agreements carried out by Senatori, I. (2022). *La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete*. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 596-611.

²²⁰ See Ales, E. (2021). *Il benessere del lavoratore: nuovo paradigma di regolazione del rapporto*. In *Diritti Lavori Mercati*, 2021,1, 43-58; Peruzzi M., Sacchetto, D. (a cura di) (2021). *Il lavoro da remoto: aspetti giuridici e sociologici*, Giappichelli.

²²¹ In this respect, it is worth referring to Fabbri, T. (2018). *Digital work: an organizational perspective*. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 29-38. Palgrave Macmillan, Cham. According to the author, digital work is not a smarter way of working by definition only because it entails time and space flexibility; rather, it becomes smart only if it allows workers to do their job with less effort, meaning that productivity increases because workers are working smarter and not harder. If, on the other hand, productivity gains come from extended working hours, breaks reduction and commuting time turned into working time, digital work is not smart work.

Yet, the lack of working time constraints and the ‘*increasingly permeable boundaries between work and private life*’ can have the opposite effect of distracting workers from their right/duty to rest and to disconnect in order to recover energies, with a consequent negative effect on their health.²²²

Therefore, despite the declared intent of Law No. 81/2017 to ‘*increase competitiveness and facilitate work-life balance*,’²²³ smart working does not represent a work-life balance enabler *per se*, but it only works as such if specific conditions are met in its deployment, namely a) a smart organisational set-up is adopted that truly allows for the discretion of employees in self-determining their working schedule to achieve given objectives,²²⁴ b) the digital gender gap is reduced, c) human resources are managed by taking into consideration workforce diverse attitudes and needs within the Diverse Management Framework.²²⁵

The combination of the above is likely to result in increased satisfaction for employees and consequent improved performance, thus maximising the favourable outcome of smart working, as it will be explained further in the following paragraphs. To begin with, smart working can become an enabler of work life balance only if objectives are sustainable and realistic and do not force employees to hyperconnectivity, extended working hours and excessive work intensity.²²⁶ In this respect, Fabbri²²⁷ provides a valuable perspective when claiming that digital work is not a smarter way of working by definition only because it entails time and space flexibility. In fact, digital work is smart only if it allows workers to do their job with less effort, meaning that productivity increases because workers are working smarter and

²²² Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham.

²²³ Article 18, Law No 81/2017

²²⁴ See Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham, and Santoni, C., & Crespi, I. (2022). Conciliazione famiglia e lavoro tra smart-working e diversity management. Una riflessione su pratiche e nuove semantiche. *Autonomie locali e servizi sociali*, 45(1), 45-66. See also Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414; Senatori, I. (2020). Il lavoro agile in cerca di identità. *Cronaca legislativa di un quadriennio travagliato (2017-2020)*. Basenghi F., Di Stefano L., Russo A., Senatori I., a cura di. Le politiche del lavoro della XVIII Legislatura: dal Decreto Dignità alla gestione dell'emergenza Covid-19. Collana Fondazione Marco Biagi. Giappichelli. According to the author, building a smart organisation is the first step for the success of smart working. In this respect, see also the recommendations contained in the 2023 Guiding Principles on Implementing Workers' Right to Disconnect by ELI, and in particular *Guiding Principle nr. 3: Preventive action and Information*, advocating for necessary preventive actions to be put in place by employers to guarantee the effectiveness of the right to disconnect, which include an assessment of workload and work organisation to counteract over-connection and the ‘always-on’ culture; Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58.

²²⁵ The term *Diversity Management* refers to a strategy of Human Resources management born in the US that promotes workforce diversity and inclusion with a view to allowing employees to express their full potential, thus resulting in increased engagement and productivity and, consequently, in a competitive advantage for companies applying this strategy.

²²⁶ Senatori, I. (2022). La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 596-611.

²²⁷ Fabbri, T. (2018). Digital work: an organizational perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 29-38. Palgrave Macmillan, Cham.

not harder. If, on the other hand, productivity gains come from extended working hours, hidden overtime, breaks reduction and saved commuting time reinvested into work, digital work is not smart work, and it cannot keep its promises of a win-win solution.²²⁸

Moreover, ‘time sovereignty’, i.e. the ‘*greater discretion for workers regarding the organisation of their working time*’²²⁹ plays an important role in the favourable perception of smart working as a work life-balance enabler. Interestingly enough, the 2017 ILO/Eurofound research showed that time and space flexibility connected to digital work are perceived as an ‘*additional stressful burden*’ when employees are unable to manage time discretion,²³⁰ meaning that an additional element to be considered for the success of the model is ‘*workers’ ability to draw boundaries between work and private life, which are increasingly permeable*’.²³¹ As far as the freedom of self-determine how to perform tasks is concerned, emergency smart working in place during the pandemic showed all the pitfalls of remote working implemented without granting employees the autonomy to self-arrange their working schedule. Indeed, if we accept that emergency smart working was a form of forced home working basically mirroring office working hours, during which employees were asked to perform from home the same tasks they would have performed in the office with very limited flexibility, we can see that this new working arrangement did not fully function as a work-life balance enabler, but rather it cast some light on the negative effect of extended remote working, like isolation and work-life blending.²³² If, on the other hand, organisational choices are made by companies allowing workers to truly self-determine the quantum and the schedule of their work performance, so that they can also plan their free time, this is likely to result increased

²²⁸ ‘*Digital work is smart if it combines (the same or possibly) more production with less effort [...]. Digital work is not smart if it supplements analog work and working methods, if it increases productivity by means of additional working effort, let alone if it is not remunerated*’. Fabbri, T. (2018). Digital work: an organizational perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 29-38. Palgrave Macmillan, Cham. Interestingly enough, according to Barrero, J. M., Bloom, N., & Davis, S. J. (2021). Why working from home will stick (No. w28731). National Bureau of Economic Research, post-pandemic work from home will increase productivity by 4,6 per cent if compared with the pre-pandemic situation, the main trigger of increased productivity being the reduction of commuting time. In contrast, in Pesenti S., Scansani G. (2021). *Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie*, Galli Edizioni, Varese, the authors claim that remote working is not a guarantee of increased productivity in itself as research carried out during the pandemic suggests; indeed, the effect of remote working on productivity still has to be proved. As a matter of fact, ‘*la semplice remotizzazione del lavoro o il trasferimento sul piano digitale della prestazione lavorativa non è [...] automatica garanzia di eguale o maggiore produttività[...]*’. On the subject, see also the contribution by Dedden, B., De Spiegelaere, S., and Hick, M. (Chapter 7, Remote Work: ensuring trade union and workers’ rights through collective bargaining) in Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI.

²²⁹ Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI.

²³⁰ Eurofound and the International Labour Office (2017), *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva.

²³¹ Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham.

²³² See Albano, R., Parisi, T., & Tirabeni, L. (2019). *Gli smart workers tra solitudine e collaborazione*. *Cambio* Vol. 9, 61-73. Firenze University Press.

workers' satisfaction and improved productivity, since workers, thanks to a predictable working schedule, can decide when to devote time to work and when to other nurturing activities.²³³

As regards the digital gender gap, there is evidence that Italy is the 25th Country in the EU out of 27 Member States in terms of digital competences, with only 36 per cent of the Italian population between 16 and 65 year old capable of an advanced use of internet; moving to a global level, only 15 per cent of women work with Cloud and 26 per cent are committed with AI (Artificial Intelligence), showing a reduced presence of women in emerging sectors and high-profile jobs with consequent impacts on pay gaps.²³⁴ This gap in digital competences needs to be addressed in order to allow women to make the most of flexible working.

Smart working shall be used as a diversity management tool by granting to workers a type of flexibility that takes into consideration their diverse needs, based on their age, gender, attitudes and preferences rather than promoting a standardised approach. This is because the type of flexibility needed by a working parent aged forty-five is likely to differ from the one needed by a working student of twenty-five with no family bonds. If companies can meet the diverse needs and professional inclinations of their workforce by offering them a customised smart working, they are more likely to improve the workforce's well-being within the organisation, thus benefiting from increased engagement, commitment and, consequently, from improved performances and productivity.²³⁵

²³³ See Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham. Fabbri, T. (2018). Digital work: an organizational perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 29-38. Palgrave Macmillan, Cham. The authors claim that the relationship between technology advance and productivity is not straightforward, but rather productivity gains '*are a corollary of the organisational changes facilitated by technological innovations rather than by technologies themselves and will be achieved only by companies which adopt new forms of work organisation at the same time as the new technologies.*' See also Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²³⁴ Santoni, C., & Crespi, I. (2022). Conciliazione famiglia e lavoro tra smart-working e diversity management. Una riflessione su pratiche e nuove semantiche. *Autonomie locali e servizi sociali*, 45(1), 45-66.

²³⁵ Idem.

5. Protecting Agile Workers' Health and Safety

5.1. Applicable Legislative Framework: a Widely Debated Issue

In Italy, Occupational Health and Safety (OHS) protection for subordinate workers is ruled by article 2087 of the Civil Code²³⁶ and by Legislative Decree No. 81/2008 dated 9 April 2008, also known as Testo Unico sulla Salute e Sicurezza sul Lavoro (TU), according to which the employer has a duty to safeguard workers' health and safety by guaranteeing a safe and healthy work environment for them (regardless of their contractual type). More broadly,²³⁷ and to complement the Health and Safety protection framework, while the right to safe, secure and dignified working conditions is ruled by articles 2, 32, 36, paragraph 2 and 41 paragraph 2 of the Italian Constitution²³⁸ and by article 35 of the Charter of Fundamental Rights of the European Union (CFR),²³⁹ the protection of private and family life as well as of personal data is ruled by articles 7 and 8 of the above-mentioned CFR²⁴⁰ and by article 8 of the European Convention on Human Rights (ECHR).²⁴¹

In the digital era, when working anytime and anywhere has become possible, work performance fails to be linked to one single workplace and to a pre-set working schedule, since the new model put forward by flexible working in general and agile work in particular 'aims

²³⁶ Tutela delle condizioni di lavoro. L'imprenditore é tenuto ad adottare nell'esercizio dell'impresa le misure che, secondo la particolarità del lavoro, l'esperienza e la tecnica, sono necessarie a tutelare l'integrità fisica e la personalità morale dei prestatori di lavoro.

²³⁷ Allamprese, A., Pascucci, F. (2017). La tutela della salute e della sicurezza del lavoratore «agile». *Rivista giuridica del lavoro e della previdenza sociale*, (2), 307-330.

²³⁸ Art. 2- *La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale.* Art. 32- *La Repubblica tutela la salute come fondamentale diritto dell'individuo e interesse della collettività, e garantisce cure gratuite agli indigenti.*

Nessuno può essere obbligato a un determinato trattamento sanitario se non per disposizione di legge. La legge non può in nessun caso violare i limiti imposti dal rispetto della persona umana.

Art. 36 (paragraph 2) - *La durata massima della giornata lavorativa è stabilita dalla legge.*

Il lavoratore ha diritto al riposo settimanale e a ferie annuali retribuite, e non può rinziarvi.

Art. 41 (paragraph 2) - *La legge determina i programmi e i controlli opportuni perché l'attività economica pubblica e privata possa essere indirizzata e coordinata a fini sociali (e ambientali).*

²³⁹ 2012/C 326/02. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT> (accessed 01/01/2024). Article 35 called Health care reads 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.'

²⁴⁰ Article 7- *Respect for private and family life- Everyone has the right to respect for his or her private and family life, home and communications.* Article 8- *Protection of personal data- 1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority.*

²⁴¹ Article 8- *Right to respect for private and family life. 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

*at overcoming the traditional Fordist paradigm, according to which work is performed from a fixed location within the company premises and according to a well-defined time schedule, in favour, instead, of greater workers' autonomy in establishing methods and execution times of the working performance itself.*²⁴²

As a result of the rise of flexible working arrangements and the consequent dematerialization and/or privatization of the workplace, it comes as no surprise that a major challenge that corporations are facing is how to comply with OHS prevention and protection obligations in the event that work is performed outside of the employer's premises. In other words, since in the digital era *'work is becoming something you do, not a place where you go'*,²⁴³ the burning question becomes how do health and safety obligations change and how are they fulfilled in the new working scenario? To answer this question, we shall focus on the OHS provisions contained under Law No. 81/2017. Based on article 18, paragraph 2, *'the employer is responsible for the safety and proper functioning of the technological tools assigned to the worker to carry out work'*.²⁴⁴ Moreover, article 22 sets forth the obligation for the employer to guarantee the health and safety of agile workers, by specifying that, to this end, it shall provide workers and workers' health and safety representatives (RLS) at least once a year with a written notice detailing the general and specific risks associated with this particular way of working.²⁴⁵ The second paragraph of said article sets forth the responsibility of agile workers to cooperate with the employer in the implementation of the prevention measures put in place by the employer itself. To conclude, article 19 paragraph 1 establishes that in the individual agreement regulating agile work, the stipulating Parties shall outline rest times and disconnection measures from ICT, which is a key provision in terms of OHS given the fundamental function of rest times and disconnection as health and safety protection measures.²⁴⁶

It is self-evident that Law No. 81/2017 is extremely skinny also when it comes to occupational health and safety provisions, especially since it fails to make an explicit reference

²⁴² Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414.

²⁴³ Davenport, T. H., & Pearlson, K. (1998). Two cheers for the virtual office. MIT Sloan Management Review, 39(4), 51.

²⁴⁴ In Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058 the author highlights that INAIL circular no. 48 dated 2 November 2017 further clarifies that the employer is responsible for checking that the ICT tools provided to agile workers comply with *'specific legislative and regulatory provisions transposing EU product directives, being responsible to ensure the permanence of safety requirements over time with adequate maintenance.'*

²⁴⁵ in compliance with Prime Ministerial Decree (DPCM) dated 1 March 2020 implementing the legislative decree No. 6 dated 23 February 2020 containing urgent measures regarding the containment and management of the epidemiological emergency from Covid-19, the employer can fulfil said obligation electronically and by means of a standard template made available by INAIL online.

²⁴⁶ Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414. On the subject, see *supra* section [3. Shaping the Right to Disconnect Within the Framework of Working Time Regulation in the European Union](#).

to pre-existing provisions in the field (and to the 2008 Testo Unico sulla Salute e Sicurezza in particular).²⁴⁷ Hence, it comes as no surprise that doubts have been raised on the relationship between the above-mentioned provisions and the contents of 2008 Testo Unico (TU). It is a shared belief among experts²⁴⁸ that the provisions contained in the TU apply to agile work as well. Indeed, *‘the duty of the employer to guarantee a safe and healthy work environment [is reconfirmed in the event of agile work] because of the existence of the employment relationship, even at someone else’s workplace, [...]’*; agile workers, being subordinate workers, are covered by the above-mentioned provisions contained both under article 2087 of the civil code and in the Legislative Decree No. 81/2008 (and this regardless of the lack of reference in Law No. 81/2017 to Legislative Decree No. 81/2008).²⁴⁹ The 2021 National Protocol on Agile Work makes this applicability explicit when stating that *‘ai lavoratori agili [...] si applicano gli obblighi di salute e sicurezza sul lavoro di cui al d.lgs. n. 81/2008 e s.m.i. alle prestazioni rese all’esterno dei locali aziendali, ossia quelli relativi agli obblighi comportamentali, anche in merito alle dotazioni tecnologiche informatiche [...]’* (article 6, par. 1).

Some take the above reasoning to extremes when claiming that Law No. 81/2017 is so minimal in terms of OHS provisions precisely because agile workers, being subordinate workers, are already covered by provisions contained under article 2087 of the civil code and under 2008 TU.²⁵⁰ Moreover, this minimalism may be connected to the fact that that employers' interest in agile work also stems from the need to rethink forms of flexible working arrangements that are free from the regulatory rigidities of telework, with particular reference

²⁴⁷ Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414; Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. Diritto della sicurezza sul lavoro, (1), 1-29; Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press.

²⁴⁸ Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414; Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker? Diritto della sicurezza sul lavoro, (1), 1-29; Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press; Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore; Allamprese, A., Pascucci, F. (2017). La tutela della salute e della sicurezza del lavoratore «agile». Rivista giuridica del lavoro e della previdenza sociale, (2), 307-330.

²⁴⁸ Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. Labour & Law Issues, 9(1), 22-59.

²⁴⁹ Porcheddu, D. (2021). La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva. Salus Working Paper n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023); Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁵⁰ Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

to the constraints on health and safety prevention and protections obligations provided for by the TU, which imposed remote workplace inspection duties on the employer.²⁵¹

In any case, what is certain is that providing workers and workers' health and safety representatives (RLS) with the above-mentioned notice on risks connected to agile work can barely be considered the only obligation in terms of health and safety from the employer's side in case of agile work, since it is not sufficient to ensure agile workers' protection²⁵² and to exclude the employer's responsibility in case of work accident.

Another widely debated topic among scholars concerns the applicability to agile work of the provisions contained under article 3 paragraph 10 of legislative decree No. 81/2008, which sets forth the prevention rules applicable to subordinate employees working remotely on a regular basis by means of ICT.²⁵³ It is generally accepted that, since the applicability of said provision is linked to the continuity of remote work, agile work carried out on a regular basis should fall within the scope of article 3 in question, as it is the case for telework.²⁵⁴ In particular, while the employer's health and safety prevention and protection responsibility is reconfirmed as far as work performance rendered within the company premises is concerned,

²⁵¹ Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche*, 27 (4), 1041-1058. In Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58, the authors highlight that, according to 2020 ISTAT annual report, only 0,2% of subordinate workers a telework agreement in place. Available at <https://www.istat.it/storage/rapporto-annuale/2020/Rapportoannuale2020.pdf>

²⁵² Santoro Passarelli, G. (2017). Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro. *Rivista italiana di diritto del lavoro*, 36(3), 369-395; Ales, E. (2020) L'occasione di lavoro all'epoca del lavoro 'multi-locale': quale sicurezza per il lavoratore agile? In Canavesi, G., & Ales, E. (2020). *La tutela antinfortunistica oggi. Seminari Previdenziali Maceratesi*, 2019. *TEMI DI SICUREZZA SOCIALE*, 1-304.

²⁵³ *'A tutti i lavoratori subordinati che effettuano una prestazione continuativa di lavoro a distanza, mediante collegamento informatico e telematico, compresi quelli di cui al decreto del Presidente della Repubblica 8 marzo 1999, n. 70, e di cui all'Accordo-Quadro Europeo sul telelavoro concluso il 16 luglio 2002, si applicano le disposizioni di cui al Titolo VII, indipendentemente dall'ambito in cui si svolge la prestazione stessa. Nell'ipotesi in cui il datore di lavoro fornisca attrezzature proprie, o per il tramite di terzi, tali attrezzature devono essere conformi alle disposizioni di cui al Titolo III. I lavoratori a distanza sono informati dal datore di lavoro circa le politiche aziendali in materia di salute e sicurezza sul lavoro, in particolare in ordine alle esigenze relative ai videoterminali ed applicano correttamente le Direttive aziendali di sicurezza. Al fine di verificare la corretta attuazione della normativa in materia di tutela della salute e sicurezza da parte del lavoratore a distanza, il datore di lavoro, le rappresentanze dei lavoratori e le autorità competenti hanno accesso al luogo in cui viene svolto il lavoro nei limiti della normativa nazionale e dei contratti collettivi, dovendo tale accesso essere subordinato al preavviso e al consenso del lavoratore qualora la prestazione sia svolta presso il suo domicilio. Il lavoratore a distanza può chiedere ispezioni. Il datore di lavoro garantisce l'adozione di misure dirette a prevenire l'isolamento del lavoratore a distanza rispetto agli altri lavoratori interni all'azienda, permettendogli di incontrarsi con i colleghi e di accedere alle informazioni dell'azienda, nel rispetto di regolamenti o accordi aziendali.'*

²⁵⁴ The relationship between telework and agile work in terms of applicable OHS provisions has been widely debated. See, for instance, Porcheddu, D. (2021). La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva. *Salus Working Paper* n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023); Ludovico, G. (2023). Lavori agili e subordinazioni. *Studi di Diritto Privato*. Università degli Studi di Milano, 178. Giuffrè editore; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. *Diritto della sicurezza sul lavoro*, (1), 1-29; Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414. According to Peruzzi, M. *'il lavoro agile non costituisca una fattispecie concettualmente autonoma e distinta dal telelavoro ma sia piuttosto inquadrabile dal punto di vista giuridico come un sotto-insieme di sue species, segnatamente un telelavoro mobile a possibile collegamento alternato (on e off-line)'*. On the other hand, Sciotti, R. Highlights that, although the 2 species have many aspects in common, like for instance the shared purpose of improving work-life balance, and the temporal and spatial disembedding of work performance they entail, the applicable legislation is not the same. In addition, Law No. 81/2017 assigns to individual negotiation managerial prerogatives like disciplinary power and power of control, which is considered to be the main difference with telework.

doubts arise regarding remote performance rendered from places potentially unknown to the employer; even in this case, though, scholars agree that Article 3, paragraph 10 of the 2008 Testo Unico is applicable to agile work, meaning that, first of all, agile workers are in scope for the protection applicable to video terminal operators.²⁵⁵ Hence, the employer is responsible for *'the verification of compliance with working hours breaks and disconnection bands and [...] to prevent the risks of physical and mental fatigue, and more generally, of work-related stress as required by art. 28 of Legislative Decree no. n. 81 of 2008'*,²⁵⁶ also with respect to the service rendered outside the company premises (and even more so, if we accept the interpretation according to which work-related stress is to be recognized as a specific risk of agile work).²⁵⁷ In addition, the employer is responsible for the compliance with 2008 TU of IT work tools it provides to its workers, for training and informing agile workers on occupational health and safety related risks for video terminal operators and on OHS company policies and for implementing measures aimed at preventing the isolation of the remote worker.

On the other hand, applicability to agile work of the provision contained under article 3 paragraph 10 and relating to the possibility for the employer of accessing remote workplaces to verify the correct implementation of OHS measures by the remote worker is not straightforward.²⁵⁸ Indeed, this section is considered difficult to apply in case of agile work, since agile workers have no legal obligation to inform the employer about the remote workplaces from which they chose to render their work performance. It is precisely because of the variability and unpredictability of the agile workplace that *'il datore di lavoro non [può] ovviamente essere obbligato, in chiave preventiva, né chiamato a rispondere anche penalmente, in chiave repressiva, per la gestione dei rischi presenti in ambienti di lavoro che non è tenuto a conoscere o che addirittura non sia nemmeno in condizione di conoscere.'*²⁵⁹

²⁵⁵ Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414; Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. Diritto della sicurezza sul lavoro, (1), 1-29; Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press; Allamprese, A., Pascucci, F. (2017). La tutela della salute e della sicurezza del lavoratore «agile». Rivista giuridica del lavoro e della previdenza sociale, (2), 307-330; Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁵⁶ Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore

²⁵⁷ Idem.

²⁵⁸ Sciotti, R. (2017). Il lavoro agile e la sua specialità. Rivista degli infortuni e delle malattie professionali, 3, 355-414; Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058; Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. Diritto della sicurezza sul lavoro, (1), 1-29; Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press.

²⁵⁹ Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche, 27 (4), 1041-1058. On the subject see also Gentilini, D., Filosa, G. (2020). La tutela della

All this considered, it is generally accepted that, while on paper the employer does have the right to access the remote premises chosen by the agile work to render work remotely for inspection purposes pursuant to Article 3, paragraph 10 of the 2008 TU , said right is difficult to exercise in practice, considering that the agile employer is not required to know all the places from which smart workers choose to render the service remotely. In addition, the need to assess the suitability of the remote workplace ruled for by the article in question and applicable to telework was a deterrent for companies to implement it, considering the administrative burden it entailed for the employer, and it was one of the rigidities connected to telework from which agile work intended to distance itself.²⁶⁰

Given the above, since agile workers are not bound to inform their employer about the place(s) where they perform remote work, it may be claimed that in case of agile work, the employer is exempted from inspection duties and the assessment of the suitability of chosen remote workplaces can only be delegated to the workers themselves, who are expected to carry it out on the basis of the information and training received from the employer, thus fulfilling the obligation of cooperating with the employer in the implementation of prevention measures, as set forth under article 22 of Law No. 81/2017.

Some may argue that it is not possible to transfer to the agile worker the obligation to assess the suitability of the remote workplace, especially considering the contents of article 6 of the National Protocol on Agile Work, which considers the employer at the centre of the prevention model when stipulating that the employer ‘*guarantees the worker’s health and safety [...]*’.²⁶¹ Rather, the obligation for the agile worker to ‘*cooperate in the enactment of the prevention measures*’²⁶² set forth by article 22 paragraph 2 of Law No. 81/2017 shall be interpreted as an attempt to empower the agile worker with the role of ‘*a conscious and active actor in the construction of a safe working environment*’.²⁶³ In any case, it is known for a fact that Law No 81/2017 empowers the signatories of the smart working agreement with the definition of the remote place(s) (not) suitable to perform work, based on the information and training agile workers shall receive from the employer, as further specified by the National Protocol on Agile Work, under article 2, reading, ‘*the individual smart working agreement*

salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press, Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. Labour & Law Issues, 9(1), 22-59.

²⁶⁰ Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press.

²⁶¹ Idem. [Translation by the Author].

²⁶² [Translation by the Author].

²⁶³ Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press. [Translation by the Author].

signed by the Employer and the Employee shall align with the contents of the existing reference collective bargaining and, in any case, it shall be compliant with the law and the guidelines contained in this Protocol, making sure it contains the following items: a) [...] b) [...] c) the places to be excluded, if any, for the exercise of the remote work performance [...].²⁶⁴

In a nutshell, the literature confirms that the employer retains its duties of OHS protection, information and training on Occupational Health and Safety related issues also in case of smart working.²⁶⁵ Cooperation requested to agile workers in terms of OHS is nonetheless key, and it consists in the correct application of company directives and trainings on health and safety in the choice of suitable remote workplaces.²⁶⁶

5.2. The Approach of Collective Bargaining

Once again, it is collective bargaining, mainly at company level, that has provided further guidance in terms of agile workers' health and safety protection by defining the places where remote work is -and more often is not- allowed.²⁶⁷ The analysis of company collective agreements signed before 2017 shows different approaches toward remote working place flexibility, with most of them empowering agile workers with the selection of a suitable workplace from a health and safety perspective, stressing their duty to take care of their safety and explicitly ruling out the application of the OHS provisions applicable to telework, by virtue of the non -continuity of the remote performance in case of agile work.²⁶⁸ If we shift focus on company collective agreements signed after 2017,²⁶⁹ we can see that most of them keep disposing that agile workers choose remote workplaces that can ensure safety and confidentiality (see for instance Atlantia SPA 10 December 2021, Banca Reale S.p.A. 23 December 2021, Gruppo Helvetia 17 February 2022, Transcom Worldwide Italy S.p.A. 15

²⁶⁴ Porcheddu, D. (2021). La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva. *Salus Working Paper* n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023); Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore. [Translation by the Author].

²⁶⁵ Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. *Labour & Law Issues*, 9(1), 22-59.

²⁶⁶ Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press; Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁶⁷ Regarding this subject see Porcheddu, D. (2021). La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva. *Salus Working Paper* n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023).

²⁶⁸ Among these Company Collective Agreements are Barilla, 2 March 2015, Snam 26 November 2015 and Cariparma 8 March 2016, as mentioned by Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414.

²⁶⁹ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

March 2022, Enel Italia 21 March 2022, AGOS Ducato s.p.a. 30 June 2022); some others either exclude public places (Johnson & Johnson Medical S.p.A. dated 18 April 2019²⁷⁰, Nexi Payments S.p.A. and Help Line S.p.A. dated 14 December 2022, Leonardo Spa dated 8 March 2022, etc.) or require that the choice of remote places other than the agile workers' home is subject to the employer's approval (Rete Gas spa 27 January 2022, Veritas s.p.a. 2 March 2022, Fruendo s.r.l. 7 March 2022, CheBanca! S.p.A. 17 March 2022, Compass Banca S.p.a. 17 March 2022, Banca Ifis S.p.a. 18 March 2022).

Limiting the perimeter of remote places allowed in case of agile work so that the Employer is informed of all the remote places selected by agile workers might allow the Employer to fulfil its OHS obligations to train and inform agile workers on the specific risks associated with the new way of working more easily, thanks to the predictability of the remote places in question. However, *'[...] the flexibility of agile working would risk being compromised by a rigid regulation of the times and places of performance.'*²⁷¹ In other words, this approach is not compatible with the flexible model based on trust and personal accountability that Tetra Pak® Italy wants to promote. Since our company regulation does not foresee any restriction on remote workplaces, as long as they are in Italy and fulfil the necessary requirements detailed in the company regulation, adopting a restrictive approach entailing, among other things, inspections of remote workplaces, may result in an excessive administrative burden placed on the employer, with no relevant added value for the Parties.

5.3. What Protection for Agile Workers in Case of Work Accidents?

Another noteworthy OHS-related issue connected to agile work is the protection of agile workers in case of work accidents and occupational diseases, as ruled under article 23 of Law No. 81/2017, named *'Assicurazione obbligatoria per gli infortuni e le malattie professionali'*,²⁷² according to which agile workers are covered in case of work accidents (also

²⁷⁰ Interestingly enough, Johnson & Johnson Medical S.p.A CBA requires that smart workers self-certify that the private domicile selected for remote working is suitable for work both from an OHS and a confidentiality point of view. Available at https://www.bollettinoadapt.it/wp-content/uploads/2019/06/JJ-Medical_accordo-welfare-18-aprile-2019.pdf

²⁷¹ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁷² [...] '2. Il lavoratore ha diritto alla tutela contro gli infortuni sul lavoro e le malattie professionali dipendenti da rischi connessi alla prestazione lavorativa resa all'esterno dei locali aziendali.

3. Il lavoratore ha diritto alla tutela contro gli infortuni sul lavoro occorsi durante il normale percorso di andata e ritorno dal luogo di abitazione a quello prescelto per lo svolgimento della prestazione lavorativa all'esterno dei locali aziendali, nei limiti e alle condizioni di cui al terzo comma dell'articolo 2 del testo unico delle disposizioni per l'assicurazione obbligatoria contro gli infortuni sul lavoro e le malattie professionali, di cui al decreto del Presidente della Repubblica 30 giugno 1965, n. 1124, e successive modificazioni, quando la scelta del luogo della prestazione sia dettata da esigenze connesse alla prestazione stessa o dalla necessità del lavoratore di conciliare le esigenze di vita con quelle lavorative e risponda a criteri di ragionevolezza.'

in itinere ones) and occupational diseases occurred and contracted outside of the company premises.²⁷³ For this purpose, the employer is required to share with INAIL the demographics of its smart workers by means of the mandatory notice to be transmitted to the Ministry of Labour and related to agile work activation and termination.

Some may argue that the norm does not add anything new to existing dispositions on the subject, since protection and indemnification are already granted by INAIL in case of all events occurring in the course of work performance or in case of either prodromal activities or activities connected to the work performance itself, regardless of the place where they occur, thus also outside of the company perimeter (so-called *occasion of work*)²⁷⁴. However, an element of novelty of the dispositions under Law No. 81/2017 could be represented by the willingness of the legislator to overcome the jurisprudential orientation that excludes from indemnity protection those events occurred in the workers' private places, such as their home.²⁷⁵ In this case, it cannot be overlooked that, because of the blurred boundaries between personal and work life in case of agile work, identifying the *occasion of work* may not be an easy task, and this is because defining both prodromal activities and activities related to work performance may be difficult when it is the worker who defines the professional nature of the event.²⁷⁶

While some argue that this is likely to result in uncertain outcomes of litigations on the recognition of work accidents in case of smart working, especially because to date²⁷⁷ case law on the subject is rather scarce,²⁷⁸ others believe that the cases in which agile workers will actually have the possibility to self-determine the time and place of their work performance

²⁷³ The concept is reinforced under article 7 of the National Protocol on Agile Work (Infortuni e Malattie Professionali), stating '1. Il lavoratore agile ha diritto alla tutela contro gli infortuni sul lavoro e le malattie professionali, dipendenti da rischi connessi alla prestazione lavorativa resa all'esterno dei locali aziendali.

2. Il datore di lavoro garantisce, ai sensi dell'art. 23, l. n. 81/2017, la copertura assicurativa INAIL contro gli infortuni sul lavoro e le malattie professionali, anche derivanti dall'uso dei videoterminali, nonché la tutela contro l'infortunio in itinere, secondo quanto previsto dalla legge.'

²⁷⁴ On the occasion of work, i.e. the link between work and the accident, see Ales, E. (2020) L'occasione di lavoro all'epoca del lavoro 'multi-locale': quale sicurezza per il lavoratore agile? In Canavesi, G., & Ales, E. (2020). La tutela antinfortunistica oggi. Seminari Previdenziali Maceratesi, 2019. TEMI DI SICUREZZA SOCIALE, 1-304 and Romano, R., Paggetti, M., Cruciani, D., Di Palma, P.A. (2023). Tutela INAIL negli infortuni occorsi in ambiente domestico durante l'attività di Smart Working. Inail, Sovrintendenza sanitaria centrale Inail, Atti Convegno Nazionale di Medicina e Sanità Inail - Salute, benessere e sicurezza del lavoratore al centro della Sanità Inail - Quaderni della rivista degli infortuni e delle malattie professionali, edizione 2023.

²⁷⁵ Ludovico, G. (2023). Lavori agili e subordinazioni. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁷⁶ Idem.

²⁷⁷ January 2025.

²⁷⁸ Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press; Romano, R., Paggetti, M., Cruciani, D., Di Palma, P.A. (2023). Tutela INAIL negli infortuni occorsi in ambiente domestico durante l'attività di Smart Working. Inail, Sovrintendenza sanitaria centrale Inail, Atti Convegno Nazionale di Medicina e Sanità Inail - Salute, benessere e sicurezza del lavoratore al centro della Sanità Inail - Quaderni della rivista degli infortuni e delle malattie professionali, edizione 2023. According to these authors, it is necessary for INAIL to provide instructions regarding how occasion of work is defined in case of agile work, so that fair protection can be granted in case of work accidents that leaves no room to subjective interpretation.

will be few if compared with the mainstream application of spatial and temporal flexibility connected to agile work within a pre-defined perimeter set by the employer. Hence, there will not be many circumstances when the problem of interpreting the *occasion of work* will arise as a result of the blurred boundary between personal and working time.²⁷⁹

A similar problem may occur in case of *in itinere* work accidents, as the extension of protection to agile workers will necessarily lead to many interpretative issues. First of all, according to paragraph 3 of article 23 of Law No. 81/2017, protection covers events occurring during the ‘*normal*’ commute to and from work, where the word ‘normal’ is ‘*to be understood not as the shortest route but as the usual one and the one that is not dictated by reasons unrelated to work.*’²⁸⁰ But how can we assess the normal commute to and from work in case of agile work, which entails by explicit regulatory provision that working hours and workplaces can be chosen by the worker and therefore are neither predetermined nor predeterminable? Moreover, in case of agile work, the *in itinere* accident may more aptly be qualified as an accident during the journey between two workplaces referred to the same employment relationship, with different calculation of compensation.²⁸¹ Another concept that is likely to trigger interpretative issues is the one of ‘reasonableness’ contained in paragraph 3 of article 23 of Law No. 81/2017, reading, ‘*the worker has the right to protection against accidents at work occurred during the normal commute from their home to the place chosen for the performance of work outside the company premises [...] when the choice of the place of work [...] meets criteria of reasonableness*’. It is a shared belief that by referring to the criterion of ‘reasonableness’, the legislator meant that the worker is required to choose remote places that do not introduce an unreasonable risk due to their distance from the contractual workplace, such as to exclude the protection provided for the *in itinere* accident.²⁸² Introducing into INAIL's tariff system an ad hoc premium for agile work, calculated on the basis of the national claims rate for agile work, ‘*so as to guarantee the coverage of any external event occurring within wide timeframes and therefore presumably considered on the occasion of work[...]*’,²⁸³ could be useful in order to reduce the interpretative doubts that may arise in case of *in itinere* work accidents occurred in case of agile work.

Another grey area is represented by INAIL coverage of accidents occurred when smart workers choose to render their work performance abroad, given that, to date, there is a

²⁷⁹ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore.

²⁸⁰ Idem.

²⁸¹ Idem.

²⁸² Idem.

²⁸³ Idem. [Translation by the Author].

legislative void on the subject and no case law to support. Although at present smart working from abroad is not allowed in Tetra Pak Italy, to align with corporate guidelines that grant Tetra Pak employees worldwide to work remotely from abroad up to a maximum of 54 days a year, the Italian legal entities are considering allowing smart working from the EU Member States and up to a maximum of twenty days per year, but the feasibility of this pilot project is still under review as of January 2025.

5.4. New Risks for Agile Workers' Health and Safety

Even though we still lack perspective and evidence on the effects of remote and hybrid work on workers' health and safety, since this is a relatively new phenomenon, the pandemic has undoubtedly brought to light some interesting phenomena from which preliminary observations can be made. Hence, it is a shared opinion that the dematerialisation of the working place has brought along new unconventional risks for agile workers, which are not only physical (see for instance visual discomfort and musculoskeletal implications like neck, shoulder and lower back pain)²⁸⁴ but mainly psycho-social, like for instance *'intensified work rhythms, hyper-connection to the network, informational/cognitive and emotional overload, overworking, time porosity, burnout, but also cyberbullying, mobbing, verbal abuse, sexual harassment, isolation'*,²⁸⁵ which are likely to have heavy repercussions on the agile worker's well-being.²⁸⁶

Let us not forget that, according to the World Health Organisation (WHO), health is *'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'*.²⁸⁷ Hence, if the employer has a duty to protect the employees' health and safety,

²⁸⁴ Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI.

²⁸⁵ See Porcheddu, D. (2021). *La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva*. *Salus Working Paper* n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023). See also Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). *The Future of Remote Work*. ETUI; Allamprese, A., Pascucci, F. (2017). *La tutela della salute e della sicurezza del lavoratore «agile»*. *Rivista giuridica del lavoro e della previdenza sociale*, (2), 307-330. According to Ichino, P. (2021). *Lo smart working e il tramonto della summa divisio tra lavoro subordinato e autonomo*. *Lavoro Diritti Europa*, 1, *'il lavoro agile non presenta di per sé alcun rischio aggiuntivo rispetto al lavoro svolto in azienda (come risulta inequivocabilmente dal modello di informativa per lo smart working diffuso dall'Inail. A meno che non ci si voglia riferire alla difficoltà di controllo della qualità di lavoro svolto e allo stress che può derivarne; ma questo non è un "rischio": è una caratteristica intrinsecamente propria del lavoro liberato da qualsiasi vincolo di coordinamento spazio-temporale con il resto dell'organizzazione aziendale'*.

²⁸⁶ Gentilini, D., Filosa, G. (2020). *La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative*. WP n. 20. @2020 ADAPT University Press, and Ludovico, G. (2023). *Lavori agili e subordinazioni*. *Studi di Diritto Privato*. Università degli Studi di Milano, 178. Giuffrè editore. The Author points out that new environmental risks factors connected to the possibility of working outdoor have emerged, which had never been assessed before since not traditionally linked to standard working places.

²⁸⁷ Constitution of the World Health Organisation (preamble). The Constitution was signed on 22 July 1946 by the representatives of 61 States and entered into force on 7 April 1948.

its focus shall not be on their physical well-being only but rather on their mental and social well-being as well. In this respect, it is of the utmost importance that, for a start, the notice provided to agile workers and workers representatives (RLS) once a year in compliance with Law No. 81/2017 also contains a section on psychosocial risks, which at present are overlooked by the template made available by INAIL during the pandemic, but have in any case to be mapped in the risk assessment that the employer has a legal obligation to carry out, also with respect to work-related stress (stress lavoro-correlato).²⁸⁸

As widely explained *supra* in this chapter, a key role in the Health and Safety protection of agile workers is played by compliance with working hour legislation and with the right to disconnect in particular. If it is generally accepted that both the absence of working hours constraints and the work by objectives are non-essential elements of agile work, the compliance with the maximum daily and weekly duration limits is an essential element.²⁸⁹ Hence, in case of agile work, working hours cease to be the measure of the fulfilment of the working obligation, but they nonetheless retain their function as workers' health and safety protection tool.²⁹⁰ In this respect, it can be claimed that *'essere responsabili della sicurezza [...] degli strumenti tecnologici [pursuant to article 18 par. 2 of Law No. 81/2017] significa anche evitare una utilizzazione degli stessi che possa pregiudicare la salute fisica e mentale dei lavoratori.'*²⁹¹ This belief is taken to extremes by those scholars²⁹² who believe that remote monitoring systems should be implemented to keep under control work performance duration as a measure to ensure disconnection, meaning that, *'where the individual agreement specifically provides for remote control systems, then, albeit within the limits of what is established by the Workers' Statute, the employer could legitimately also introduce mechanisms for the telematic quantification of the performance'*²⁹³ through work tools such as laptops and tablets or dedicated software that could be installed upon trade union or labour inspectorate (ITL) authorisation. If this approach can help pinpoint instances of non-compliance with disconnection, it is worth exploring, provided that it does not turn into a means

²⁸⁸ Work-related stress is a very complex phenomenon defined in the 2004 European Framework Agreement as *'una condizione che può essere accompagnata da disturbi o disfunzioni di natura fisica, psicologica o sociale ed è conseguenza del fatto che taluni individui non si sentono in grado di corrispondere alle richieste o alle aspettative riposte in loro'*.

²⁸⁹ Mezzacapo, D. (2017). Il lavoro agile ex legge n. 81/2017: note minime e problemi aperti. Biblioteca '20 Maggio'-Collective Volumes. See *Supra*, section [2.3 Italian Agile Work and Working Time Regulation](#).

²⁹⁰ Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker? *Diritto della sicurezza sul lavoro*, (1), 1-29. On the subject, see also *supra* section [3.1 The European Union and the Right to Disconnect: no 'One-Size-Fits-All Approach](#) and footnote 132 in particular referring to the Judgment of the European Court of Justice (ECJ) on case C-55/18 of 14 May 2019 (Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE).

²⁹¹ Cataudella, M. C. (2021). Tempo di lavoro e tempo di disconnessione. *Massimario di giurisprudenza del lavoro*, 4, 853-873.

²⁹² Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. *Diritto della sicurezza sul lavoro*, (1), 1-29. Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414.

²⁹³ Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414.

for the employer for merely tracking working hours rather than focusing on the results achieved.

It is worth noting that, when work is hybrid, working conditions and related risks are bound to change even at the employer's premises because the fact that either managers and co-workers may not be present onsite at the same time or working schedule may not overlap when teammates are in the office is likely to affect relationships and communication with managers and peers, also resulting in phenomena of isolation, worsened team cohesion and reduction of teamwork and knowledge sharing,²⁹⁴ all of which is likely to have an impact on workers' productivity and well-being. These effects are intensified when hybrid work is fully flexible and applied differently within teams and organisations, as it happens in Tetra Pak Italy.

All this considered, a shift of paradigm is needed, and the Occupational Health and Safety model should move from protecting safety in the workplace to protecting workers' safety overall, regardless of where work is performed. In this new model, a fully-fledged risk assessment is advisable that includes all the risks emerging from an accurate analysis of the work process considering every person working in the organisation, regardless of where they render their services and of their contractual type.²⁹⁵ By doing so, the organisation could achieve the highest physical, mental and social well-being of its workers,²⁹⁶ in line with a broader concept of organisational well-being (promoted also at a EU level)²⁹⁷ meant as '*the essential prerequisite for guaranteeing the health of [its workers] in the entire dimension in which it is meant by the legislator.*'²⁹⁸

For sure, this is not only an OHS-related issue, but it requires joint actions aimed at improving the organisational climate overall, by designing ad hoc organisational solutions counteracting phenomena like workaholism, stress and burnout,²⁹⁹ based on the assumption

²⁹⁴ European Agency for Safety and Health at Work (EU-OSHA) (2023). Hybrid work: new opportunities and challenges for Occupational Safety and Health. Discussion Paper. Available at: <https://osha.europa.eu/en/publications/hybrid-work-new-opportunities-and-challenges-occupational-safety-and-health> (accessed 20/03/2024). See also Albano, R., Parisi, T., & Tirabeni, L. (2019). Gli smart workers tra solitudine e collaborazione. *Cambio* Vol. 9, 61-73. Firenze University Press. According to the authors, empirical evidence suggests that smart workers are likely to feel they are missing out on social interactions, and they are being excluded from important knowledge coming from face to face interaction.

²⁹⁵ Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. *Labour & Law Issues*, 9(1), 22-59.

²⁹⁶ Porcheddu, D. (2021). La tutela della sicurezza del lavoratore agile. Tra dubbi interpretativi e ruolo della contrattazione collettiva. *Salus Working Paper* n. 3/2021. Available at: https://salus.adapt.it/wp-content/uploads/2021/04/wp_SALUS_2021_3_porcheddu.pdf (accessed 15/10/2023). See also Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press.

²⁹⁷ Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. *Labour & Law Issues*, 9(1), 22-59. See Comunicazione Lavoro più sicuro e più sano per tutti – Aggiornamento della normativa e delle politiche dell'UE in materia di salute e sicurezza sul lavoro, COM (2017) 12 final, 10 gennaio 2017.

²⁹⁸ Lazzari, Ch. (2023). Lavoro senza luogo fisso, de-materializzazione degli spazi, salute e sicurezza. *Labour & Law Issues*, 9(1), 22-59. [Translation by the Author].

²⁹⁹ Gentilini, D., Filosa, G. (2020). La tutela della salute e sicurezza del lavoro nello smart working. Inquadramento giuridico e sfide formative. WP n. 20. @2020 ADAPT University Press.

that workaholism and virtual presenteeism are not synonymous with productivity, but they may rather end up representing a cost for the organisation due to decreased health conditions and worsened work-life balance they can cause. Thus, *‘if organisations seek to increase productivity and minimise employee burnout, they should strive to foster employees’ engagement rather than incentivising and praising workaholic behaviour.’*³⁰⁰

6. Exerting Disciplinary Power and Power of Control

In the subordinate working relationship, the employer has three main powers, namely managerial (deciding how, when and where work has to be performed), supervisory (checking that instructions and directives are complied with) and disciplinary (imposing sanctions if instructions and directives are not complied with).³⁰¹ According to article 2094 of the civil code, *‘è prestatore di lavoro subordinato chi si obbliga mediante retribuzione a collaborare nell’impresa, prestando il proprio lavoro intellettuale o manuale alle dipendenze e sotto la direzione dell’imprenditore’*, meaning that managerial power is the defining element of the subordinate working relation. The employer has traditionally exercised this power unilaterally,³⁰² *in primis* by defining where and when the working performance had to be rendered.

As already mentioned *supra*,³⁰³ digitalisation has impacted the allocation of managerial prerogatives, mainly due to the physical separation of employer and employees resulting in the employer no longer being able to exercise said prerogatives in person: *‘physical separation affects [...] the power to direct and control, personally and continuously, the quality and quantity of work performed by the worker within the agreed working time.’*³⁰⁴ Moreover, the spread of flexible time has started to make it possible for workers to free themselves from rigid

³⁰⁰ Clark, M. A., Michel, J. S., Zhdanova, L., Pui, S. Y., & Baltes, B. B. (2016). All work and no play? A meta-analytic examination of the correlates and outcomes of workaholism. *Journal of Management*, 42(7), 1836-1873. For an interesting analysis of Workaholism, see Spagnoli, P., & Balducci, C. (2024). *Lavorare troppo: riconoscere e contrastare il workaholismo*. Ed. Il Mulino.

³⁰¹ Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 11-28. Palgrave Macmillan, Cham; Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46; Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³⁰² Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³⁰³ See *supra*, Chapter 2, section [1. Regulating Working Time and Post Pandemic Perspectives](#).

³⁰⁴ Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 11-28. Palgrave Macmillan, Cham.

working time constraints, so that performance management is gradually (or at least should be) shifting from working time measurement to value measurement.³⁰⁵

As a result, there is no such thing as one single subordination in the digital age, since the new forms of work organisation made possible by ICT and introducing work by objectives show ever-increasing analogies with self-employment, feeding a grey area in which the difference between subordinate and autonomous work is not so clearcut anymore.³⁰⁶ This is particularly true for agile work, which the legislator has qualified as subordinate work, but which is endowed with peculiar traits that are typical of autonomous work like the possibility for the agile worker to self-determine where and when to work (although within specific limits already detailed *supra*)³⁰⁷ and the possibility to work by objectives. In other words, ‘*la disciplina degli artt. 18 ss., l.n. 81/2017 incrocia gli elementi tipici dello schema dell’art. 2094 c.c. con altri più simili a quelli del rapporto di lavoro autonomo: l’ampio spazio assegnato all’accordo individuale per la precisazione delle modalità di svolgimento della prestazione e la possibilità di organizzare il contenuto contrattuale “in funzione di obiettivi, cicli o fasi”*’.³⁰⁸ Hence, it is undeniable that agile work brings about a new definition of traditional managerial prerogatives as well as of subordination.³⁰⁹ In order to understand what this means, it is worth focusing on the contents of article 19 paragraph 1, article 21 paragraph 1 and paragraph 2 of

³⁰⁵ Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³⁰⁶ There is an extensive bibliography dealing with the relationship between agile work and subordination. See, among others Poletti, D. (2013). Il cd diritto alla disconnessione nel contesto dei «diritti digitali», cit. C. Rapisarda Sasson, Inibitoria, in Dig. Disc. Priv. Sez. Civ., IX, 474; Passarelli, G. S. (2017). Lavoro eterorganizzato, coordinato, agile e il telelavoro: un puzzle non facile da comporre in un’impresa in via di trasformazione. WP CSDLE “Massimo D’Antona”. IT, 327, 6; Santoro Passarelli, G. (2017). Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro. Rivista italiana di diritto del lavoro, 36(3), 369-395; Donini, A. (2018). Lavoro agile e su piattaforma digitale tra autonomia e subordinazione. Variazioni su temi di diritto del lavoro, 3(3), 823-841; Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 11-28. Palgrave Macmillan, Cham; Fabbri, T. (2018). Digital work: an organizational perspective. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 29-38. Palgrave Macmillan, Cham. The author rejects the common belief according to which ‘digital work is more of an autonomous type than a subordinate type of work’ *since work behaviours can still be strictly pre-determined, leaving no room for autonomy and instead imposing some degree of discretion on the worker*’; Maiani, B. (2018). Smart working: il lavoro del futuro che apre degli interrogativi, *Quotidiano Ipsoa*, 23.2.18; Notaro, F. (2018). Il lavoro agile nel quadro della vecchia (o nuova?) subordinazione. *Lavoro Diritti Europa*, 1; Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46; Ichino, P. (2021). Lo smart working e il tramonto della summa divisio tra lavoro subordinato e autonomo. *Lavoro Diritti Europa*, 1; Senatori, I., Spinelli C. (2021). ICT-enhanced remote and mobile work. National Report on Italy. Available at: <https://irel.fmb.unimore.it/download/italy-ict-enhanced-remote-and-mobile-work/>; Pesenti S. – Scansani G. (2021), *Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie*, Galli Edizioni, Varese; Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore; Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³⁰⁷ As a matter of fact, although the first 17 articles of Law No. 81/2017 ‘*Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l’articolazione flessibile nei tempi e nei luoghi del lavoro subordinato*’ rule on self-employment, agile work is clearly qualified as a form of subordinate work under article 18 of said norm.

³⁰⁸ Donini, A. (2018). Lavoro agile e su piattaforma digitale tra autonomia e subordinazione. *Variazioni su temi di diritto del lavoro*, 3(3), 823-841.

³⁰⁹ Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

Law No. 81/2017, which rule on managerial power, power of control and disciplinary power in case of agile work respectively. To begin with, article 19 states that *‘the individual agreement is stipulated in writing for the purposes of administrative regularity and proof, and it regulates work performance carried out outside of the company premises, also as regards the forms of exercise of the employer’s managerial power and the tools used by the worker [...];’*³¹⁰ then, article 21 continues, *‘(1) The individual agreement regulates the exercise of the Employer’s power of control on the working performance rendered by the worker outside the company premises in compliance with the provisions of article 4 of law 20 may 1970, n. 300, and subsequent amendments. (2) The agreement under paragraph 1 shall identify the conducts connected with the work performance rendered outside the company premises which give rise to disciplinary sanctions.’*³¹¹

Based on the above contents, it has been argued that Law No. 81/2017 contains a new model of ‘shared’ subordination, in which Employer and agile worker co-design the exercise of managerial prerogatives that before the enactment of that law had traditionally been assigned to the employer exclusively.³¹² In other words, *‘nel lavoro agile, [...] l’interlocutore diventa, in prima persona, lo stesso lavoratore, il quale nell’accordo individuale si vede riconosciuti spazi di “negoziabilità concordata” con l’imprenditore (direttamente e al di fuori di qualsiasi regolazione in sede protetta), allo scopo di definire le modalità di esercizio dei poteri datoriali, ivi compresa l’individuazione delle infrazioni disciplinari.’*³¹³

It can be maintained that Law No. 81/2017 expresses the legislator’s will to allow the parties to negotiate the working arrangement that best suits their respective interests and the goals they intend to pursue. This could involve either adopting a rigid model of heterodirection in accordance with Article 2094 or choosing a more flexible, collaborative approach to achieve the shared goals of the parties. For the latter to be effective, it is essential to foster trust in the relationship and to identify clear objectives.³¹⁴

Rather than claiming that in case of agile work, the managerial power is weakened with reference to when, where and how work is performed by virtue of the greater autonomy granted to the agile worker,³¹⁵ then, it would be more appropriate to say that the managerial power is

³¹⁰ [Translation by the Author].

³¹¹ [Translation by the Author].

³¹² Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

³¹³ Idem.

³¹⁴ Ludovico, G. (2023). *Lavori agili e subordinazioni*. Studi di Diritto Privato. Università degli Studi di Milano, 178. Giuffrè editore; Ichino, P. (2021). *Lo smart working e il tramonto della summa divisio tra lavoro subordinato e autonomo*. *Lavoro Diritti Europa*, 1.

³¹⁵ Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

redrawn and updated to better suit the new ways of working made possible by ICT.³¹⁶ For instance, with respect to the identification of disciplinary conduct, Law No. 81/2017 refers to the need to clarify the disciplinary cases already provided for by collective bargaining and company regulations in force and to adapt them to agile work. Moreover, the fact that the tools and methods to carry out remote controls must be agreed in the individual agreement does not demonstrate a weakening of the employer's managerial prerogative; rather, it is a way of empowering the Parties with the opportunity to identify the behaviours related to this new way of working that can give rise to sanctions, making it possible for the employer to resort to ad hoc ones, not provided for in case of traditional working arrangements.³¹⁷

In any case, it is a shared belief that the attenuation of subordination linked to agile work is not such as to make this working arrangement veer towards self-employment, and this is also because the 'special' discipline that expands the role of individual autonomy in agile work applies by express regulatory provision to the performance rendered outside the company premises only, and this can be seen as mitigating the disruption of subordination brought about by the law on agile work.³¹⁸ This belief reflects the prevailing orientation of the doctrine according to which flexible working applies only to work performed outside the company premises, while when the agile worker is on site, working arrangements keep their traditional nature. This interpretation is supported by the fact that the managerial power, disciplinary power and power of control that become the subject of the agreement in case of agile work refer only to the contents of the performance rendered offsite, as if to say that when the worker is onsite, managerial prerogatives keep being exercised as they always have.³¹⁹ However, this is still a much-disputed subject, and other scholars³²⁰ maintain that not only does Law No. 81/2017 regulate the performance rendered outside the company premises, but also the working performance as a whole, and this is because the individual agreement on agile work signed by the Parties intervenes on the contractual synallagma governing the working relationship as a whole.³²¹ In this respect, it must be underlined that the smart working model that Tetra Pak Italy wishes to implement involves a new way of working applicable to the working performance as a whole, regardless of where it is rendered.

³¹⁶ Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58.

³¹⁷ Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³¹⁸ *Idem*.

³¹⁹ Notaro, F. (2018). Il lavoro agile nel quadro della vecchia (o nuova?) subordinazione. *Lavoro Diritti Europa*, 1; Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

³²⁰ Ludovico, G. (2023). Lavori agili e subordinazioni. *Studi di Diritto Privato. Università degli Studi di Milano*, 178. Giuffrè editore; Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³²¹ *Idem*.

In any case, it would be more accurate to say that Law No. 81/2017, when reshaping managerial prerogatives, does not aim at making them shared prerogatives, but rather at redesigning working arrangements with a view to giving the worker the possibility of self-determining some aspects of the organization of work, including its spatial-temporal coordinates.³²² Hence, subordination in case of agile work is not overcome, nor is heterodirection, for several reasons. Firstly, it is in the employer's faculty to adopt agile work as a peculiar way of working within the organisation and to approve/reject smart working applications, and this can be seen as an expression of its managerial power. Secondly, agile workers are in any case still obliged to render a working performance that is suitable for the purposes of the organisation upon payment of a salary, which is granted to them regardless of the actual achievement of the agreed results, unlike what happens in case of self-employment when payment is conditioned upon producing a given result. Let us not forget that work by objective is just a possibility in case of agile work and not a defining element of this working arrangement.³²³ Hence, there is no automatic transition to an obligation of result in case of agile work.³²⁴ Thirdly, also in case of agile work, the employer remains in charge of the organisation, and it establishes hierarchical relationships with workers,³²⁵ who receive instructions from the employer and are required to comply with principles of diligence, observance and fidelity in executing them,³²⁶ thus qualifying as subordinate workers.

In a nutshell, when the parties sign an individual smart working agreement, managerial prerogatives still apply and the co-decision ruled under articles 19 and 21 of Law No. 81/2017 does not concern the content of these powers but rather the way in which they are enforced, which shall take into account the peculiarity of agile work.³²⁷ In this new 'agile subordination',

³²² Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58.

³²³ See Casillo, R. (2017). La subordinazione agile. *Diritti Lavori Mercati*, 3, 529-551, according to whom '*nel lavoro agile/smart, "fasi, cicli e obiettivi" [...] sono un modo di declinare il lavoro come lo è il fare tradizionale: sono esattamente una "forma di organizzazione" del lavoro subordinato (art. 18, co. 1) che recepisce la contemporanea idea di lavoro (nuova) dell'impresa[...]'*.

³²⁴ There is an extensive bibliography dealing with the process of deconstruction of the concept of subordination and focusing on the comparison between agile work and new forms of autonomous work ruled by the Jobs Act. Among the authors who treated the subject are Santoro Passarelli, G. (2017). Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro. *Rivista italiana di diritto del lavoro*, 36(3), 369-395; Casillo, R. (2017). La subordinazione agile. *Diritti Lavori Mercati*, 3, 529-551; Donini, A. (2018). Lavoro agile e su piattaforma digitale tra autonomia e subordinazione. *Variazioni su temi di diritto del lavoro*, 3(3), 823-841; Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46; Fenoglio, A. (2022). Tempo e subordinazione: riflessioni intorno al lavoro agile. *Labour & Law Issues*, 8 (1), 182-206; Ludovico, G. (2023). Lavori agili e subordinazioni. *Studi di Diritto Privato*. Università degli Studi di Milano, 178. Giuffrè editore; Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³²⁵ Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³²⁶ Idem.

³²⁷ Casillo, R. (2017). La subordinazione agile. *Diritti Lavori Mercati*, 3, 529-551.

typified by *'meno soggezione e più cooperazione,'*³²⁸ the employer retains its managerial, control and disciplinary powers, but it releases the power of arranging the working performance, which is left to the autonomy of the agile worker,³²⁹ or, as Russo puts it *'la modalità di organizzazione del lavoro non altera quello che è lo schema del rapporto: da un lato sussistono i poteri datoriali e dall'altro permangono gli obblighi di diligenza, osservanza e fedeltà dei dipendenti, anche quando la prestazione venga svolta fuori dai locali aziendali e senza un preciso vincolo orario.'*³³⁰

Another widely debated topic connected to the relationship between agile work and subordination concerns the potentially contradictory effects that digital transformation and digitalisation are going to produce on the employment relationship.³³¹ Indeed, if on the one hand they are likely to trigger a reallocation of managerial prerogatives in that the working relationship is rearranged into a less subordinate one, on the other hand, agile workers autonomy is accompanied by reinforced control and blurred work-life boundaries, thus potentially (and paradoxically) resulting in a form of 'boosted' subordination.³³²

It is known for a fact that remote work can bring about increased remote surveillance, since work enters spaces previously dedicated exclusively to private life by means of ICT allowing for extended monitoring of work performance, thus *'paradoxically leading to an extension and intensification of worker subordination'*.³³³ Indeed, ICT amplifies control opportunities insofar as digital work tools may be used to control workers, and it is well-known that labour law has always considered distance control with suspicion. To be more precise, in case of remote work, control can be either direct or indirect, the former being carried out by means of surveillance and digital monitoring (for instance of worked hours, keystrokes tracking, physical presence in the premises, use of laptop cameras), the latter involving control on targets, project goals, schedules.³³⁴ If, on the one hand, it is advisable that in case of agile work indirect control substitute direct control, on the other hand, it is undeniable that flexibility connected to agile work could be seen as unbalanced in favour of employees and, as such, it could fuel uncertainty for the employer that could result disruptive for business. Hence, the

³²⁸ Carinci, F. (1985). Rivoluzione tecnologica e diritto del lavoro: il rapporto individuale, DLRI, 1985, 223 ss. Quoted in Casillo, R. (2017). La subordinazione agile. Diritti Lavori Mercati, 3, 529-551.

³²⁹ Casillo, R. (2017). La subordinazione agile. Diritti Lavori Mercati, 3, 529-551.

³³⁰ Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³³¹ Ales, E. (2018). Protecting work in the digital transformation: Rethinking the typological approach in the intrinsically triangular relationship perspective. In Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 11-28. Palgrave Macmillan, Cham.

³³² Idem.

³³³ Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). The Future of Remote Work. ETUI. D'Aponte, M. (2022). Evoluzione dei sistemi organizzativi nell'impresa e tutela dei diritti dei lavoratori nel quadro della regolamentazione europea: dal diritto alla "disconnessione", al lavoro "per obiettivi". Massimario di Giurisprudenza del Lavoro, 1, 29-50.

³³⁴ Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). The Future of Remote Work. ETUI.

need to exercise remote control over the agile worker arises, which, however, has necessarily to be placed within the perimeter of art. 4 Law No. 300/1970 (Workers' Statute), also referred to in article 21 of Law No. 81/2017.³³⁵

Paragraph 2 of article 4 of the Workers' Statute establishes that the employer's prohibition to carry out distance control does not apply to '*tools used by the worker to perform work*', which include only those technological tools that are essential for the performance to be rendered remotely.³³⁶ Consequently, if the employer complies with the obligation to inform workers on how the information collected by the remote control is used and, in general, if it complies with article 4 of the Workers' Statute, it may also use the information collected by remote control for disciplinary purposes.³³⁷ Regarding this topic, it may be worth adding that article 21 of Law No. 81/2017 rules on the exercise of the employer's power of control on the performance rendered outside of the company premises and not on the agile worker's activity. Controlling the agile worker's activity would entail a) a control also on the worker's private activity: if agile workers are free to self-determine their working schedule, controlling the work activity would imply acquiring data on non-work-related activity, b) an intrusion by the employer into the domestic sphere of employees working remotely. Therefore, it makes sense that the agreement between the parties can only concern performance control and not activity control, and the only way to control performance in case of agile work is by means of remote monitoring. In order to make sure that remote control does not lead to an excess of control, it is necessary to verify (on the union side) that the control is carried out only on the performance and not on the activity and that the worker is provided with appropriate information relating to data processing.³³⁸ It shall not be overlooked that heightened surveillance can lead to diminished autonomy and increased stress and anxiety, fostering insecurity and mutual mistrust between remote workers and their employers. This dynamic can negatively impact working relationships and compromise both the quality of output and the well-being of employees.³³⁹

Another way in which agile work could be perceived as a form of boosted subordination is linked to the phenomenon of permanent availability potentially connected to remote

³³⁵ Barraco, E. (2018). Il controllo sullo smart worker. *Diritto e Pratica del Lavoro*, 10, 623-627.

³³⁶ The Guarantor has expressed its opinion on this issue by specifying that e-mails sent and received with a personal account and internet connection can be considered "work tools", while other more invasive control tools cannot be allowed (provision no. 303 of 13 July 2016).

³³⁷ Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

³³⁸ Russo, M. (2023). Il datore di lavoro agile. Il potere direttivo nello smart working (Vol. 19, pp. 1-304). ESI.

³³⁹ European Agency for Safety and Health at Work (EU-OSHA) (2023). Hybrid work: new opportunities and challenges for Occupational Safety and Health. Discussion Paper. Available at: <https://osha.europa.eu/en/publications/hybrid-work-new-opportunities-and-challenges-occupational-safety-and-health> (accessed 20/03/2024).

working, extensively analysed *supra*.³⁴⁰ As a result, the right to disconnect, if correctly enforced, could take on the additional role of subordination attenuator in that it ‘*would make possible to limit the moments when workers must comply with the duty of care, thus allowing for a balance between the employer’s power of control and the workers’ right to confidentiality.*’³⁴¹

7. Conclusion

This chapter has offered an overview of the legal framework, the doctrine and the approach of collective bargaining on some specific aspects of flexible working arrangements, namely working time flexibility and the right to disconnect, the impact of flexible working on workers’ work-life balance, the difficulties connected to OHS protection and the exercise of managerial prerogatives in that grey area of subordination represented by agile work ex Law No. 81/2017. These are the most challenging topics emerged in the deployment of flexible working arrangements in Tetra Pak Italy over the years, and the literature review contained in this chapter has served the purpose of looking for a compliant answer to partially unanswered questions, with a particular focus on working time flexibility and the exercise of disconnection in case of smart working, which can be considered the *fil rouge* governing the whole analysis.

The literature review has shown that the digitalisation of the employment relationship and the spread of flexible working arrangements (entailing different degrees of flexibility) are questioning the standard concepts of working time, which together with the definition of working place, has traditionally been considered a defining element of subordination.

Current regulation on working time both at an EU and country level is considered to be outdated as it is unable to capture the new trends connected to flexible working. Having amplified these phenomena, the Covid-19 pandemic has been a wake-up call for EU policy makers, who have become aware of the need to adjust the working time regulatory framework to flexible working and to ensure disconnection. As a result, the right to disconnect, namely the right to switch off from ICT tools and disengage from work outside of designated working hours, has become of interest both for EU policy makers and collective bargaining at a sectoral and company level across the EU, since it is considered key to ensure workers’ protection

³⁴⁰ Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58. In this respect see *supra*, section [2.3. Italian Agile Work and Working Time Regulation](#).

³⁴¹ Aimo, M., & Fenoglio, A. (2021). Alla ricerca di un bilanciamento tra autonomia organizzativa del lavoratore e poteri datoriali nel lavoro agile. *Labor. Il lavoro nel diritto*, 1, 25-58. [Translation by the Author].

against the risks connected to constant availability and to the blurring of boundaries between private and work life.

These are among the new threats posed to workers in the digital era, and social partners have been identified as the key players in the definition and enforcement of disconnection at a country, sectoral and company level. Indeed, research findings analysed in this chapter showed that without any EU legislation on the right to disconnect in force, it is rather through collective bargaining at a sectoral and company level that Member States are governing disconnection, since this channel seems to be able to guarantee protection to workers' health and safety without hindering flexibility, which both entrepreneurs and employees wish to safeguard.

With only nine Member States out of twenty-seven having a well-defined legislative framework in place addressing disconnection as of December 2023, collective bargaining at a sectoral and country level has become the main driver of disconnection, with a preference for a soft approach over a hard one, meaning that collective agreements do not impose straightforward disconnection measures, but rather raise awareness on the risks connected to hyper connection and suggest best practices to follow in order to make sure that workers set clear boundaries between time devoted to work and time devoted to rest. This approach is based on shared responsibilities between employees and employers and is thus considered more fit for purpose than a hard approach, in that it makes sure that a high level of flexibility for both parties is safeguarded. The effectiveness of this approach, though, is still open to question.

Also in Italy, where disconnection in the private sector is ruled exclusively within the legislative framework of agile work (although many advocate that its protection is granted to subordinate workers in general by virtue of provisions contained in the Constitution and in the Civil Code), it is primarily collective bargaining, especially at company level, that is leading the way towards the implementation of disconnection in the private sector.

The analysis of Italian company collective bargaining dealing with agile work and the right to disconnect showed that it was only after 2017 and even more after the pandemic, that agreements started to focus on time flexibility connected to agile work and to disconnection in particular, showing increasing awareness on the role of disconnection not only to protect employees' health and safety but also their work-life balance. Another noteworthy finding is that, in Italy, similarly to what happens in other EU Member States, companies prefer a soft approach to disconnection rather than a hard one.

When it comes to the impact of flexible working (and of agile work in particular) on work-life balance, the literature review showed that there were some lessons learnt during the pandemic, when extended remote working was adopted as a response to the health crisis, with

companies going fully remote basically overnight to protect their employees' health and safety on the one hand and business continuity on the other. Extended remote working showed many drawbacks back then, among which were longer working hours, the risk of sharpening gender inequalities, extended control on performance, isolation, career penalties (i.e. not been considered for promotions), reduced opportunities for learning, weakened union representation, adverse effects on physical and mental health. These drawbacks were somehow amplified by the sudden imposition of (pandemic) remote work on workers, which, in most cases, was not accompanied by a dedicated regulatory framework explaining what this new way of working entailed, nor by a specific training for managers and employees involved. The complete absence of guidance amplified the negative outcomes of pandemic remote working.³⁴²

Evidence shows that, even after transitioning to agile work ruled by the individual smart working agreement, flexible working does not guarantee improved work-life balance *per se*. In particular, agile work can fulfil the intended goal declared under Law No. 81/2017 of facilitating work-life balance only if some specific conditions are met in its implementation, ranging from the presence of an organisational set-up truly allowing workers to exercise some discretion on working time arrangements to achieve given sustainable objectives, through the reduction of the digital gender gap up to the use of agile work as a diversity management tool when taking into consideration the diverse attitudes and needs of the workforce in terms of flexibility, as well as by promoting a model of shared conciliation. Hence, the way in which (company) collective bargaining and company regulations implement smart working becomes key in defining agile work as a productivity booster and a work-life balance enabler.

As regards the employer's responsibility in terms of Occupational Health and Safety protection and, more broadly, the exercise of managerial prerogatives in case of agile work, the literature review showed that the Italian legislator qualifies agile work as subordinate work, but at the same time it inserts the discipline within a rule governing self-employment, and there is consensus on the similarities between agile work and self-employment or at least on the consideration of agile work as a form of 'attenuated' subordination, especially because the individual agreement intervenes to regulate areas that in the subordinate work model pursuant to Article 2094 are unilaterally defined by the employer, like for instance the exercise of the disciplinary power and the power of control. Moreover, the fact that agile workers are given the possibility to choose where to perform work, that they may self-determine their working

³⁴² Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (2023). The Future of Remote Work. ETUI.

schedule to a certain extent, that they may be offered to work by objectives, and that they are required to cooperate with the employer in the selection of OHS-compliant workplaces as well as in the exercise of disconnection seems to be questioning the traditional scheme of subordination, which is based on hetero-direction and control of the physical presence of the worker on the employer's premises within a specific, pre-set timeframe.

All this notwithstanding, it is a shared belief that the employer retains its managerial prerogatives in case of agile work and keeps being responsible for the health and safety of agile workers, although cooperation becomes the key word for the success of the model when employer and employees are physically separated. Agile workers are required to cooperate with the employer when selecting compliant remote working places and making sure to safeguard their work-life balance and mental well-being by disconnecting. Moreover, through the signature of the individual smart working agreement, they are required to agree with the employer on how its managing, control and disciplinary power will be exerted in case of agile work. There is a general consensus that this new role assigned to agile workers empowers them with increased autonomy on the one hand, but it also exposes them to the risk of boosted subordination through work-extending ICT allowing for pervasive control and intrusion in their personal sphere.

While new risks for agile workers' health and safety have emerged in the digital era that are not only physical but also psychosocial (isolation, hyper-connection, informational and cognitive overload, overworking, time porosity, etc.), it is the employer's duty to protect workers' mental as well as physical well-being by targeting workers' health and safety protection regardless of where work is performed, ideally partnering with other functions (like HR) to design organisational solutions counteracting workaholism and burnout to maximise engagement and productivity, thus achieving organisational well-being. This is the challenge that the operational model designed in Chapter 3 wants to undertake.

Chapter 3 Walking the Talk: Outline of an Effective Smart Working Operational Model

CONTENTS: 1. Research Topic Reconnaissance. 2. Key Findings. 3. The Model. 3.1. Preliminary Considerations. 3.2. Working Time and the Right to Disconnect. 3.3. Ensuring Occupational Health and Safety 3.4. Protecting Work-Life Balance by Addressing the Autonomy Paradox 3.5. Managerial Superpowers. 4. The Model Toolkit - The Individual Smart Working Agreement Template. 4.1. Allegato 1 INFORMATIVA SULLA SALUTE E SICUREZZA NEL LAVORO AGILE AI SENSI DELL'ART. 22, COMMA 1, L. 81/2017 5. Study Limitations and Opportunities for Future Research.

1. Research Topic Reconnaissance

As detailed in Chapter 1, the enactment of agile work in Tetra Pak Italy was triggered by a global project launched in 2015, revamped in 2018 and still ongoing, which is meant to offer flexible working patterns to Tetra Pak employees worldwide, with a view to improving their overall working experience in the organisation and their productivity, while ensuring compliance with the Law. Indeed, based on the guidelines provided by the central HR function, each country was invited to implement Flexible Working Arrangements in compliance with the local legislation in force, with the intended goal of improving employees' work-life balance thus increasing engagement, retention and competitiveness while ensuring sustainability, in alignment with the Company 2030 Strategy. As a result, in 2018 the HR Country Services Italy team started to investigate the options offered by Law No. 81/2017 in the attempt to adapt already existing forms of flexible working in the company (like occasional remote work) to the new regulatory framework.

Hence, in October 2019 we started benchmarking other pioneering companies in the field of flexible working like, to name a few, Siemens S.p.A. and Maire Tecnimont, which had implemented smart working in its more flexible forms and, in agreement with Tetra Pak Italy HR Country Committee,³⁴³ we started to design the Tetra Pak '*Work Smart, Be Flexi*' model, governed by a company regulation providing for a set of rules that should be applicable to all

³⁴³ The HR Country Committee is a forum composed of HR Country Services Representatives and Managing Directors of the Italian legal entities.

five legal entities in Italy at once and which empowered managers with the decision on whether and how to grant flexibility to their team members, based on their knowledge of the business and of their reporting resources.

The companies we selected for the benchmark were chosen among the smart working business cases made available by the Smart Working Observatory of Politecnico di Milano³⁴⁴ for the outstanding type of flexibility they offered to their employees, going beyond the market prevalent model of three days a week in the office and two days a week of remote working and associated with broad time flexibility. HR professionals from both companies were interviewed in 2019 in order to collect feedback on the upsides and on the downsides of their models, and in both cases, they shared success stories that inspired the development of our peculiar Tetra Pak Italy model. What our model shares with '*Siemens Office*' is the approach to flexibility: although we did not introduce smart working as the standard way of working in the company by means of a company collective agreement (as Siemens did) but rather preferred to empower people leaders with the decision to approve/reject smart working applications submitted by employees, we embraced Siemens approach to smart working as work by objectives basically unconstrained from time and space (although with given limitations). On the other hand, unlike '*Siemens Office*' model, Tetra Pak Italy '*Work Smart, Be Flexi*' model shared Maire Tecnimont's approach to smart working governance, in that smart working in Tetra Pak Italy is ruled by means of the individual agreement rather than by a company collective agreement.

Our decision to introduce smart working through a single company regulation applicable to all five legal entities rather than by means of separate company collective agreements negotiated with union representatives of the different companies was mainly driven both by the project scope and by the complexity of the targeted population. Indeed, the project addressed Tetra Pak Italy as a whole, which meant having approximately 1,000 white collars employees in scope, belonging to different legal entities with very different scenarios in terms of business activities and applied collective bargaining. Hence, although a common framework had to be set up to provide guidelines applicable to all, no one-size-fits-all approach could be followed. Rather, the agreement between the employee and the line manager had to become the main regulatory framework for flexible working for the Model to succeed. Of course, the number of employees in scope also claimed for standardisation, which is the reason why the '*Work Smart, Be Flexi*' project involved the launch of a dedicated platform where employees

³⁴⁴Available at: <https://www.osservatori.net/business-case/?events=future&view=cards>

could take preliminary mandatory trainings, follow the smart working application approval flow and sign their individual smart working agreement as the final outcome of the process.

Unfortunately, when the Covid-19 pandemic struck, we were forced to rethink the project timeline, since we had to postpone the go live of the platform due to the ‘interference’ of emergency smart working. However, we also took that opportunity to train people on agile work/smart working and, particularly, on the differences between telework, emergency smart working and ‘proper’ agile work as defined by Law No. 81/2017. In addition, the emergency period became a test for (partially flexible) remote work that would result extremely valuable for the fine tuning of the flexibility we had in mind for the post pandemic smart working. Indeed, during this ‘trial phase’ and even afterwards, when the company regulation was fully enacted and individual smart working agreements collected during the pandemic came into force, some blind spots of the ‘*Work Smart, Be Flexi*’ model were brought to light during coaching sessions with managers held after the project launch, as well as by requests of clarifications received from the employees in the ticketing system. For the sake of this doctoral thesis, the pain points were grouped into four main areas, namely working time organisation, work-life balance, Occupational Health and Safety protection and managerial prerogatives, and this doctoral thesis was born specifically to address those blind spots, in order to find a compliant answer to them so as to ensure the Model success in terms of improved work-life balance and increased productivity.

Chapter 2 contains an in-depth analysis of the literature dealing with critical issues connected to smart working identified in Chapter 1, in order to provide the legal framework for an operational Model that could overcome said criticalities and help Tetra Pak Italy Flexible Working Arrangement model achieve the intended goals of increased productivity and improved work-life balance, preferably outside collective bargaining and without resorting to fixed and binding measures (for instance in terms of disconnection and remote workplace selection) that would limit the flexibility connected to this new way of working and impose excessive administrative burden on the Company.

Before detailing the main findings of the literature review, it should be emphasised that the starting point of this doctoral thesis is an extremely advanced smart working model offered by a trust-based organisation with a tradition for flexible working. Said model has elicited an overall very positive response among Tetra Pak Italy employees to the advanced patterns of flexibility made available to them, with some pain points that this doctoral thesis has targeted to solve, in an effort to continuously improve both employees’ well-being in the organisation and, simultaneously, the Company’s competitiveness.

2. Key Findings

The literature review carried out in Chapter 2 has shown that, although post-pandemic remote working is not yet a well-studied phenomenon as it is still very new and its challenges and opportunities are still being tested,³⁴⁵ some lessons learnt are there already. A widely held belief is that flexible working is here to stay, or as Hassard & Morris put it, *‘the predominant view in academic literature and the mass media currently is for some form of ‘hybrid’ arrangement to define the terrain of managers’ ‘normal working day’ going forward,*³⁴⁶ and the fundamental reasons for this are clear. Firstly, flexible working arrangements have become key players in workforce attraction and retention. Indeed, when some organisations like Google and Amazon,³⁴⁷ called their employees back to the office to an (almost) pre-pandemic working arrangement, they faced resistance from them, since the workforce had gotten used to flexible working arrangements and to the benefits it entailed for them. Secondly, in a post pandemic scenario, while fully remote working has shown contradictory outcomes for both the individual and the company,³⁴⁸ hybrid work, which is defined as *‘the intersection between remote work [...] and onsite work’*³⁴⁹ is more likely to boost the positive effects of remote work and to offset its pitfalls. As a result, companies cannot overlook the value of flexible working as a tool for talent attraction, retention and engagement.

It is equally clear that, when implementing flexible working, organisations should avoid going fully remote, in order to minimise its downsides. In this respect, based on the findings of a study carried out by Charalampous, Grant & Tramontano,³⁵⁰ it can be observed that *‘for*

³⁴⁵ Eurofound (2023), The future of telework and hybrid work, Publications Office of the European Union, Luxembourg.

³⁴⁶ Hassard, J., & Morris, J. (2024). Is Managerial Homeworking New? Assessing strategic, technological and political influences before, during and after coronavirus. *Organization Studies*, 45(6), 777-800.

³⁴⁷ Tech.co (2021), Google criticized for remote working policy. Available at: <https://tech.co/news/google-remote-working-policy#:~:text=As%20Google%20gears%20up%20its%20employees%20to%20return.have%20criticized%20its%20%E2%80%9Chypocritical%E2%80%9D%20approach%20to%20flexible%20working>. Accessed 1 June 2024.

³⁴⁸ As we have seen in the previous chapters and as reinforced also by Eurofound (2023), The future of telework and hybrid work, Publications Office of the European Union, Luxembourg, remote work can improve engagement and productivity if employees perceive an improved work-life balance; on the other hand, reduced formal interaction between colleagues can affect creativity and push towards innovation. Moreover, a downturn in productivity can result from inefficiency linked to frequent interruptions to which workers are exposed due to pervasive exposure to technology and ICT-mediated communication. Among other pitfalls of remote working are isolation, difficulty in disconnecting from work, gender inequalities, blurred lines between paid and unpaid work, increased control and supervision, etc. On the subject of social isolation connected to smart working see Albano, R., Parisi, T., & Tirabeni, L. (2019). Gli smart workers tra solitudine e collaborazione. *Cambio* Vol. 9, 61-73. Firenze University Press. For a detailed examination of this topic see *infra* in Chapter 3 section [3.4. Protecting Work-Life Balance by Addressing the Autonomy Paradox](#).

³⁴⁹ Eurofound (2023), The future of telework and hybrid work, Publications Office of the European Union, Luxembourg.

³⁵⁰ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). “It needs to be the right blend”: A qualitative exploration of remote e-workers’ experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355. This qualitative study explores the relationship between remote working and well-being by focusing on the findings of semi-structured interviews with open-ended questions carried out among 40 remote e-workers of a British IT company, belonging to various job roles. Respondents are engaged in different forms of remote working, i.e. full remote working, equally working onsite and offsite, splitting their time between the office and other locations.

*an organisation to succeed in the adoption and implementation of this work practice, it is pivotal to identify the right blend and balance between working from the office locations and working remotely using ICT to stay connected.*³⁵¹

Indeed, despite the ‘remote working euphoria’ conveyed by the media and triggered by empirical evidence and data collected mainly through surveys highlighting the many advantages of homeworking on both productivity, commitment and work-life balance, once the pandemic was over and mandated homeworking was lifted, commentators started to focus also on the considerable disadvantages connected with full remote working,³⁵² namely adverse effects on career prospects, extended working hours, social isolation, increased surveillance, and so on.³⁵³ In addition, it has been highlighted that the relationship between technological advance and productivity is not as straightforward as it would seem, since productivity gains ‘are a corollary of the organisational changes facilitated by technological innovations rather than technologies themselves, and will be achieved only by companies which adopt new forms of work organisations at the same time as the new technologies,’³⁵⁴ which means that how technological advance positively impacts productivity depends on the organisational choices made by companies.

Another fundamental finding of the review carried out in Chapter 2 is that agile work can be implemented in many ways and with various degrees of flexibility, work by objectives being just one of the options. Right from the start, Tetra Pak® Italy intended to offer to its employees the most flexible version of agile work as work by objectives, based on the assumption that most organisations and teams within the company had been working flexibly for a long time, supported by a corporate trust-based culture encouraging a flexible way of working focusing on results rather than on time spent to achieve them. This was the main driver of the decision not to recognise overtime treatment to anyone when an individual smart working agreement was in place. However, this approach most likely underestimated the fact that in some legal entities and in some teams, standard working hours and office work were (and still are) the core of operations, and, most of all, the concept of working time self-

³⁵¹ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). “It needs to be the right blend”: A qualitative exploration of remote e-workers’ experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁵² Hassard, J., & Morris, J. (2024). Is Managerial Homeworking New? Assessing strategic, technological and political influences before, during and after coronavirus. *Organization Studies*, 45(6), 777-800.

³⁵³ Idem. Empirical evidence collected by the Authors suggests that ‘*working at home is an area fraught with ethical challenges while, as noted, tensions can arise from the effects of work intensification, social isolation and employment instability. This suggests that much uncertainty exists over what the new ‘normal working day’ of the managerial labour process will look like going forward.*’

³⁵⁴ Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham.

determination is failing to stick. Hence, despite the message conveyed by the Company, for some employees signing a smart working agreement meant renouncing to overtime as a trade-off for some days of remote work, which limited the perceived added value of this flexible working arrangement. As the literature review has shown, it would be advisable to carry out a case-by-case assessment before deciding whether smart working truly entails the self-determination of agile workers' working schedule to the extent that they can fall under the derogations to the discipline of working hours applicable to workers whose performance duration cannot be measured or pre-determined. Only under these circumstances are the regulations regarding working time recording and overtime treatment inapplicable to them. Consequently, the parties can circumvent the standard concept of working hours through the individual smart working agreement. However, it must be pointed out that, although the case-by-case assessment undoubtedly is the most advisable and surefire approach to follow when deciding whether overtime treatment in case of smart working is due or not, it may be difficult to implement in big corporations that need a significant level of standardisation in their processes to make sure flexible working can be governed smoothly, also from an administrative point of view. In addition, applying different overtime treatments to different teams and organisations within the company may be perceived as unfair by employees. Hence, it is necessary to balance tailor-made flexibility with the need for simplification, and this can be considered as one of biggest challenges for the Model success.

Let us not forget that every organisation is composed of interdependent parts, and the more complex the interdependence, the more difficult and complex the coordination.³⁵⁵ More specifically, *'homogeneity facilitates coordination because a set of rules is applied to all positions within the group. Similarly, when changes in rules are necessary, the set of changes also applies to all positions.'*³⁵⁶ However, it is also true that *'organisations [...] need to avoid setting blanket policies, acknowledging both individuals' different circumstances and the fact that one size does not fit all, as this is fundamental when ensuring the effectiveness of remote e-working practices.'*³⁵⁷ All this considered, an advisable approach would consist in pre-assessing the degree of self-determination of working schedule available for smart workers, based on the smart working Model the company wishes to implement and manage overtime accordingly for the whole population. Those specific functions who either lack or have reduced

³⁵⁵ Thompson, J. D. (1988). *L'azione organizzativa: A cura e con un saggio introduttivo di Bruno Maggi*. Isedi.

³⁵⁶ Idem. [Translation by the Author].

³⁵⁷ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

possibilities of self-determining their working hours shall be addressed by the HR function for dedicated change management actions.

Both when designing Tetra Pak Italy smart working model and when working on this research project, the main focus of the discussion has been on working time flexibility, which in our view is an underestimated yet fundamental success factor for smart working, especially when the ambition is to overcome the market prevalent smart working model involving one or two days a week of remote working mirroring standard office working hours. The literature review reconfirmed the need to keep conversation open on flexible working time in general and on disconnection in particular, the two concepts being fully intertwined. An important lesson learnt in terms of disconnection is that the soft approach that is currently being adopted by most companies offering flexible working arrangements to its workforce, among which is Tetra Pak Italy, can be successful only if it is accompanied by effective awareness raising initiatives like, for instance, a dedicated focus during work-related stress assessment, relevant modules in the OHS periodical trainings, etc. Moreover, it is of the utmost importance for corporations to change the narrative around virtual presenteeism and permanent availability, which they should stop praising as evidence of commitment and dedication.

Not surprisingly, while the literature review shed light on the specific criticalities connected to smart working in Tetra Pak Italy, it also brought to light some additional ones that had not emerged when introducing smart working in the company. For instance, when we undertook this project, the most burning OHS-related issue to tackle was how to make sure employees could choose a compliant remote workplace without the Company inspecting it. Yet, the literature review made it clear that, although this question is relevant and surely has to be addressed, there are new risks, mainly psychosocial ones (e.g. burnout and technostress), that need attention; hence, protecting the health and safety of agile workers currently is much more than a matter of ergonomics and compliant remote workplace selection, since the OHS function needs to tackle new risks for the successful outcome of flexible working. This aspect was not specifically addressed when implementing the '*Work Smart, Be Flexi*' project, and this is an area for improvement that the Model should consider.

Moreover, although this research project was born with the goal of providing legally compliant solutions to blind spots of agile work emerged in Tetra Pak Italy, at some point in the research I was guided towards organisational studies, which offered an additional perspective in the analysis of flexible working patterns, with particular reference to the concepts of interdependences and the autonomy-control paradox, which will be taken into consideration in the following sections.

Before embarking on the outline of the operational Model, though, it is worth sharing a consideration that Kahn and Katz made in a study on workers' productivity and morale back in 1952, when highlighting that, '*in applying the principles discovered in laboratory studies to life situations there is always the problem of the generality and meaningfulness of the findings. [...] Will the use of the generalization from the group experiment be effective in the life situation, where the game is being played for higher stakes [...]?*'³⁵⁸ Although this doctoral thesis does not rely on laboratory results, it does rely on qualitative findings that we are suggesting are applied to everyday business operations, knowing that bridging the gap between theory and practice may be an ambitious challenge even in 2025.

3. The Model

3.1. Preliminary Considerations

As we have seen in Chapter 2, the success of remote work as a productivity booster and work-life balance enabler depends on many different factors, and the organisational Model outlined in the current Chapter intends to overcome those obstacles that can hinder the long-term success of flexible working.

A necessary preamble to make is that '*there is not a unique path towards effective implementation of smart working: it has to be designed starting from a specific situation and with specific attention to the features of any organization.*'³⁵⁹ Equally important, the organisational Model suggested in this doctoral thesis shall not be considered a fixed one, but rather a flexible one, open to change to better adapt to both the ever-changing reality of current organisations, which evolve rapidly and continuously, and the ongoing legislation on the subject, both at a European and at a country level, so that the Model outlined today may not be able to address criticalities that have yet to emerge and may as well not be fit for purpose should a new legislative framework emerge. In addition, flexible working should be considered a journey rather than a stand-alone business transformation project, and organisations should be open-minded enough to rearrange and adapt it, if needed, based on the inputs provided by the stakeholders involved. Monitoring trends and carrying out periodical benchmarks against other

³⁵⁸ Kahn, R. L., & Katz, D. (1952). Leadership practices in relation to productivity and morale (pp. 612-628). Ann Arbor, MI: Institute for Social Research, University of Michigan.

³⁵⁹ Torre, T., & Sarti, D. (2018). Into smart work practices: which challenges for the HR department? Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 249-275. Palgrave Macmillan.

companies in order to fine tune the Model once it has been set up can be a good approach to identify best practices and readjust accordingly.

Having said that, we can now move forward and identify the main steps involved in the outline of an effective smart working organisational Model.

Firstly, it is recommendable to decide what type of agile work the Company intends to implement and who is in scope. In other words, the company has to decide whether it wishes to implement work by objectives or remote work with limited working time flexibility, as well as who the population in scope is, either all (white-collar) employees or just some legal entities, departments, teams in the Company. Once the target audience has been identified, it is advisable to involve them in the design process, for instance by carrying out surveys and interviews to understand what their needs and their expectations in term of flexibility are, to make sure that the outcome truly meets the needs of the end users.³⁶⁰ At this stage, it might be convenient to provide for a trial period, in order to test the effectiveness of the Model as well as the response from end users. This preliminary step is fundamental as it drives the Model design, for instance in terms of overtime treatment, as it will be explained in the dedicated section.

Secondly, based on the assessment of the project scope, Companies should define what regulatory framework will govern smart working, be it company collective bargaining or company regulation. As argued in Chapter 2, there is a general consensus among researchers on the key role that social dialogue and collective bargaining should play in the definition of the necessary framework governing this hybrid Model (for instance in terms of working time, working hours and right to disconnect), based on the assumption that *‘it is only through genuine social dialogue that we can ensure that remote work delivers for all’*.³⁶¹ However, as clearly stated by Law No. 81/2017, the main regulatory framework of agile work shall be the individual smart working agreement. In Tetra Pak Italy the choice to govern smart working by means of a company regulation assigning the bargaining role to the individual smart working agreement (within the limits set by the regulation itself) proved to be successful and allowed to take into consideration the diverse needs of the population in scope, given the huge complexity that the project addressed.

Thirdly, once the above assessment has been carried out, it is advisable to treat smart working as an organisational change process, and *‘[...] like any organisational change that*

³⁶⁰ Gratton, L. (2021). How to do hybrid right. Harvard Business Review, 99(3), 65-74.

³⁶¹ Dedden, B., De Spiegelaere, S., and Hick, M. (Chapter 7, Remote Work: ensuring trade union and workers' rights through collective bargaining) in Countouris, N., De Stefano, V., Piasna, A., & Rainone, S. (eds.) (2023). The Future of Remote Work. ETUI.

*overthrows the status quo, the process needs to be properly managed [...].*³⁶² It is common knowledge that smart working relies on flexibility, discretion and responsibility, and for this new organisational Model to work properly, managers' traditional approach to human resources and behaviour needs to change.³⁶³ Hence, the first step the involved functions need to take when introducing this new organisational Model is to communicate change effectively. This should be a joint effort among HR, the leading function, Communications and OHS. Moreover, the population in scope (i.e. end users) needs to be trained on the changes involved before the organisational change takes place, and this is particularly true for people leaders, who should be the addressee of dedicated change management training programmes helping them shift from a logic of control to one of trust, as well as of sessions on remote/dispersed team management. Equally important, managers should be guided and trained to develop work practices that take into consideration the heterogeneity of the workforce, and their awareness should be raised on how to avoid gender inequalities in case of flexible working. Their key message to be cascaded to them top down is that the organisation supports work autonomy, trust, workforce diversity, and wants to transition from a presence culture to a result culture, by creating a culture of trust. Equally important, despite being an intended work-life balance enabler, smart working is mainly a way of working through which companies mean to improve their resources' productivity, and this is precisely how it should be presented to avoid it being misunderstood for a benefit or a parental leave. The importance of this step for the Model success shall not be underestimated: if organisations do not properly communicate targeted outcomes, expectations and rules to connected to the new way of working to people leaders and employees, misunderstandings are likely to arise, and smart working governance and outcome risk being compromised.

Moreover, the key role of people leaders for the success of the Model needs to be made clear right from the early stages of the organisational change, given that they are expected to be the role models and to lead by example by being ambassadors of good practices, also in order to establish a safe working environment.³⁶⁴ When managing hybrid teams, people leaders should take into account different needs for flexibility and assign tasks based on where work is performed. Indeed, a careful classification of tasks based on their 'teleworkability' is advisable, and the same is true for the assessment of what tasks can be performed

³⁶² Torre, T., & Sarti, D. (2018). Into smart work practices: which challenges for the HR department? Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations, 249-275. Palgrave Macmillan.

³⁶³ Idem

³⁶⁴ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. Employee Relations: The International Journal, 44(2), 335-355.

synchronously/asynchronously,³⁶⁵ as this can help give office work a purpose. To further elaborate on this, managers should consider what the productivity drivers in their teams are and how they relate to the space and time dimensions. For some jobs or tasks, place where work is performed may be a critical element of success, while for some others synchronous/asynchronous time is what brings added value to the performance. For example, when jobs entail a great degree of information gathering, focus and output development, place where work is performed becomes irrelevant, while the time dimension becomes the key factor of a good performance, since asynchronous work can trigger productivity. On the other hand, when jobs are innovation-related, place becomes an important dimension for productivity, as it enables cooperation, face-to face-interaction and informal exchange³⁶⁶.

Furthermore, line managers have to make sure they assign reasonable and measurable objectives and assess performance evaluation criteria by carrying out periodical reviews, also collecting feedback from colleagues and people working with their reporting resources. Proactive monitoring of workload within the team is key to prevent phenomena of long hour working (so called ‘superlavoro’), which can lead to workaholism and other dangerous side effects like burnout and depression³⁶⁷. Managers should also avoid encouraging overtime (when applicable) while encouraging disconnection instead, and, of equal importance, they should evaluate performance based on the outcomes and not on physical office presence.³⁶⁸

Another pivotal element for the success of the Model is that smart working should be treated as a diversity management tool. This means that Companies should design it ‘*with individual human concerns in mind*’³⁶⁹ and customise the Model as much as possible based on the diverse needs of their population, although setting minimum standards to help the Model governance. Evidence shows that workers productivity is influenced by their personal preferences,³⁷⁰ so when designing hybrid work, organisations shall consider the preferences of the end users, which are likely to be affected by factors like family situation, age and tenure.³⁷¹ As a result, two people with the same job may attribute value to different forms of flexibility as one may feel more focused when working from home, where he/she has set up a comfortable home office, as this allows him/her to avoid a time consuming daily commute, while the other who shares a small apartment with some flatmates may prefer to work in the office, which is

³⁶⁵ Eurofound (2023), The future of telework and hybrid work, Publications Office of the European Union, Luxembourg.

³⁶⁶ Gratton, L. (2021). How to do hybrid right. Harvard Business Review, 99(3), 65-74.

³⁶⁷ Spagnoli, P., & Balducci, C. (2024). Lavorare troppo: riconoscere e contrastare il workaholismo. Ed. Il Mulino.

³⁶⁸ Gratton, L. (2021). How to do hybrid right. Harvard Business Review, 99(3), 65-74.

³⁶⁹ Idem.

³⁷⁰ Idem.

³⁷¹ Idem.

also near to where he/she lives.³⁷² There can be little doubt that the individual smart working agreement is more fit for purpose than collective bargaining at company level to govern this type of tailor-made flexibility.

Another challenging aspect to address for the success of the Model is the interdependence among functions within the organisation, which means that for hybrid work to succeed it is fundamental to coordinate work carried out by different team members within the same team as well as in relation to other functions and stakeholders.³⁷³ While said coordination is taken for granted when colleagues work in the same place and at the same time, things get more complicated in case of hybrid work, especially when flexible working time is involved and when customised forms of flexibility apply in interdependent teams. Technology plays an important role in the coordination of activities, but an additional effort may be required in redesigning processes and workflows rather than trying to adapt existing ones to the new flexible working scheme.³⁷⁴ A telling example of this could be introducing the digital signature of official documents (when legally compliant) to overcome the issue of collecting wet signatures from signatories that might not be available in the same office at the same time, instead of making arrangements to try and collect wet signatures asynchronously. At present, interdependence can be considered as one of the most difficult obstacles to overcome for the Model to succeed.

All this considered, the following sections will contain suggested standards to be applied in the main areas where blind spots have been identified in Tetra Pak Italy model, namely working time and the right to disconnect, OHS and work-life balance protection and the exercise of managerial prerogatives.

3.2. Working Time and the Right to Disconnect

Since there is no such thing as a universal, standard type of smart working, companies can customise the kind of flexibility they want to grant to their employees in terms of working hours, and overtime management, as seen supra, is strictly linked to the level of working time flexibility the Model entails. Indeed, if the type of smart working the Company decides to implement allows for very limited time flexibility, and working time is intended to mirror standard office working hours regardless of where work is performed, overtime treatment shall

³⁷² Gratton, L. (2021). How to do hybrid right. *Harvard Business Review*, 99(3), 65-74.

³⁷³ Idem.

³⁷⁴ Idem.

not be affected. In contrast, if employees are encouraged to work by objectives with a certain degree of working time self-determination, overtime shall not be an option.

Having said that, to make sure smart working truly has a positive impact on work-life balance, it is advisable to allow a certain degree of working time flexibility in the Model, making sure that smart working does not become synonymous either with occasional remote working or with ‘permanent availability’. A recommended approach would be governing time flexibility by means of contactability and disconnection time bands, intended as a timeframe during the day when agile workers are required to be connected and reachable by company devices as opposed to those bands when they are totally offline and not working. The breadth of contactability time bands, mirroring the level of flexibility agreed between the parties, could guide in deciding whether overtime premiums apply or not. It can be maintained that the broader these bands within the working day, the more limited the time flexibility and the freedom for agile workers in self-determining working hour schedule. In this case, overtime premiums should remain in place, following the traditional approval route. Ideally, every department, unit and even team within a company should be given the possibility to implement its own form of working time flexibility connected to smart working; however, this level of customisation can be difficult to administer, so it is advisable to set a single overtime treatment standard for the whole company. Differentiating overtime treatments by departments, although advisable to guarantee tailor-made solutions, must be discouraged, as it would require governance through collective bargaining and would most likely create confusion in the Model governance.

In order to avoid that smart workers are in a status of permanent availability, the right to disconnect shall be governed, and a soft approach is advisable that does not hinder the flexibility connected with the arrangement. Said approach should involve creating a ‘culture of disconnection’³⁷⁵ by sharing disconnection best practices with employees and by training them on how to draw boundaries between work and private life and on how to manage time discretion, how to set priorities, to delegate and to ask for help. It is of the utmost importance that employees are given the opportunity to disconnect in practice and not only on paper, meaning that disconnection time bands shall be made explicit in the individual smart working agreement as a commitment taken by the Parties, and disconnection outcomes shall constantly be monitored. If working hours recording systems can help to identify cases of non-compliance

³⁷⁵ Purificato, I., Senatori, I. (2024). Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect. *Diritti Lavori Mercati International* n.1-2024, 285-303

with disconnection, they should be used to this purpose, as long as they do not become a workaround to evaluate performance based on hours worked instead of results achieved.

Recent studies on remote work have suggested that, in order to improve the flexible working experience, organisations shall provide guidance to their employees on the pitfalls connected to flexible working arrangements and train the necessary soft skills that can be of help when working flexibly, like self-discipline, self-motivation and task-orientation. Yet, in parallel, organisation should be mindful of the risks associated with flexible working in terms of overwork, workaholism, blurred boundaries between life and work, social isolation and loss of social interaction, and should send out clear and straightforward messages on how to use e-mails and other communication tools and on responsiveness expectations.³⁷⁶ In other words, it is advisable for organisations to adhere to an extensive approach towards disconnection,³⁷⁷ which does not consider it complied with when rest time is met, but rather when workers' time sovereignty is safeguarded, so that disconnection can truly become a fully-fledged work-life balance enabler. Sending out clear and straightforward messages on overwork-related disorders and on the differences between work engagement and workaholism is pivotal for the success of a flexible working Model that targets the protection of workers' well-being³⁷⁸.

3.3. Ensuring Occupational Health and Safety

It cannot be overlooked that the primary assumption at the base of a successful smart working Model is that the Company complies with its OHS obligations without compromising on health and safety, as '*individuals need to trust that their organisation safeguards their well-being at all times and that they can work safely.*'³⁷⁹ Having said that, it is of the utmost importance for the OHS function to take an active role in the design of the smart working operational Model, given that the well-being of the individual within the organisation is one of the Model key targets.

In our opinion, there are two main OHS-related issues that the Model needs to address and focus on, namely the selection of a compliant remote workplace and the protection of the

³⁷⁶ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁷⁷ See in this respect Purificato, I., Senatori, I. (2024). Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect. *Diritti Lavori Mercati International* n.1-2024, 285-303

³⁷⁸ For an extensive analysis of the phenomenon of 'workaholism' focusing not only on its individual but also on its social and organisational dimension, see Spagnoli, P., & Balducci, C. (2024). *Lavorare troppo: riconoscere e contrastare il workaholismo*. Ed. Il Mulino.

³⁷⁹ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

mental and social well-being of agile workers in addition to the physical one. As regards the first item, there is a general consensus among scholars³⁸⁰ on the need for the employer to limit the remote places allowed in case of agile work on the one hand and to be informed of what they are on the other. This is because, thanks to the resulting predictability of the remote workplaces, the OHS function would be able to fulfil its obligations to train and inform agile workers on specific risks more easily. Indeed, while on paper the employer retains its OHS responsibility also in case of agile work, said duties are difficult to exercise in practice since in most cases, the employer does not know what remote places employees have selected to perform remote work. However, a serious drawback of this approach is that it is not aligned with the purposes that the Model outlined in this doctoral thesis means to achieve, not only because it would limit agile workers' freedom to choose remote places considerably, but also because it would risk replicating those rigidities connected to telework that companies felt the need to overcome in the past. Indeed, adopting a restrictive approach entailing, among other things, inspections of remote workplaces, may result in an excessive administrative burden placed on the employer, and, consequently, it may jeopardise the adoption of flexible working within the organisation.

A more promising approach could be to increase employees' awareness on the risks by keeping conversation going on the topic. For instance, after having provided all necessary information on the criteria to follow in the selection of a remote workplace, the employer should reinforce key messages on a regular basis by means of targeted communication and trainings to employees, for a start by devoting a dedicated session to the risks connected to smart working and the necessary measures to counteract them in the periodical OHS training update. In addition to this, the Employer may reserve the right to carry out random checks on the suitability of remote workplaces, for example in case of work accidents occurred when working remotely. In this case, remote workers may be asked to provide evidence that their remote workplace is compliant with the training received before activating the smart working agreement.

As regards the second OHS-related issue that the Model needs to consider, it is of the utmost importance that all employers be aware that in case of agile work OHS focus shall shift from protecting safety in the workplace to protecting workers' safety overall, regardless of where work is performed. Hence, a fully-fledged risk assessment must be carried out, with a

³⁸⁰ Sciotti, R. (2017). Il lavoro agile e la sua specialità. *Rivista degli infortuni e delle malattie professionali*, 3, 355-414.; Pelusi, L. M. (2017). La disciplina di salute e sicurezza applicabile al lavoro agile. *Diritto delle relazioni industriali: rivista della Associazione lavoro e ricerche*, 27 (4), 1041-1058. Peruzzi, M. (2017). Sicurezza e agilità: quale tutela per lo smart worker?. *Diritto della sicurezza sul lavoro*, (1), 1-29.

specific emphasis on new psychosocial risks connected to flexible working like technostress and burnout, to name a few. In this respect, all employees (and managers in particular) need to be trained on how to recognise red flags so that these can be promptly counteracted.

In this respect, as a starting point, it could be useful to integrate the notice provided to agile workers and workers representatives once a year with a section on psychosocial risks, which at present are overlooked by the template made available by INAIL but have, in any case, to be mapped in the risk assessment analysis carried out by the employer (work-related stress). Furthermore, as already mentioned supra, regular breaks and disconnection have to be encouraged, especially by the OHS functions, while virtual presenteeism, hyper connection and working from home when sick need to be discouraged by showing the negative effects of these behaviours on employees' health and safety. It is also important to consider that when hybrid work is in place, surveillance, prevention and risk assessment should be reviewed in full, also for the portion of onsite work, since the effects of isolation, loss of in-person interaction and issues with relational dynamics that may be linked to hybrid working are bound to affect also in-presence work.

Cooperation of the agile workers in the enactment of the measures set out by the employer remains key, since employees have a duty to safeguard their health and well-being, but they need to be guided by means of dedicated trainings and straightforward corporate messages. In this respect, it is highly recommended to limit the access to smart working to employees who have taken dedicated OHS trainings specifically designed to make them aware of the risks connected to this new way of working and to the necessary measures to take to counteract them.

3.4. Protecting Work-Life Balance by Addressing the Autonomy Paradox

According to the definition given by the Cambridge Dictionary, well-being is '*the state of feeling healthy and happy*,'³⁸¹ which takes us back to the definition of health provided by the World Health Organisation (WHO) as '*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*.'³⁸²

³⁸¹ Available at: <https://dictionary.cambridge.org/it/dizionario/inglese/well-being>.

³⁸² Constitution of the World Health Organisation (preamble). The Constitution was signed on 22 July 1946 by the representatives of 61 States and entered into force on 7 April 1948. See Chapter 2, section [5.4 New Risks for Agile Workers' Health and Safety](#).

Although the term well-being could generically be associated with the notion of *'life satisfaction,'*³⁸³ academic studies have shown the complexity of this concept, which may encompass affective, cognitive, social, professional and psychosomatic components.³⁸⁴ Time sovereignty, work motivation and commitment, as well as job autonomy and work-life balance have been identified as contributing factors of well-being.³⁸⁵ Another contributing factor to consider is autonomy in the workplace, which can be defined as *'the ability to exercise a degree of control over the content, timing, location, and performance of activities.'*³⁸⁶

Noteworthy studies³⁸⁷ indicate that there is an overall positive relationship between flexible working, work-life balance and well-being, since flexible working gives employees greater control on where and when they can render their work performance, thus boosting motivation and engagement and, consequently, their well-being. However, a competing theory, supported by empirical evidence, questions the straightforward nature of this positive relation, showing, among other things, how flexible working may trigger the so called *'autonomy paradox,'*³⁸⁸ which can be explained as follows: having the possibility to work anywhere and anytime thanks to work-extending technology gives an illusionary impression of greater autonomy over the work performance, while, in fact, it leads to work everywhere and all the time, with consequent reduced autonomy on work performance and adverse consequences both at an individual and at a collective level.³⁸⁹

On the one hand, the consequences of *'escalating engagement and diminishing autonomy,'*³⁹⁰ at an individual level can be work intensification, reduced rest times, blurring of

³⁸³ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁸⁴ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁸⁵ Wajcman, J. (2020). *La tirannia del tempo. L'accelerazione della vita nel capitalismo digitale*, Treccani.

³⁸⁶ Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357.

³⁸⁷ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁸⁸ Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357. On this subject see also Albano, R., Bertolini, S., Curzi, Y., Fabbri, T., & Parisi, T. (2018). *DigitRemote: the office in a mobile device. Threats and opportunities for workers and companies*. In *Working in Digital and Smart Organizations: Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, 93-222. Palgrave Macmillan, Cham; Hassard, J., & Morris, J. (2021). The extensification of managerial work in the digital age: Middle managers, spatio-temporal boundaries and control. *Human Relations*, 75 (9), 1647-1678; Kunzl, F., & Messner, M. (2023). Temporal Structuring as Self-Discipline: Managing time in the budgeting process. *Organization Studies*, 44(9), 1439-1464.

³⁸⁹ Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357; see also Kelliher, C., & Anderson, D. (2010). Doing more with less? Flexible working practices and the intensification of work. *Human relations*, 63(1), 83-106; Kunzl, F., & Messner, M. (2023). Temporal Structuring as Self-Discipline: Managing time in the budgeting process. *Organization Studies*, 44(9), 1439-1464; Hassard, J., & Morris, J. (2021). The extensification of managerial work in the digital age: Middle managers, spatio-temporal boundaries and control. *Human Relations*, 75 (9), 1647-1678.

³⁹⁰ Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357.

temporal boundaries, job stress, which are bound to take a toll on professionals' work-life balance. As for the collective effects, empirical evidence shows how the individual attitude can impact collective behaviour due to '*the relationship of interdependency and accountability*'³⁹¹ existing between teammates and other stakeholders. Indeed, constant connectivity and extended availability at individual level is bound to affect the way communication is managed within teams over time and to redefine accessibility and responsiveness expectations as well as the very same meaning of commitment, engagement and professionalism.³⁹² Put another way, '*knowing that one's colleagues and clients are connecting and monitoring email messages continually and expecting increased accessibility and responsiveness produced an environment where checking email communication at night and on weekends became the rule, not the exception.*'³⁹³

Interestingly (or worryingly) enough, empirical evidence used to support the findings on the autonomy paradox both by Kelliher & Anderson in 2010, and by Mazmanian and colleagues in 2013³⁹⁴ also suggests that remote workers did not report any negative perception of their reduced autonomy. Rather, most of them attributed extended availability and constant connectivity to their personality traits and to their commitment, the underlying message being that said attitude was what it took to be successful. In other words, they chose to reduce their autonomy, as they envisioned this as an element of pride and dedication. Similarly, the more recent study carried out by Charalampous, Grant, & Tramontano in 2022 on the effects of remote working on well-being at work reconfirms that remote workers tend to perceive extended working hours as a consequence of their personality traits and commitment rather than as an unintentional paradoxical effect of flexible working.

Said 2022 study is relevant also because it flagged the emergence of a negative emotion among interviewees in connection with flexible working, namely guilt '*potentially resulting in working longer hours. Guilt was associated with the worry that colleagues or the management might suspect that one is not as productive as they are e-working remotely.*'³⁹⁵ As the authors explain, if these negative implications of flexible working emerge also in a trusting

³⁹¹ Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357.

³⁹² Idem.

³⁹³ Idem.

³⁹⁴ Kelliher, C., & Anderson, D. (2010). Doing more with less? Flexible working practices and the intensification of work. *Human relations*, 63(1), 83-106; Mazmanian, M., Orlikowski, W. J., & Yates, J. (2013). The autonomy paradox: The implications of mobile email devices for knowledge professionals. *Organization science*, 24(5), 1337-1357.

³⁹⁵ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). "It needs to be the right blend": A qualitative exploration of remote e-workers' experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355. See also the feedback provided by Tetra Pak Italy survey respondents and detailed in Chapter 1, section [3. Blind Spots of Smart Working or Opportunities?](#), specifically, '*People do not understand flexibility in full and feel guilty if they take extra time during working hours to attend personal stuff.*'

organisational culture like the one to which respondents belonged (and like Tetra Pak, among others), we can expect it to become even a greater issue in less trust-based organisations. Hence, to counteract the pitfalls of remote work (and of flexible working in general), organisations need to take an active stance and ‘*to encourage individuals to leave their screens, especially when individuals feel guilty to do so, or when they are new starters.*’³⁹⁶

The above findings further support the notion that organisations should be aware of potential paradoxical and counterintuitive outcomes of flexible working patterns and should get ready to take the lead in tackling them instead of leaving it to employees to responsibly manage their time discretion.

3.5. Managerial Superpowers

As we have seen in Chapter 2, flexible working means rethinking managerial prerogatives like disciplinary power and power of control by taking into consideration the new working scenario that questions standard working hours, office-based performance and, consequently, workforce control based on time spent rendering the work performance. In our view, there is no doubt that ‘*contemporary forms of organizational control are not primarily based on disciplinary power [...]. Rather, control operates to an important extent by making people accountable for outcomes. [...] In such a regime, employees are ‘governed’ rather than ‘disciplined.*’³⁹⁷

Empirical evidence collected in the early 2000s by researchers focusing on managerial supervision in case of remote work³⁹⁸ shows that managers of remote teams have been enacting various strategies to cope with the loss of visibility and presence that offsite work entailed for their reporting resources, ranging from digital surveillance, to setting short-term and medium-term goals and monitoring outputs, to carrying out home inspections. While digital surveillance has proved to be of scarce effectiveness, mainly because of its time-consuming nature for managers and because of the limited added value it brought about in the assessment of the remote workers’ productivity, the main issue managers had to face with target setting concerned the identification of relevant, easy to measure targets. As far as home inspections are concerned, instead, these were often seen as an intrusion into the private dimension of

³⁹⁶ Charalampous, M., Grant, C. A., & Tramontano, C. (2022). “It needs to be the right blend”: A qualitative exploration of remote e-workers’ experience and well-being at work. *Employee Relations: The International Journal*, 44(2), 335-355.

³⁹⁷ Kunzl, F., & Messner, M. (2023). Temporal Structuring as Self-Discipline: Managing time in the budgeting process. *Organization Studies*, 44(9), 1439-1464.

³⁹⁸ Felstead, A., Jewson, N., & Walters, S. (2003). Managerial control of employees working at home. *British journal of industrial relations*, 41(2), 241-264.

remote workers and ‘*an invasion of privacy*’,³⁹⁹ which did not add value to the managerial supervision of home workers.⁴⁰⁰ When it comes to digital surveillance, though, it is worth reinforcing that, as highlighted in Chapter 2, among the counterintuitive aspects of flexible (remote) working is the fact that, while favouring task flexibility, it can also entail ‘*sophisticated forms of electronic surveillance and monitoring to account for employee actions when working at home (e.g. measuring of keyboard strokes and patterns, pressing alert buttons to prove work is in progress, replying to irregularly sent emails to prove screen presence, and so on)[...]*’.⁴⁰¹

What we wish to emphasize here is that for flexible working to fulfil its intended goals in terms of productivity and work-life balance, managers are required to take a quantum leap and to develop ‘superpowers’ allowing them to shift from control by presence to control by outcome, and this is the case no matter what level of working time flexibility the implemented smart working Model entails. Hence, corporations shall adopt new methods for monitoring employees, other than physical presence in the office, which are based on trust, like control on outputs. It is worth highlighting that empirical evidence collected back in the 1950s⁴⁰² already showed that close supervision had a negative impact on employees’ motivation and morale, while ‘*the greater freedom may produce positive results through the satisfaction that the individual has in participation and in self-determination*’.⁴⁰³ Moreover, organisations shall encourage new forms of control aimed at avoiding workforce hyper-connection as a result of work intensification.

In any case, communication to employees is key for the success of the Model, i.e. agile workers need to be informed on both what the sanctionable conducts are in case of agile work and how controls will be carried out. It is advisable for companies to detail the legal framework governing remote control both in the company regulation and in the individual smart working agreement⁴⁰⁴ and to provide agile workers with a dedicated notice detailing how these controls will be implemented. Indeed, should this notice be missing, the employer will not be allowed to use collected data for disciplinary purposes, should the need arise. Hence, in more detail, the

³⁹⁹ Felstead, A., Jewson, N., & Walters, S. (2003). Managerial control of employees working at home. *British journal of industrial relations*, 41(2), 241-264.

⁴⁰⁰ *Idem*.

⁴⁰¹ Hassard, J., & Morris, J. (2024). Is Managerial Homeworking New? Assessing strategic, technological and political influences before, during and after coronavirus. *Organization Studies*, 45(6), 777-800.

⁴⁰² Kahn, R. L., & Katz, D. (1952). Leadership practices in relation to productivity and morale (pp. 612-628). Ann Arbor, MI: Institute for Social Research, University of Michigan.

⁴⁰³ *Idem*.

⁴⁰⁴ Pesenti S., Scansani G. (2021). Smart Working Reloaded. Una nuova organizzazione del Lavoro oltre le utopie, Galli Edizioni, Varese; Notaro, F. (2018). Il lavoro agile nel quadro della vecchia (o nuova?) subordinazione. *Lavoro Diritti Europa*, 1; Levi, A. (2019). Il lavoro agile nel contesto del processo di destrutturazione della subordinazione. *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 1, 25-46.

individual smart working agreement shall a) incorporate the reference to sanctionable behaviours to mitigate uncertainty that could lead to disputes, b) identify, even if in general terms, the scenarios that may lead to the termination of the smart working agreement.

4. The Model Toolkit - The Individual Smart Working Agreement Template

To compliment the findings of the research, based on the outcome of the same, a template of individual smart working agreement applicable in case of a long-term hybrid smart working Model entailing work by objectives is outlined hereafter in Italian.⁴⁰⁵ Said template encompasses all the lessons learnt from the literature review and can be used as reference template by Companies wishing to introduce smart working as work by objectives.

ACCORDO INDIVIDUALE DI ADESIONE AL LAVORO AGILE (SMART WORKING) A TEMPO INDETERMINATO

Con riferimento alla richiesta da Lei avanzata in data [dd/mm/yyyy] di poter effettuare la prestazione lavorativa con modalità di smart working (lavoro agile), la Scrivente Società conferma l'accoglimento della Sua richiesta. L'attività lavorativa prestata in modalità agile sarà regolamentata dal presente accordo individuale, dalla normativa vigente e dal regolamento aziendale in vigore denominato [*Insert Name of the company regulation in force*]

1. L'adesione alla modalità di smart working non determina il mutamento delle condizioni contenute nel Suo contratto di lavoro individuale per quanto riguarda, tra l'altro, qualifica, inquadramento, retribuzione e non determina alcuna modifica delle mansioni affidate.
2. Ogni eventuale costo sostenuto per l'espletamento dell'attività lavorativa in regime di smart working (a titolo esemplificativo e non esaustivo elettricità, riscaldamento, connessione internet, vitto, trasporto, ecc.), non verrà rimborsato dall'Azienda.
3. L'adesione alla modalità di smart working non dovrà in alcun modo incidere sul regolare smaltimento delle ferie annuali; Lei dovrà quindi assicurare lo smaltimento, entro il periodo definito dalla normativa e dai regolamenti aziendali in vigore, delle spettanze annuali di ferie e dei permessi, condividendo i periodi con l'Azienda ed attendendo, da essa, la prevista autorizzazione.
4. In caso di insorgenza di malattia durante lo svolgimento della prestazione lavorativa in

⁴⁰⁵ The template contained in this section reworks the individual smart working agreement template currently in use in Tetra Pak Italy, as drafted in 2020 and subsequently amended over time with the consultancy of Avv.to Sara Hüge- Partner at Scorcelli and Partners Law firm. It is also the result of various conversations on the subject within the HR Country Services Team and with the labour departments of Assolombarda, Confindustria Emilia Romagna and Unindustria Reggio Emilia.

modalità agile, Lei dovrà darne immediata comunicazione all'Azienda, sulla base delle consuete modalità previste dai regolamenti aziendali ed astenersi conseguentemente dal lavoro per la durata dell'inabilità al lavoro indicata sul certificato di malattia.

5. La programmazione definisce gli obiettivi ad Ella assegnati in termini di incrementi di produttività, redditività, qualità, efficienza ed innovazione, anche in base a fasi, cicli e progetti preventivamente definiti.
6. Lei, durante il periodo di vigenza del presente accordo, potrà effettuare la prestazione lavorativa in un luogo diverso dai locali aziendali siti in [*insert the address of the contractual workplace shown on the employment letter*], garantendo però la presenza onsite concordata col Suo Line Manager e di cui al punto 10 del presente accordo, ed in ogni caso nel rispetto delle esigenze organizzative e di business.
7. Il luogo di lavoro potrà essere liberamente scelto da Lei all'interno del territorio nazionale, purché sia rispettata l'idoneità per gli aspetti relativi alla sicurezza ed alla riservatezza (vedasi, in particolare, quanto previsto al punto 26 del presente accordo e quanto disciplinato Regolamento aziendale [*Insert Name of the company regulation in force*]).
8. Non è consentito rendere la prestazione in regime di smart working al di fuori del territorio nazionale.
9. La prestazione resa in regime di smart working da un luogo diverso dai locali aziendali non comporta il riconoscimento di alcun trattamento di trasferta ovvero di qualsivoglia altra indennità comunque connessa alla nuova collocazione. In particolare, durante le giornate di lavoro in modalità agile non saranno riconosciute eventuali indennità quali, a titolo meramente esemplificativo: indennità di missione, indennità di trasferta, reperibilità comunque denominate. Parimenti, non sarà erogata alcuna indennità sostitutiva del servizio mensa nelle giornate di lavoro prestato in modalità agile.
10. La Sua prestazione lavorativa in modalità agile si dovrà svolgere in maniera coerente con le esigenze organizzative, funzionali e tecniche dell'Azienda, nel rispetto del Regolamento aziendale [*Insert Name of the company regulation in force*] vigente, di quanto previsto nel Protocollo Nazionale sul lavoro in modalità agile sottoscritto in data 7 dicembre 2021, nonché di quanto pattuito col Suo Line manager rispetto a:⁴⁰⁶
 - a. Alternanza onsite/offsite: [*fill in with agreed onsite/offsite alternation*]⁴⁰⁷

⁴⁰⁶ In case of remote working other than work by objectives, it is advisable to insert a bullet point reading 'Orario di lavoro contrattuale: full time/part time, containing the indication of the weekly standard working hours.'

⁴⁰⁷ Smart working involves an alternation between onsite and offsite work. In case of work by objectives employees and Line manager will need to define a percentage of working time to be spent offsite, not necessarily on a weekly basis. If the company regulation, though, provides for a maximum number of days offsite per week, this should be detailed in this section.

- b. Fasce di contattabilità: *[fill in with agreed contactability time bands]*⁴⁰⁸
- c. Fasce di disconnessione: *[fill in with agreed disconnection time bands]*⁴⁰⁹
11. La partecipazione ad eventi, riunioni, attività periodiche e/o programmate ed attività formative dovrà essere garantita.
 12. In applicazione del presente accordo, Lei dovrà rendere la prestazione lavorativa nel rispetto dei limiti di durata massima dell'orario di lavoro giornaliero e settimanale previsti dalla legge e dal CCNL di riferimento.
 13. In considerazione della tipologia di lavoro per obiettivi e della conseguente autonomia nell'autodeterminazione del Suo orario di lavoro per il raggiungimento degli obiettivi assegnati, durante la vigenza del presente accordo di adesione al lavoro agile non saranno applicabili le disposizioni sulla disciplina dell'orario di lavoro in conformità a quanto previsto dall'Art. 17, comma 5, lett. a), D.lgs. 8 aprile 2003, n. 66. In particolare, si precisa che la prestazione resa in regime di smart working si considera tale a prescindere dal luogo di svolgimento della stessa, è priva di vincoli di orario e non comporta lavoro supplementare o straordinario né, quindi, il riconoscimento di alcun trattamento relativo, nemmeno nelle giornate di lavoro prestato in sede, anche in forza di quanto previsto dall'art. 3 c. 4 del Protocollo Nazionale sul Lavoro Agile siglato dal Ministro del Lavoro e delle Politiche Sociali con le Parti Sociali in data 7 dicembre 2021. Allo stesso modo non è previsto il riconoscimento di maggiorazioni per lavoro eventualmente prestato nella fascia oraria 22-06.⁴¹⁰
 14. Lei dovrà comunque rispettare i tempi di riposo giornaliero e settimanale previsti dalla legge, dal CCNL di riferimento e dai regolamenti aziendali. In caso di part-time la prestazione lavorativa dovrà svolgersi in coerenza con la durata prevista nel contratto individuale; in ogni caso non sono previste maggiorazioni legate alla variabilità della collocazione temporale della prestazione lavorativa, anche in presenza di clausole elastiche, stante l'autodeterminazione della stessa da parte del Dipendente sia in caso di lavoro in presenza che da remoto.
 15. Lei dovrà rendersi disponibile e contattabile tramite i normali strumenti Aziendali (telefono, e-mail, messaggistica istantanea, etc.) secondo le esigenze organizzative e nelle fasce di

⁴⁰⁸ Availability time bands are thought as a timeframe during which the employee guarantees to be on duty and reachable via company tools. In case of work by objectives, these bands do not have to match contractual daily working hours, the assumption being that outside of these bands, the employee is working but might be doing so in a discontinuous way. For instance, 'I will be available from Monday to Friday from 9 to 1 p.m. and to 2 p.m. to 3 p.m.' In case of remote working with limited working time flexibility, contactability time bands will mirror standard daily working hours (eight hours in case of full-time contract) without exceeding them.

⁴⁰⁹ In case of remote work other than work by objectives, disconnection can be considered complied with when rest times are observed. Hence, disconnection time bands shall include lunch break and at least 11 consecutive hours.

⁴¹⁰ Erase this paragraph if smart working does not entail work by objectives.

contattabilità concordate col suo manager di cui al punto 10.

16. A Lei è riconosciuto il diritto alla disconnessione nelle fasce orarie concordate col Suo Line Manager ed indicate al punto 10, anche in base alle esigenze di coordinamento col team. Durante suddette fasce lei si impegna a scollegarsi dagli strumenti aziendali e a non intraprendere alcuna attività lavorativa. La mancata risposta da parte sua a tentativi di contatto da parte del suo datore di lavoro nelle suddette fasce non costituirà motivo di contestazione disciplinare. Nei casi di assenze c.d. legittime (es. malattia, infortuni, permessi retribuiti, ferie, ecc.), Lei potrà disattivare i Suoi dispositivi di connessione e, in caso di ricezione di comunicazioni aziendali, non sarà comunque obbligato a prenderle in carico prima della prevista ripresa dell'attività lavorativa.
17. Durante l'espletamento dell'attività lavorativa in modalità agile Lei dovrà assicurare il mantenimento dei livelli di impegno professionale, qualitativi, quantitativi e di riservatezza abituali.
18. Lo svolgimento dell'attività lavorativa in Smart Working non preclude né modifica il sistema di diritti e libertà sindacali individuali e collettivi definiti dalla legge e dalla contrattazione. In particolare, coerentemente con quanto previsto dai Regolamenti aziendali in vigore, al fine di agevolare un funzionale godimento dei diritti sindacali da parte di tutti i lavoratori anche nelle giornate di svolgimento dell'attività lavorativa in modalità agile, la pubblicazione di comunicati ufficiali, contratti collettivi applicati, del codice disciplinare, delle informative, dei comunicati sindacali avverrà su una bacheca virtuale, consultabile in ogni momento e le assemblee sindacali potranno svolgersi anche da remoto.
19. Durante l'espletamento dell'attività lavorativa in modalità agile, è confermato il potere direttivo ed organizzativo in capo all'Azienda e il vincolo di cui all'art. 2014 e ss del Codice Civile (Diligenza, Obbedienza, Fedeltà e Riservatezza). Viene altresì confermato il potere disciplinare e di controllo del datore di lavoro sulla prestazione resa all'esterno dei locali Aziendali nel rispetto di quanto disposto dall'articolo 4 della legge 20 maggio 1970 n. 300, come modificato dal decreto legislativo n. 151/2015 nonché dal CCNL applicato e dalla disciplina in materia di Privacy. L'esercizio del potere di controllo della Società sull'attività lavorativa al di fuori dei locali aziendali potrà avvenire, nel rispetto di quanto disposto dall'art. 4 L. 300/1970 e successive modifiche nonché della normativa in materia di privacy, a campione, per il tramite della funzione HR con periodicità trimestrale, sulle informazioni risultanti dall'uso degli strumenti di lavoro, che potranno essere utilizzate a qualsiasi fine relativo al rapporto di lavoro, compreso quello disciplinare. La Società si riserva altresì la

facoltà di effettuare controlli a campione sulle informazioni risultanti dagli accessi in azienda, per il tramite della funzione HR, con periodicità trimestrale, che potranno essere utilizzate anche per la verifica della veridicità di quanto autocertificato dai lavoratori e per le eventuali azioni disciplinari.⁴¹¹ La Società si riserva altresì la facoltà di effettuare controlli a campione sulle informazioni risultanti dall'uso degli strumenti di lavoro e dagli accessi in azienda al fine di verificare il rispetto delle fasce di disconnessione pattuite.

20. La Società non fornirà alcun supporto aggiuntivo per svolgere la prestazione in modalità agile. In ogni caso, la strumentazione da Lei utilizzata per lo svolgimento della prestazione in smart working costituisce “strumento di lavoro”, disciplinato dal comma 2 dell'art. 4 della Legge n. 300/70 (c.d. Statuto dei lavoratori).
21. L'Azienda si impegna a fornirle adeguata informazione e formazione circa l'utilizzo delle apparecchiature, la corretta postazione di lavoro, i rischi generali e specifici, nonché le ottimali modalità di svolgimento dell'attività con riferimento alla protezione della persona.
22. Lei si impegna ad utilizzare gli strumenti forniti ed i programmi informatici messi a disposizione esclusivamente nell'interesse Aziendale, a rispettare le relative norme di sicurezza, a non manomettere in alcun modo detti strumenti e a non consentire ad altri l'utilizzo degli stessi, in ottemperanza alle linee guida aziendali in materia (*refer to existing policies*)
23. Lei si impegna a comunicare eventuali malfunzionamenti degli strumenti forniti dall'Azienda per l'espletamento dell'attività lavorativa entro due (2) ore dal verificarsi degli stessi. L'Azienda si riserva, in tal caso, di richiamarla in sede.
24. La manutenzione degli strumenti Aziendali resta a carico dell'Azienda.
25. L'adesione alla modalità di smart working sarà subordinata agli adempimenti di legge relativi alla formazione obbligatoria in materia di sicurezza sui rischi generali e specifici.
26. Nell'ambito del presente accordo individuale sarà applicata, per quanto compatibile, la disciplina sulla sicurezza e salute sui luoghi di lavoro prevista dal D. Lgs 81/2008, tenuto conto della specificità della prestazione lavorativa. L'Azienda garantirà tutte le misure ed azioni dirette a tutelare la salute nel quadro degli obblighi di legge e di contratto. In particolare, l'Azienda le consegnerà, con cadenza annuale, una informativa scritta nella quale saranno individuati i rischi generali e i rischi specifici connessi alla particolare modalità di esecuzione del rapporto di lavoro.
27. Alla prestazione lavorativa in remoto non si applicano le disposizioni di igiene e sicurezza in

⁴¹¹ Here it is advisable to provide a list of behaviours that could result in disciplinary actions, for example by recalling the contents of the information handling and data privacy policies and procedures in force.

materia di telelavoro, ai sensi del D. Lgs No. 81/2008, con particolare riferimento alla facoltà del datore di lavoro di ispezionare i luoghi presso cui si svolgerà la prestazione agile ex art. 3 comma 10 del suddetto Decreto Legislativo. In un'ottica di responsabilizzazione e fiducia, Lei non è infatti tenuto a comunicare all'Azienda i luoghi presso cui intende prestare opera da remoto. Si ribadisce altresì la Sua responsabilità di verificare che i locali presso i quali si svolgerà la prestazione agile e gli impianti ad esso asserviti siano a norma di legge e consentano lo svolgimento della prestazione lavorativa in sicurezza, sulla base della formazione ed informazione impartita dall'Azienda.

28. Lei ha diritto alla tutela contro gli infortuni sul lavoro e le malattie professionali dipendenti da rischi connessi alla prestazione lavorativa resa all'esterno dei locali aziendali nei limiti ed alle condizioni di cui al T.U. n. 1124/1965. Lei ha diritto alla tutela contro gli infortuni in itinere nei limiti ed alle condizioni di cui al T.U. n. 1124/1965 ed alla normativa vigente in materia di smart working. In caso di infortunio professionale occorso durante la prestazione lavorativa in modalità agile, Lei dovrà darne immediata comunicazione al proprio Line Manager, ad HR ed al RSPP secondo le modalità previste dall'Azienda, affinché possa attivare la procedura interna di infortunio, nonché trasmettere prontamente il certificato di infortunio ad HR, secondo le modalità previste dall'Azienda;
29. L'Azienda non potrà ritenersi responsabile in merito ad eventuali infortuni in cui Lei dovesse incorrere, qualora gli stessi siano riconducibili ad un uso improprio delle apparecchiature assegnate che generi situazioni di rischio nell'ambito della propria postazione di lavoro.
30. Lei si impegna a rispettare i requisiti minimi di idoneità dei locali adibiti ad attività lavorativa in smart working (si vedano indicazioni di dettaglio contenute nell'informativa allegata al presente accordo- All.1). A norma di legge e di contratto, Lei è tenuto alla più assoluta riservatezza sui dati e sulle informazioni Aziendali in Suo possesso e/o disponibili sul sistema informativo Aziendale e che conseguentemente dovrà adottare, in relazione alla particolare modalità della prestazione anche in modalità agile, ogni provvedimento idoneo a garantire tale riservatezza.
31. Lei, nella Sua qualità di "incaricato" del trattamento dei dati personali dovrà osservare tutte le istruzioni e misure di sicurezza impartite dalla Società. In particolare, Lei:
 - deve porre ogni cura per evitare che ai dati possano accedere persone non autorizzate presenti nel luogo di prestazione fuori sede;
 - deve procedere a bloccare, con password, il computer in dotazione in caso di allontanamento dalla postazione di lavoro, anche per un intervallo molto limitato di tempo;

- alla conclusione della prestazione lavorativa giornaliera è obbligato a conservare e tutelare i documenti eventualmente stampati, provvedendo alla loro eventuale distruzione solo una volta rientrato presso la abituale sede di lavoro;
 - qualora, invece, in via d'eccezione, al termine del lavoro risulti necessario trattenere presso il luogo di prestazione fuori sede materiale cartaceo contenente dati personali, lo stesso dovrà essere riposto in armadi, cassetti o altri contenitori muniti di serratura.
32. Lei è tenuto a trattare i dati personali cui accede per fini professionali in conformità alle istruzioni fornite dal datore di lavoro, nonché alla riservatezza su tutti i dati e le informazioni aziendali in Suo possesso e/o disponibili sul sistema informatico aziendale. Lei si impegna ad attenersi alle linee guida contenute nelle policy aziendali in materia di data privacy. Nel caso in cui dovesse riscontrare data breach e/o violazione del sistema aziendale da parte di terzi e/o accesso a dati aziendali da parte di terzi e/o qualsiasi problematica connessa alla diffusione di dati aziendali, dovrà comunicarlo immediatamente alla funzione preposta.
33. Il presente accordo è valido dalla data di trasmissione della comunicazione obbligatoria alle autorità competenti, che Le verrà comunicata via e-mail da HR. La possibilità di svolgimento dell'attività lavorativa in modalità "smart" è a tempo indeterminato. Sarà possibile il recesso con un preavviso di 90 giorni (lato azienda) e 30 giorni (lato Dipendente) attraverso comunicazione scritta da recapitare all'altra parte via e- mail a [*insert email address of the HR reference contact*] copia al Line Manager.
34. Nei casi seguenti il recesso potrà avvenire senza preavviso:
- Sua assegnazione a mansioni differenti da quelle per cui è stato concordato lo smart working o comunque riorganizzazione aziendale delle funzioni e delle mansioni che incida sul contenuto della Sua posizione;
 - mancato raggiungimento degli obiettivi di cui al piano annuale della performance;
 - mancato rispetto del regolamento aziendale sullo smart working nonché degli obblighi previsti nel presente accordo relativi, a titolo esemplificativo, alla sicurezza sul lavoro, alla riservatezza e sicurezza dei dati aziendali, alla pianificazione delle attività concordata col Suo line manager e dettagliata nel punto 10 del presente accordo.

Per quanto non espressamente previsto nel presente accordo si rimanda alle previsioni di legge.

Luogo, Data

Dipendente

Line Manager

Consigliere/a Delegato/a

All. 1 - INFORMATIVA SULLA SALUTE E SICUREZZA NEL LAVORO AGILE AI SENSI DELL'ART. 22, COMMA 1, L. 81/2017 ⁴¹²

⁴¹² This document is a customised version of the Informativa sulla salute e sicurezza nel lavoro agile ai sensi dell'Art. 22, Comma 1, L. 81/2017 published on www.inail.it. Further adjustments can be made, based on the specificity of the Company implementing Smart Working.

4.1. Allegato 1 INFORMATIVA SULLA SALUTE E SICUREZZA NEL LAVORO AGILE AI SENSI DELL'ART. 22, COMMA 1, L. 81/2017

Al lavoratore

Oggetto: informativa sulla sicurezza dei lavoratori (art. 22, comma 1, della legge 22 maggio 2017 n. 81)

AVVERTENZE GENERALI

Si informano i lavoratori degli obblighi e dei diritti previsti dalla legge del 22 maggio 2017 n. 81 e dal decreto legislativo del 9 aprile 2008 n. 81.

Sicurezza sul lavoro (art. 22 L. 81/2017)

1. Il datore di lavoro garantisce la salute e la sicurezza del lavoratore, che svolge la prestazione in modalità di lavoro agile, e a tal fine consegna al lavoratore e al rappresentante dei lavoratori per la sicurezza, con cadenza almeno annuale, un'informativa scritta, nella quale sono individuati i rischi generali e i rischi specifici connessi alla particolare modalità di esecuzione del rapporto di lavoro.

2. Il lavoratore è tenuto a cooperare all'attuazione delle misure di prevenzione predisposte dal datore di lavoro per fronteggiare i rischi connessi all'esecuzione della prestazione all'esterno dei locali aziendali.

Obblighi dei lavoratori (art. 20 D. Lgs. 81/2008)

1. Ogni lavoratore deve prendersi cura della propria salute e sicurezza e di quella delle altre persone presenti sul luogo di lavoro, su cui ricadono gli effetti delle sue azioni o omissioni, conformemente alla sua formazione, alle istruzioni e ai mezzi forniti dal datore di lavoro.

2. I lavoratori devono in particolare:

- a) contribuire, insieme al datore di lavoro, ai dirigenti e ai preposti, all'adempimento degli obblighi previsti a tutela della salute e sicurezza sui luoghi di lavoro;
- b) osservare le disposizioni e le istruzioni impartite dal datore di lavoro, dai dirigenti e dai preposti, ai fini della protezione collettiva ed individuale;
- c) utilizzare correttamente le attrezzature di lavoro, le sostanze e i preparati pericolosi, i mezzi di trasporto, nonché i dispositivi di sicurezza;
- d) utilizzare in modo appropriato i dispositivi di protezione messi a loro disposizione;

e) segnalare immediatamente al datore di lavoro, al dirigente o al preposto le deficienze dei mezzi e dei dispositivi di cui alle lettere c) e d), nonché qualsiasi eventuale condizione di pericolo di cui vengano a conoscenza, adoperandosi direttamente, in caso di urgenza, nell'ambito delle proprie competenze e possibilità e fatto salvo l'obbligo di cui alla lettera f) per eliminare o ridurre le situazioni di pericolo grave e incombente, dandone notizia al rappresentante dei lavoratori per la sicurezza;

f) non rimuovere o modificare senza autorizzazione i dispositivi di sicurezza o di segnalazione o di controllo;

g) non compiere di propria iniziativa operazioni o manovre che non sono di loro competenza ovvero che possono compromettere la sicurezza propria o di altri lavoratori;

h) partecipare ai programmi di formazione e di addestramento organizzati dal datore di lavoro;

i) sottoporsi ai controlli sanitari previsti dal D. Lgs. 81/2008 o comunque disposti dal medico competente.

3. I lavoratori di aziende che svolgono attività in regime di appalto o subappalto, devono esporre apposita tessera di riconoscimento, corredata di fotografia, contenente le generalità del lavoratore e l'indicazione del datore di lavoro. Tale obbligo grava anche in capo ai lavoratori autonomi che esercitano direttamente la propria attività nel medesimo luogo di lavoro, i quali sono tenuti a provvedervi per proprio conto.

In attuazione di quanto disposto dalla normativa in materia di salute e sicurezza sul lavoro, il Datore di Lavoro ha provveduto ad attuare le misure generali di tutela di cui all'art. 15 del T.U. sulla sicurezza; ha provveduto alla redazione del Documento di Valutazione di tutti i rischi presenti nella realtà lavorativa, ai sensi degli artt. 17 e 28 D. Lgs. 81/2008; ha provveduto alla formazione e informazione di tutti i lavoratori, ex artt. 36 e 37 del medesimo D. Lgs. 81/2008. Pertanto, di seguito, si procede alla analitica informazione, con specifico riferimento alle modalità di lavoro per lo *smart worker*.

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COMPORAMENTI DI PREVENZIONE GENERALE RICHIESTI ALLO *SMART WORKER*

- Cooperare con diligenza all'attuazione delle misure di prevenzione e protezione predisposte dal datore di lavoro (DL) per fronteggiare i rischi connessi all'esecuzione della prestazione in ambienti *indoor* e *outdoor* diversi da quelli di lavoro abituali.
- Non adottare condotte che possano generare rischi per la propria salute e sicurezza o per quella di terzi.

- Individuare, secondo le esigenze connesse alla prestazione stessa o dalla necessità del lavoratore di conciliare le esigenze di vita con quelle lavorative e adottando principi di ragionevolezza, i luoghi di lavoro per l'esecuzione della prestazione lavorativa in *smart working* rispettando le indicazioni previste dalla presente informativa.
- In ogni caso, evitare luoghi, ambienti, situazioni e circostanze da cui possa derivare un pericolo per la propria salute e sicurezza o per quella dei terzi.

Di seguito, le indicazioni che il lavoratore è tenuto ad osservare per prevenire i rischi per la salute e sicurezza legati allo svolgimento della prestazione in modalità di lavoro agile.

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CAPITOLO 1

INDICAZIONI RELATIVE ALLO SVOLGIMENTO DI ATTIVITA' LAVORATIVA IN AMBIENTI *OUTDOOR*

Nello svolgere l'attività all'aperto si richiama il lavoratore ad adottare un comportamento coscienzioso e prudente, escludendo luoghi che lo esporrebbero a rischi aggiuntivi rispetto a quelli specifici della propria attività svolta in luoghi chiusi.

È opportuno non lavorare con dispositivi elettronici come *tablet* e *smartphone* o similari all'aperto, soprattutto se si nota una diminuzione di visibilità dei caratteri sullo schermo rispetto all'uso in locali al chiuso dovuta alla maggiore luminosità ambientale.

All'aperto inoltre aumenta il rischio di riflessi sullo schermo o di abbagliamento.

Pertanto, le attività svolgibili all'aperto sono essenzialmente quelle di lettura di documenti cartacei o comunicazioni telefoniche o tramite servizi VOIP (ad es. Skype).

Fermo restando che va seguito il criterio di ragionevolezza nella scelta del luogo in cui svolgere la prestazione lavorativa, si raccomanda di:

- privilegiare luoghi ombreggiati per ridurre l'esposizione a radiazione solare ultravioletta (UV);
- evitare di esporsi a condizioni meteorologiche sfavorevoli quali caldo o freddo intenso;
- non frequentare aree con presenza di animali incustoditi o aree che non siano adeguatamente mantenute quali ad esempio aree verdi incolte, con degrado ambientale e/o con presenza di rifiuti;

- non svolgere l'attività in un luogo isolato in cui sia difficoltoso richiedere e ricevere soccorso;
- non svolgere l'attività in aree con presenza di sostanze combustibili e infiammabili (vedere capitolo 5);
- non svolgere l'attività in aree in cui non ci sia la possibilità di approvvigionarsi di acqua potabile;
- mettere in atto tutte le precauzioni che consuetamente si adottano svolgendo attività *outdoor* (ad es.: creme contro le punture, antistaminici, abbigliamento adeguato, quanto prescritto dal proprio medico per situazioni personali di maggiore sensibilità, intolleranza, allergia, ecc.), per quanto riguarda i potenziali pericoli da esposizione ad agenti biologici (ad es. morsi, graffi e punture di insetti o altri animali, esposizione ad allergeni pollinici, ecc.).

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CAPITOLO 2

INDICAZIONI RELATIVE AD AMBIENTI *INDOOR* PRIVATI

Di seguito vengono riportate le principali indicazioni relative ai requisiti igienico-sanitari previsti per i locali privati in cui possono operare i lavoratori destinati a svolgere il lavoro agile.

Raccomandazioni generali per i locali:

- le attività lavorative non possono essere svolte in locali tecnici o locali non abitabili (ad es. soffitte, seminterrati, rustici, box);
- adeguata disponibilità di servizi igienici e acqua potabile e presenza di impianti a norma (elettrico, termoidraulico, ecc.) adeguatamente mantenuti;
- le superfici interne delle pareti non devono presentare tracce di condensazione permanente (muffe);
- i locali, eccettuati quelli destinati a servizi igienici, disimpegni, corridoi, vani-scala e ripostigli debbono fruire di illuminazione naturale diretta, adeguata alla destinazione d'uso e, a tale scopo, devono avere una superficie finestrata idonea;
- i locali devono essere muniti di impianti di illuminazione artificiale, generale e localizzata, atti a garantire un adeguato comfort visivo agli occupanti.

Indicazioni per l'illuminazione naturale ed artificiale:

- si raccomanda, soprattutto nei mesi estivi, di schermare le finestre (ad es. con tendaggi, appropriato utilizzo delle tapparelle, ecc.) allo scopo di evitare l'abbagliamento e limitare l'esposizione diretta alle radiazioni solari;
- l'illuminazione generale e specifica (lampade da tavolo) deve essere tale da garantire un illuminamento sufficiente e un contrasto appropriato tra lo schermo e l'ambiente circostante.
- è importante collocare le lampade in modo tale da evitare abbagliamenti diretti e/o riflessi e la proiezione di ombre che ostacolano il compito visivo mentre si svolge l'attività lavorativa.

Indicazioni per l'aerazione naturale ed artificiale:

- è opportuno garantire il ricambio dell'aria naturale o con ventilazione meccanica;
- evitare di esporsi a correnti d'aria fastidiose che colpiscano una zona circoscritta del corpo (ad es. la nuca, le gambe, ecc.);
- gli eventuali impianti di condizionamento dell'aria devono essere a norma e regolarmente mantenuti; i sistemi filtranti dell'impianto e i recipienti eventuali per la raccolta della condensa, vanno regolarmente ispezionati e puliti e, se necessario, sostituiti;
- evitare di regolare la temperatura a livelli troppo alti o troppo bassi (a seconda della stagione) rispetto alla temperatura esterna;
- evitare l'inalazione attiva e passiva del fumo di tabacco, soprattutto negli ambienti chiusi, in quanto molto pericolosa per la salute umana.

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CAPITOLO 3

UTILIZZO SICURO DI ATTREZZATURE/DISPOSITIVI DI LAVORO

Di seguito vengono riportate le principali indicazioni relative ai requisiti e al corretto utilizzo di attrezzature/dispositivi di lavoro, con specifico riferimento a quelle consegnate ai lavoratori destinati a svolgere il lavoro agile: *notebook, tablet e smartphone*.

Indicazioni generali:

- conservare in luoghi in cui siano facilmente reperibili e consultabili il manuale/istruzioni per l'uso redatte dal fabbricante;

- leggere il manuale/istruzioni per l'uso prima dell'utilizzo dei dispositivi, seguire le indicazioni del costruttore/importatore e tenere a mente le informazioni riguardanti i principi di sicurezza;
- si raccomanda di utilizzare apparecchi elettrici integri, senza parti conduttrici in tensione accessibili (ad es. cavi di alimentazione con danni alla guaina isolante che rendano visibili i conduttori interni), e di interromperne immediatamente l'utilizzo in caso di emissione di scintille, fumo e/o odore di bruciato, provvedendo a spegnere l'apparecchio e disconnettere la spina dalla presa elettrica di alimentazione (se connesse);
- verificare periodicamente che le attrezzature siano integre e correttamente funzionanti, compresi i cavi elettrici e la spina di alimentazione;
- non collegare tra loro dispositivi o accessori incompatibili;
- effettuare la ricarica elettrica da prese di alimentazione integre e attraverso i dispositivi (cavi di collegamento, alimentatori) forniti in dotazione;
- disporre i cavi di alimentazione in modo da minimizzare il pericolo di inciampo;
- spegnere le attrezzature una volta terminati i lavori;
- controllare che tutte le attrezzature/dispositivi siano scollegate/i dall'impianto elettrico quando non utilizzati, specialmente per lunghi periodi;
- si raccomanda di collocare le attrezzature/dispositivi in modo da favorire la loro ventilazione e raffreddamento (non coperti e con le griglie di aerazione non ostruite) e di astenersi dall'uso nel caso di un loro anomalo riscaldamento;
- inserire le spine dei cavi di alimentazione delle attrezzature/dispositivi in prese compatibili (ad es. spine a poli allineati in prese a poli allineati, spine schuko in prese schuko). Utilizzare la presa solo se ben ancorata al muro e controllare che la spina sia completamente inserita nella presa a garanzia di un contatto certo ed ottimale;
- riporre le attrezzature in luogo sicuro, lontano da fonti di calore o di innesco, evitare di pigiare i cavi e di piegarli in corrispondenza delle giunzioni tra spina e cavo e tra cavo e connettore (la parte che serve per connettere l'attrezzatura al cavo di alimentazione);
- non effettuare operazioni di riparazione e manutenzione fai da te;
- lo schermo dei dispositivi è realizzato in vetro/cristallo e può rompersi in caso di caduta o a seguito di un forte urto. In caso di rottura dello schermo, evitare di toccare le schegge di vetro e non tentare di rimuovere il vetro rotto dal dispositivo; il dispositivo non dovrà essere usato fino a quando non sarà stato riparato;

- le batterie/accumulatori non vanno gettati nel fuoco (potrebbero esplodere), né smontati, tagliati, compressi, piegati, forati, danneggiati, manomessi, immersi o esposti all'acqua o altri liquidi;
- in caso di fuoriuscita di liquido dalle batterie/accumulatori, va evitato il contatto del liquido con la pelle o gli occhi; qualora si verificasse un contatto, la parte colpita va sciacquata immediatamente con abbondante acqua e va consultato un medico;
- segnalare tempestivamente al datore di lavoro eventuali malfunzionamenti, tenendo le attrezzature/dispositivi spenti e scollegati dall'impianto elettrico;
- è opportuno fare periodicamente delle brevi pause per distogliere la vista dallo schermo e sgranchirsi le gambe;
- è bene cambiare spesso posizione durante il lavoro anche sfruttando le caratteristiche di estrema maneggevolezza di tablet e smartphone, tenendo presente la possibilità di alternare la posizione eretta con quella seduta;
- prima di iniziare a lavorare, orientare lo schermo verificando che la posizione rispetto alle fonti di luce naturale e artificiale sia tale da non creare riflessi fastidiosi (come ad es. nel caso in cui l'operatore sia posizionato con le spalle rivolte ad una finestra non adeguatamente schermata o sotto un punto luce a soffitto) o abbagliamenti (ad es. evitare di sedersi di fronte ad una finestra non adeguatamente schermata);
- in una situazione corretta lo schermo è posto perpendicolarmente rispetto alla finestra e ad una distanza tale da evitare riflessi e abbagliamenti;
- i notebook, tablet e smartphone hanno uno schermo con una superficie molto riflettente (schermi lucidi o glossy) per garantire una resa ottimale dei colori; tenere presente che l'utilizzo di tali schermi può causare affaticamento visivo e pertanto:
 - regolare la luminosità e il contrasto sullo schermo in modo ottimale;
 - durante la lettura, distogliere spesso lo sguardo dallo schermo per fissare oggetti lontani, così come si fa quando si lavora normalmente al computer fisso;
 - in tutti i casi in cui i caratteri sullo schermo del dispositivo mobile siano troppo piccoli, è importante ingrandire i caratteri a schermo e utilizzare la funzione zoom per non affaticare gli occhi;
 - non lavorare mai al buio.

Indicazioni per il lavoro con il *notebook*

In caso di attività che comportino la redazione o la revisione di lunghi testi, tabelle o simili è opportuno l'impiego del *notebook* con le seguenti raccomandazioni:

- sistemare il notebook su un idoneo supporto che consenta lo stabile posizionamento dell'attrezzatura e un comodo appoggio degli avambracci;
- il sedile di lavoro deve essere stabile e deve permettere una posizione comoda. In caso di lavoro prolungato, la seduta deve avere bordi smussati;
- è importante stare seduti con un comodo appoggio della zona lombare e su una seduta non rigida (eventualmente utilizzare dei cuscini poco spessi);
- durante il lavoro con il notebook, la schiena va mantenuta poggiata al sedile provvisto di supporto per la zona lombare, evitando di piegarla in avanti;
- mantenere gli avambracci, i polsi e le mani allineati durante l'uso della tastiera, evitando di piegare o angolare i polsi;
- è opportuno che gli avambracci siano appoggiati sul piano e non tenuti sospesi;
- utilizzare un piano di lavoro stabile, con una superficie a basso indice di riflessione, con altezza sufficiente per permettere l'alloggiamento e il movimento degli arti inferiori, in grado di consentire cambiamenti di posizione nonché l'ingresso del sedile e dei braccioli, se presenti, e permettere una disposizione comoda del dispositivo (notebook), dei documenti e del materiale accessorio;
- l'altezza del piano di lavoro e della seduta devono essere tali da consentire all'operatore in posizione seduta di avere gli angoli braccio/avambraccio e gamba/coscia ciascuno a circa 90°;
- la profondità del piano di lavoro deve essere tale da assicurare una adeguata distanza visiva dallo schermo;
- in base alla statura, e se necessario per mantenere un angolo di 90° tra gamba e coscia, creare un poggiapiedi con un oggetto di dimensioni opportune.

In caso di uso su mezzi di trasporto (treni/aerei/ navi) in qualità di passeggeri o in locali pubblici:

- è possibile lavorare in un locale pubblico o in viaggio solo ove le condizioni siano sufficientemente confortevoli ed ergonomiche, prestando particolare attenzione alla comodità della seduta, all'appoggio lombare e alla posizione delle braccia rispetto al tavolino di appoggio;

- evitare lavori prolungati nel caso l'altezza della seduta sia troppo bassa o alta rispetto al piano di appoggio del notebook;
- osservare le disposizioni impartite dal personale viaggiante (autisti, controllori, personale di volo, ecc.);
- nelle imbarcazioni il notebook è utilizzabile solo nei casi in cui sia possibile predisporre una idonea postazione di lavoro al chiuso e in assenza di rollio/beccheggio della nave;
- se fosse necessario ricaricare, e se esistono prese elettriche per la ricarica dei dispositivi mobili a disposizione dei clienti, verificare che la presa non sia danneggiata e che sia normalmente ancorata al suo supporto parete;
- non utilizzare il notebook su autobus/tram, metropolitane, taxi e in macchina anche se si è passeggeri.

Indicazioni per il lavoro con *tablet* e *smartphone*

I *tablet* sono idonei prevalentemente alla gestione della posta elettronica e della documentazione, mentre gli *smartphone* sono idonei essenzialmente alla gestione della posta elettronica e alla lettura di brevi documenti.

In caso di impiego di *tablet* e *smartphone* si raccomanda di:

- effettuare frequenti pause, limitando il tempo di digitazione continuata;
- evitare di utilizzare questi dispositivi per scrivere lunghi testi;
- evitare di utilizzare tali attrezzature mentre si cammina, salvo che per rispondere a chiamate vocali prediligendo l'utilizzo dell'auricolare;
- per prevenire l'affaticamento visivo, evitare attività prolungate di lettura sullo smartphone;
- effettuare periodicamente esercizi di allungamento dei muscoli della mano e del pollice (stretching).

Indicazioni per l'utilizzo sicuro dello *smartphone* come telefono cellulare

- È bene utilizzare l'auricolare durante le chiamate, evitando di tenere il volume su livelli elevati;
- spegnere il dispositivo nelle aree in cui è vietato l'uso di telefoni cellulari/smartphone o quando può causare interferenze o situazioni di pericolo (in aereo, strutture sanitarie, luoghi a rischio di incendio/esplosione, ecc.);

- al fine di evitare potenziali interferenze con apparecchiature mediche impiantate seguire le indicazioni del medico competente e le specifiche indicazioni del produttore/importatore dell'apparecchiatura.
- I dispositivi potrebbero interferire con gli apparecchi acustici. A tal fine:
- non tenere i dispositivi nel taschino;
- in caso di utilizzo posizionarli sull'orecchio opposto rispetto a quello su cui è installato l'apparecchio acustico;
- evitare di usare il dispositivo in caso di sospetta interferenza;
- un portatore di apparecchi acustici che usasse l'auricolare collegato al telefono/smartphone potrebbe avere difficoltà nell'udire i suoni dell'ambiente circostante. Non usare l'auricolare se questo può mettere a rischio la propria e l'altrui sicurezza.

Nel caso in cui ci si trovi all'interno di un veicolo:

- lo smartphone può essere utilizzato esclusivamente se NON si è alla guida.
- inviare e leggere i messaggi solo durante le fermate in area di sosta o di servizio o se si viaggia in qualità di passeggeri.
- non tenere o trasportare liquidi infiammabili o materiali esplosivi in prossimità del dispositivo, dei suoi componenti o dei suoi accessori.

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CAPITOLO 4

INDICAZIONI RELATIVE A REQUISITI E CORRETTO UTILIZZO DI IMPIANTI ELETTRICI

Indicazioni relative ai requisiti e al corretto utilizzo di impianti elettrici, apparecchi/dispositivi elettrici utilizzatori, dispositivi di connessione elettrica temporanea.

Impianto elettrico

A. Requisiti:

- 1) i componenti dell'impianto elettrico utilizzato (prese, interruttori, ecc.) devono apparire privi di parti danneggiate;
- 2) le sue parti conduttrici in tensione non devono essere accessibili (ad es. a causa di scatole di derivazione prive di coperchio di chiusura o con coperchio danneggiato, di scatole per prese o interruttori prive di alcuni componenti, di canaline portacavi a vista prive di coperchi di chiusura o con coperchi danneggiati);

3) le parti dell'impianto devono risultare asciutte, pulite e non devono prodursi scintille, odori di bruciato e/o fumo;

4) nel caso di utilizzo della rete elettrica in locali privati, è necessario conoscere l'ubicazione del quadro elettrico e la funzione degli interruttori in esso contenuti per poter disconnettere la rete elettrica in caso di emergenza;

B. Indicazioni di corretto utilizzo:

- è buona norma che le zone antistanti i quadri elettrici, le prese e gli interruttori siano tenute sgombre e accessibili;
- evitare di accumulare o accostare materiali infiammabili (carta, stoffe, materiali sintetici di facile innesco, buste di plastica, ecc.) a ridosso dei componenti dell'impianto, e in particolare delle prese elettriche a parete, per evitare il rischio di incendio;
- è importante posizionare le lampade, specialmente quelle da tavolo, in modo tale che non vi sia contatto con materiali infiammabili.

Dispositivi di connessione elettrica temporanea

(prolunghe, adattatori, prese a ricettività multipla, avvolgicavo, ecc.).

A. Requisiti:

- i dispositivi di connessione elettrica temporanea devono essere dotati di informazioni (targhetta) indicanti almeno la tensione nominale (ad es. 220-240 Volt), la corrente nominale (ad es. 10 Ampere) e la potenza massima ammissibile (ad es. 1500 Watt);
- i dispositivi di connessione elettrica temporanea che si intende utilizzare devono essere integri (la guaina del cavo, le prese e le spine non devono essere danneggiate), non avere parti conduttrici scoperte (a spina inserita), non devono emettere scintille, fumo e/o odore di bruciato durante il funzionamento.

B. Indicazioni di corretto utilizzo:

- l'utilizzo di dispositivi di connessione elettrica temporanea deve essere ridotto al minimo indispensabile e preferibilmente solo quando non siano disponibili punti di alimentazione più vicini e idonei;
- le prese e le spine degli apparecchi elettrici, dei dispositivi di connessione elettrica temporanea e dell'impianto elettrico devono essere compatibili tra loro (spine a poli allineati in prese a poli allineati, spine schuko in prese schuko) e, nel funzionamento, le spine devono essere inserite completamente nelle prese, in modo da evitare il danneggiamento delle prese e garantire un contatto certo;

- evitare di piegare, schiacciare, tirare prolunghe, spine, ecc.;
- disporre i cavi di alimentazione e/o le eventuali prolunghe con attenzione, in modo da minimizzare il pericolo di inciampo;
- verificare sempre che la potenza ammissibile dei dispositivi di connessione elettrica temporanea (ad es. presa multipla con 1500 Watt) sia maggiore della somma delle potenze assorbite dagli apparecchi elettrici collegati (ad es. PC 300 Watt + stampante 1000 Watt);
- fare attenzione a che i dispositivi di connessione elettrica temporanea non risultino particolarmente caldi durante il loro funzionamento;
- srotolare i cavi il più possibile o comunque disporli in modo tale da esporre la maggiore superficie libera per smaltire il calore prodotto durante il loro impiego.

CAPITOLO 5

INFORMATIVA RELATIVA AL RISCHIO INCENDI PER IL LAVORO “AGILE”

Indicazioni generali:

- identificare il luogo di lavoro (indirizzo esatto) e avere a disposizione i principali numeri telefonici dei soccorsi nazionali e locali (VVF, Polizia, ospedali, ecc.);
- prestare attenzione ad apparecchi di cottura e riscaldamento dotati di resistenza elettrica a vista o a fiamma libera (alimentati a combustibili solidi, liquidi o gassosi) in quanto possibili focolai di incendio e di rischio ustione. Inoltre, tenere presente che questi ultimi necessitano di adeguati ricambi d’aria per l’eliminazione dei gas combustivi;
- rispettare il divieto di fumo laddove presente;
- non gettare mozziconi accesi nelle aree a verde all’esterno, nei vasi con piante e nei contenitori destinati ai rifiuti;
- non ostruire le vie di esodo e non bloccare la chiusura delle eventuali porte tagliafuoco.

Comportamento per principio di incendio:

- mantenere la calma;
- disattivare le utenze presenti (PC, termoconvettori, apparecchiature elettriche) staccandone anche le spine;
- avvertire i presenti all’interno dell’edificio o nelle zone circostanti *outdoor*, chiedere aiuto e, nel caso si valuti l’impossibilità di agire, chiamare i soccorsi telefonicamente (VVF, Polizia, ecc.), fornendo loro cognome, luogo dell’evento, situazione, affollamento, ecc.;

- se l'evento lo permette, in attesa o meno dell'arrivo di aiuto o dei soccorsi, provare a spegnere l'incendio attraverso i mezzi di estinzione presenti (acquaⁱ, coperteⁱⁱ, estintoriⁱⁱⁱ, ecc.);
- non utilizzare acqua per estinguere l'incendio su apparecchiature o parti di impianto elettrico o quantomeno prima di avere disattivato la tensione dal quadro elettrico;
- se non si riesce ad estinguere l'incendio, abbandonare il luogo dell'evento (chiudendo le porte dietro di sé ma non a chiave) e aspettare all'esterno l'arrivo dei soccorsi per fornire indicazioni;
- se non è possibile abbandonare l'edificio, chiudersi all'interno di un'altra stanza tamponando la porta con panni umidi, se disponibili, per ostacolare la diffusione dei fumi all'interno, aprire la finestra e segnalare la propria presenza.

Nel caso si svolga lavoro agile in luogo pubblico o come ospiti in altro luogo di lavoro privato è importante:

- accertarsi dell'esistenza di divieti e limitazioni di esercizio imposti dalle strutture e rispettarli;
- prendere visione, soprattutto nel piano dove si è collocati, delle piantine particolareggiate a parete, della dislocazione dei mezzi antincendio, dei pulsanti di allarme, delle vie di esodo;
- visualizzare i numeri di emergenza interni che sono in genere riportati sulle piantine a parete (addetti lotta antincendio/emergenze/coordinatore per l'emergenza, ecc.);

ⁱ È idonea allo spegnimento di incendi di manufatti in legno o in stoffa ma non per incendi che originano dall'impianto o da attrezzature elettriche.

ⁱⁱ In caso di principi di incendio dell'impianto elettrico o di altro tipo (purché si tratti di piccoli focolai) si possono utilizzare le coperte ignifughe o, in loro assenza, coperte di lana o di cotone spesso (evitare assolutamente materiali sintetici o di piume come i *pile* e i piumini) per soffocare il focolaio (si impedisce l'arrivo di ossigeno alla fiamma). Se particolarmente piccolo il focolaio può essere soffocato anche con un recipiente di metallo (ad es. un coperchio o una pentola di acciaio rovesciata).

ⁱⁱⁱ ESTINTORI A POLVERE (ABC)

Sono idonei per spegnere i fuochi generati da sostanze solide che formano bruce (fuochi di classe A), da sostanze liquide (fuochi di classe B) e da sostanze gassose (fuochi di classe C). Gli estintori a polvere sono utilizzabili per lo spegnimento dei principi d'incendio di ogni sostanza anche in presenza d'impianti elettrici in tensione.

ESTINTORI AD ANIDRIDE CARBONICA (CO₂)

Sono idonei allo spegnimento di sostanze liquide (fuochi di classe B) e fuochi di sostanze gassose (fuochi di classe C); possono essere usati anche in presenza di impianti elettrici in tensione. Occorre prestare molta attenzione all'eccessivo raffreddamento che genera il gas: ustione da freddo alle persone e possibili rotture su elementi caldi (ad es.: motori o parti metalliche calde potrebbero rompersi per eccessivo raffreddamento superficiale). Non sono indicati per spegnere fuochi di classe A (sostanze solide che formano bruce). A causa dell'elevata pressione interna l'estintore a CO₂ risulta molto più pesante degli altri estintori a pari quantità di estinguente.

ISTRUZIONI PER L'UTILIZZO DELL'ESTINTORE

- sganciare l'estintore dall'eventuale supporto e porlo a terra;
- rompere il sigillo ed estrarre la spinetta di sicurezza;
- impugnare il tubo erogatore o manichetta;
- con l'altra mano, impugnata la maniglia dell'estintore, premere la valvola di apertura;
- dirigere il getto alla base delle fiamme premendo la leva prima ad intermittenza e poi con maggiore progressione;
- iniziare lo spegnimento delle fiamme più vicine a sé e solo dopo verso il focolaio principale.

- leggere attentamente le indicazioni scritte e quelle grafiche riportate in planimetria;
- rispettare il divieto di fumo;
- evitare di creare ingombri alla circolazione lungo le vie di esodo;
- segnalare al responsabile del luogo o ai lavoratori designati quali addetti ogni evento pericoloso, per persone e cose, rilevato nell'ambiente occupato.

CAPITOLO 6^{iv}

L'AFFATICAMENTO ED I CARICHI DI LAVORO

Il termine stress (letteralmente, *sforzo*) indica sia la tensione nervosa, l'affaticamento che l'insieme delle condizioni che li determinano. Nella definizione di stress sono compresi non solo i fattori legati in modo specifico all'attività, ma anche tutti i fattori ambientali e psicosociali di contorno, sia stabili nel tempo che occasionali.

Per fronteggiare tutte le situazioni, l'individuo mette in atto le proprie strategie comportamentali. Gli stili di coping dipendono dalle caratteristiche del soggetto e dalle esperienze personali. Da ciò consegue la soggettività nella risposta allo stress.

Lo stress non è quindi una malattia, ma una modalità fisiologica di adattamento (risposta) dell'individuo all'ambiente. Si individuano due tipi di stress: **eustress** (o stress positivo) e **distress** (o stress negativo). Mentre il primo può fungere da elemento motivatore e da propulsore di attività, il secondo può verificarsi quando le richieste sono eccessivamente intense o quando durano troppo a lungo, superando quindi le possibilità di compensazione del soggetto.

Lo stress-lavoro correlato si intende quindi come una percezione di squilibrio da parte del lavoratore tra le richieste ricevute dall'organizzazione e le risorse a disposizione per adempiere alle richieste in questione.

Lo strain mentale, effetto dello stress mentale, è una risposta immediata alla sollecitazione, e viene influenzata anche dagli stili personali, i modi di risposta alle influenze esterne, specifici per ogni individuo, che risentono della storia e delle abitudini personali.

Indicazioni generali sulla gestione del tempo:

- Attenzione al rispetto delle pause previste. Evitare di caricarsi di lavoro in maniera non gestibile
- Rispettare le fasce di disconnessione pattuite col proprio Line Manager

^{iv} This section can be customised based on the assessment of psychosocial risks carried out by each organisation.

- Evitare l'uso non corretto di «app» che possono far perdere la cognizione del tempo distraendo dal lavoro.
- [...] ^v

*** **

Il lavoratore dichiara di ricevere la presente informativa ai sensi di legge, di attenersi diligentemente ai comportamenti indicati nella stessa nonché nell'accordo sottoscritto e di cooperare, secondo quanto impartito nell'ambito della formazione ricevuta, all'attuazione delle misure di prevenzione predisposte dal datore di lavoro, anche secondo quanto disposto dall'art. 20 del D.lgs. n. 81/2008.

Data --/--/----

Firma del Lavoratore per ricevuta

^v Customise with guidelines agreed with the OHS function, also based on the outcome of the work-related stress assessment carried out in the Company.

5. Study Limitations and Opportunities for Future Research

This Doctoral Thesis, although born in relation with the specific nature of Flexible Working Arrangements adopted in Tetra Pak Italy, aimed at addressing a big question mark connected to smart working, namely, how to make sure this flexible working arrangement can truly benefit employees, companies and society, maximising productivity and sustainability without negatively affecting employees' health and work-life balance but rather boosting their wellbeing in the organisation.

On drawing attention to a few selected problems and grey areas connected to smart working, with specific reference to the issues Tetra Pak Italy had to face in the implementation of its own smart working model, the research has intended to provide some practical answers to the main issues emerged, which can hopefully benefit other corporations that may be willing to explore flexible working in the future.

Of course, there are many aspects of smart working that have not been taken into consideration, like for instance the feasibility and implications in terms of compliance of international remote working, let alone the privacy and data protection implications of smart working, which have only been touched upon very briefly in this doctoral thesis, but nonetheless deserve further investigation. Another aspect that this work has not analysed is the impact of smart working on the environment, which would be an interesting topic to deal with.

Moreover, an additional field for research could be a follow-up investigation of the effectiveness of the Model outlined in this Doctoral Thesis, once implemented, by means of qualitative research (semi-structured interviews) targeting end users of the Model itself to double check whether productivity both at an individual and company level as well as the organisational well-being actually improved after the implementation of the Model.

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