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TELEWORKING AND SMART WORKING
THEORY, COMPARISON AND PRAXIS



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ABSTRACT

This thesis aims to analyze the development of two new forms of execution of the working performance: teleworking and smart working. In particular, the first chapter focuses on a multidisciplinary analysis of teleworking, under a social, legal and economic dimension. The second section of this thesis describes the features of the most recent flexible modality of execution of the working activity, smart working, by trying to emphasize the differences with the institute of teleworking. Finally, the thesis offers a qualitative overview of some examples of implementation of teleworking and smart working.

Key words: teleworking – smart working – comparison – Italy – right to be disconnected – praxis.

INTRODUCTION

New Information and Communication Technologies (ICT) have revolutionized work and life in the 21st century. They, in fact, allow people to connect with friends and family, as well as with work colleagues and supervisors, at any points in time; they also facilitate sharing of spaces and times, normally reserved for personal life, within the work world.

Nowadays, office work and, more broadly, work knowledge, is supported by the Internet and it can be carried out from practically any location and at any time: technology does not substitute human work, but it enriches it and makes it more effective (Méda, 2016).

This spatial innovation has transformed the role of technology in the work environment, offering both new opportunities and challenges.

Contemporary societies try to overstep boundaries that space and time impose on people's relationships, through new technologies of information which allow quick communication links among very distant points in space. In this perspective of challenge, modalities of work that are independent from the physical location of structures and resources and closer to the needs of individuals and the community as a whole are planned.

Information Society is always more characterized by forms of work linked to technology and consequences of this transformation are the delocalization and globalization of productive processes.

Traditional models, in fact, are becoming less important and the emphasis on results to reach prevails on the presence into the place of work; besides, hierarchical structures well defined are substituted by workers' autonomy in order to promote creativity and innovation (Weiss, 2016).

This is the perspective of teleworking, thanks to which a new conception of working activities, that reverses the relationship of distance among subjects and places of employment and assigns a different nature to the physical – spatial – temporal dimension, has been created. The relationship of distance does not refer to home, but it refers to offices, workshops, factories: by far we mean a job outside the office and located near the worker's residence or home. According to ILO (International Labor Organization), teleworking «is carried out at remote location from the central office or production centre and it implies a new technology which allows the separation and facilitates communications» (Gaeta, 1998).

Moreover, not all activities may be decentralized with teleworking: some of them need to be performed only in the offices or departments. Nevertheless, this kind of work produces advantages for companies, in terms of organizational flexibility and localization

and transport costs reduction, and also for workers with the regard to the improvement of the quality of work – life, organizational autonomy and the possibility to organize working time with other activities. So, the main features of this form of work are:

- the distance among subjects that are involved in the relationship, such as employees, employers, customers) who act in a space technically but not physically close;
- the functional interdependence among individuals, which expands the organizational context beyond the physical perimeter of traditional environments;
- the operative interconnection, thanks to the use of technologies, which allow either the autonomy of workers or the relationship with colleagues and employers;
- the flexibility in the way in which to manage the work (Scarpitti, 1998).

This thesis aims to describe the impact of teleworking in the labor market, either at a national level, with regard to Italy, or at the EU level.

First of all, the thesis shows the normative source through which teleworking is disciplined; secondly, it focuses on the Italian labor market, where, within the private sector, the collective bargaining takes place, while, with the regard to the public sector, there have been several administrative interventions; thirdly, the thesis tries to describe a new flexible modality of subordinate employment and its performance relationship, smart working, whose objective is to promote the increase of productivity and conciliation of work – life times: it is not a new form of teleworking, rather it seems to be a substantial evolution of it; the analysis also includes some considerations about the «right to be disconnected». Furthermore, the thesis offers a European comparative analysis, with the purpose of underlining the differences among different countries, for example with regard to economic sector, gender, individual and organizational performance.

In the last part of the thesis there are some examples of implementation of teleworking and smart working, in order to better understand the main elements of these kinds of flexible employment relationship. The aim is also to answer radical challenges which affect «how people work»: the work place with its telematic technologies does not necessarily correspond with the company's location and the performance may also be achieved outside its own home.

The concept of teleworking was defined for the first time in 2002, by the European Framework Agreement on Teleworking, in Brussels, with the intent to establish a general structure at a European level.

«A cup of coffee, tracksuit, slippers and computer. Often a work day of a person who works from home starts in this way: jacket and tie stay in the wardrobe.»

CHAPTER I – A MULTIDISCIPLINARY ANALYSIS ON TELEWORKING: SOCIAL, LEGAL AND ECONOMIC PERSPECTIVES

1. PREMISE

Teleworking is a particular form of working organization able to offer particular advantages either to enterprises or workers. It allows to companies to increase productivity and efficiency, to reduce management expenses (mostly those related to purchase or rent of company premises), to obtain a greater operative flexibility and to decrease the turnover of personnel, by holding back employees that, for objective (business transfer) or subjective reasons may not longer remain in the company. At the same time, teleworking offers workers the possibility to manage in a more flexible way working time, by choosing with more freedom working rhythms and places and it also allows to have a greater free time, thanks to the elimination or reduction of the time taken to reach the working place; working at home, besides, allows a greater presence in the familiar ambit.

The term teleworking was coined in 1973 in the U.S.A. by Jack Nilles and it identifies generally that type of activity characterized by the use of telecommunication and information technologies and by the distance from the principal location of the company (Toriello, 2012).

2. A SOCIAL INTRODUCTION

Under a social point of view, it is widespread the conviction according to which the acceleration of competition and globalization of markets, which is determined by technological innovations mostly in the field of information technologies and telecommunications, considerably affects on processes of «flexibility» of productive organizations, by entailing, at the same time, a reorganization of working relations with refer to time, space and hierarchies.

2.1 FLEXIBILITY AND TELEWORKING

In a such context, the «flexibility» characterizes the general system, by influencing the development of a complex post – industrial society marked by an epoch based by the leading role undertaken by services and «soft work» (planning, research, elaboration and distribution of data and information, production of know – how) and by the use of automated systems which substitute the routine work (Castronovo, 2007).

Flexibility may be conceived in differently. It may be saw as a set of business policies, according to which necessary things and energies for production, and among these working

activities, are acquired outside when they are effectively usable, in a measure effectively necessary, with a negotiable price, without commitments for the future.

Furthermore, in the ambit of working relationships, «flexibility» may also mean emersion of atypical forms of performing working activity with respect to those traditional.

Within a research of a notion legally and systematically based, teleworking plays an important role under a double aspect. First of all, those personal working activities released from spatial, temporal and hierarchical dimension stand out and they link with the organization of enterprises through telematic instruments, by projecting the organization of work towards strongly innovative models; under another aspect, the influences of telematic organization of the work in the enterprise on the complex organization of the work in the society may not be ignored, since they may be also used as a general social safety net.

Teleworking, in fact, is considered as a remedy against the employment crisis to contrast, in the long period, the drain of working places, even if, according to other opinions, information technologies could simply activate processes of automation and destruction of working places.

Nevertheless, according to Martin Bangemann¹ the new ways of working, and in particular teleworking, may help to better distribute possibilities of employment, by contributing to overcome numerous obstacles to occupation. The opportunity for employees to perform their working activity far away from the traditional place of work contributes to reduce costs related to transfer and fixed costs of companies.

Teleworking, thus, increases productivity of enterprises without reducing working force, by also improving environmental problems and urban areas; in addition, it is a way of working which, in many cases, better adapt itself to new and always variable needs of individuals and enterprises, which live and operate in a society of information and knowledge. These needs include a challenge towards modalities of working always more organized for projects, an increasing need of mobility and flexibility, the necessity of having in real time the information more recent, and the capability to adapt to rapid challenges of scenario (Flammia, 1996).

2.2 RESISTANCES AGAINST TELEWORKING

Nevertheless teleworking is an actualizing instrument of «flexibility», according to features analyzed before, expectations related to the diffusion of the organizational model have been going disappointed in part, since teleworking may generate profound

¹ Commissioner of European Union for industrial affairs and for technologies of information and telecommunications.

modifications into the organizations of enterprises, hierarchical models, professional training and workers' familiar relationships.

Under a juridical point of view, inside the «living law²» there are strong resistances opposed to teleworking in respect to the rigid scheme of subordination directly linked with the methods of traditional production that are regulated by quantity and realization of standardized products.

According to some doctrinal orientations, the figure of subordinated worker, because of the advent of flexible organizational models of post – industrial production, makes uncertain the meaning of subordination (D'Antona, 1995).

According to the Constitutional Court³, subordination in strict sense is a concept qualitatively different from subordination comparable in other working contracts; particularly, the difference is determined by the combination of two conditions which in other cases are never joined: the alienation⁴ of the result of the working activity performed and the alienation of productive organization in which the performance is inserted.

Concerning the teleworker, you may observe that he has an interest in performing his activity in compliance with the quality supplied by the enterprise: teleworker, although he is extraneous with respect to space, time and hierarchy, he is not extraneous to the scope of productive organization and he, thus, participates to the interest for which the teleworked activity is carried out.

The new model, first of all, is different from the traditional subordinated work since the productive organization, in which teleworking is inserted, is not extraneous rather participated, mostly when a business program or a project are realized through telematic instruments.

Furthermore, the difference between teleworking and subordinated work is also marked by the constitutional text: Article 35, paragraph 1) of Italian Constitution, in fact, foresees that «Republic safeguards work in all its forms and applications».

Consequently, you could not negate the power of ordinary legislator to regulate, in different forms, different kinds of working performances, by taking into account either the technological and organizational evolution of enterprises or safeguard needs of fundamental personal values⁵.

The Italian republic recognizes everyone the right to work and it promotes conditions that make it effective (Article 4, paragraph 1, Cost.); work serves to guarantee a right

² Judges' interpretations.

³ Constitutional Court, Sentence 12th February 1996, n. 30.

⁴ In the sense of exclusive destination to others.

⁵ Constitutional Court, Sentence 24th July 1995, n. 365.

retribution (Article 36 Cost.) but, at the same time, the effective participation to the society to develop people (Article 3 Cost).

Job is, besides participation, the only means – right/duty – of contributing to the material or spiritual progress of the society. Job is the society, which exists only because there is a social organization (Miscione, 2009).

2.3 INFORMATION SOCIETY AND TELEWORKING

Teleworking, in fact, must be connected in the most broad concept of Information Society which affects work not only in relation to different modalities of performances deriving from technologies but, in a communitarian perspective, in compliance with European Strategy for Occupation, mostly on the quality of work (better jobs) and on the reaction capacity of worker to challenges, that are always more unexpected, of the labor market (Biagi and Treu, 2002).

The preamble of European Framework Agreement on Teleworking, in fact, reports the two fundamental elements of connection between Information Society and teleworking.

First of all there is the communitarian intent «in the framework of the European Strategy for Occupation to negotiate agreements direct to modernize work organization and to guarantee the necessary equilibrium between flexibility and security, by making the most of the possibilities inherent in the information society, to improve working quality and to offer to disabled people broader opportunities in the labor market».

Capacity of worker's vulnerability reduction to labor market challenges means, thus, to allow harmony, in the working experience, between flexibility and security.

Information Society offers, in this sense, the opportunity to improve productivity and prosperity through new modalities of working organization. Teleworking, in fact, owns an extraordinary capacity of constituting itself according to forms which adapt to the single case, whose juridical nature, by following a development related to that of Information Society, which moves from remote teleworking to home – based teleworking, multi – sites teleworking, autonomous teleworking, mobile teleworking.

These observations conduct to confirm the idea according to which in the teleworking definition you have to focalize, rather than the place of performance execution, the working performance carried out via telematic, by taking into account the necessary aid of a technological working station which varies in relation to the business organization and technological science evolution of that precise historical and technological circumstance.

Teleworking assumes so a fundamental role to guarantee the possibility of developing, in conditions of effectiveness, an organization that uses standard practice of active

groupware (Fornari, 2007).

The working performance via telematic, thus, is required and carried out to meet new necessities of Information Society and to conciliate individual needs with those of the working organization: the implementation of the spatial – temporal disassociation of worker from the working community of belonging derives from this context.

The quality of Information Society directly affects the quality of performed work.

Teleworking is, in this perspective, oriented to improve quality of work through the most effective conciliation of working times with those of private life. The quality of work, in fact, is situated by the European Commission in the centre of the European social model.

Promoting working quality means, according to this orientation, to realize the objectives of a better occupation and to develop a competitive and inclusive market of knowledge.

The notion of the quality of performed work, which is multi – dimensional, refers to objective features of work (the context in which it is carried out) and subjective characteristics of worker regarding the work to be performed and the intersection between the required professional skills and that of the worker.

Teleworking is, thus, a privileged modality or realization of this quality of work in terms of flexibility and form of conciliation between working and private life time (Faioli, 2006).

2.4 TELEWORKING AND GENDER PERSPECTIVE

Under the social perspective, everything must therefore lead to work no longer to increase the quantity of work performed but, mostly, in view of an improvement in the quality of the work itself: qualitative increasing of worker's life and qualitative development of the service provided. To do this it is necessary to strengthen leadership especially for women in the processes of change. This also due the epochal transformation which has been characterizing labor market in the last decades, as consequence of the growing presence in it of women.

The work demand is moving towards the feminine universe precisely because of challenges in technology and structures itself of the economic system (Fornego, 2003).

The entry of women is today facilitated by the significant weight taken on by the employable and intellectual work compared to the manual one. A new role rests with the managers who are within whom contacts will be more than virtual, while responsibilities on services provided and, in general, on results will continuing to be real (Cecora, 1999).

This new form of working organization is an effective instrument aimed also at

favoring the increasing of the presence of women into the decisional positions, mostly noting that organizations are needed different kinds of leadership that are not absolutely based on characteristics well defined, but the fundamental point resides in the malleable propensity to the result: control on workers will no longer be based on their physical presence but on the quality of work carried out.

3. TYPOLOGIES OF TELEWORKING

Teleworking is, thus, a particular modality of organization and execution of remote working performance which is characterized by the constant use of telecommunication networks for the connection between worker and employer. The empirical data that distinguishes the phenomena in exam consists, thus, into the performance of remote working activity with respect to the productive centre, through telematic and information technology instruments. In other words, to identify this particular case it is sufficient the presence of these elements: a) delocalization of the activity with respect to the working location; b) the use of telematic and information technology instruments in performing the working activity; c) systematic nature of work carried out at a distance. The correct reference is the so called «digital workplace»: as technology evolves, the physical space which has been known as «the office» has been becoming less and less important. This consideration is fundamental because it allows to understand as the elements of normative regulation of the traditional work relationship have to be reevaluated through the technological paradigm that regulates the work relationship (Stanchi, 2009).

Teleworking, however, does not constitute a further genus in addition to traditional categories of subordinate and autonomous work, but it is only a flexible form of working activity that, according to concrete modalities of execution, will have to be carried over to one of the indicated categories rather than the other.

The prevailing doctrine has identified the following figures of teleworkers characterized by increasing levels of safeguard:

- Intrapreneur – teleworker: performance is qualified as entrepreneurial activity under art. 2082 c.c., when it is performed by a subject that makes use of its own organization of means and persons;
- Autonomous – teleworker: teleworker, under art. 2222 c.c., only uses the auxiliary means of external labor and/or equipments and he performs his working activity without any duty of subordination with the employer;
- Para – subordinate teleworker: teleworker performs his working activity in continuative and coordinated way, for his employer, and he is potentially free in

organizing his activity in which the prevalent contribution of personal work must be found;

- Home – based teleworking: this case takes place when a subject, with the duty of subordination, performs the working activity at his domicile or other places he has availability, also with the accessory help of his family's members (except apprentices and salaried), paid work, by using his own or entrepreneur's raw materials and equipments, even if provided by third persons (Article 1, Law n. 877/1973);
- Subordinate – teleworker tout court: in this case it is evident the existence of a directive and control power carried out by the employer, also through a telematic connection (Carinci, 2007).

Furthermore, the Project of Research n. 1403 of 2009, financed by the Ministry of Work and Social Policies, identifies three different forms of teleworking:

- Teleworking off line: teleworker carries out his performance without any electronic connections with the company and transfer of data to the employer takes place by the use of external memories (hard disk); availability and re – entry are however agreed (Pasquarella, 2017);
- Teleworking one way: data directly flow to the employer's computer from the teleworker's computer terminal, without a direct control on it;
- Teleworking on line: teleworker works by a computer terminal inserted in a network of electronic communication which allows an interactive dialogue among different computer terminals and between them and the employer's one. Teleworker, even if performs his working activity far away from the central location, may interact in real time with the rest of business organization.

In addition, you may distinguish different typologies of teleworking also under an organizational point of view (Nevens, 2010).

- Home teleworking: it is the most widespread and recognized form of teleworking and it implies the delocalization of work station from the company to worker's home. Teleworker is linked with the company in a continuative way through a business network (business LAN) or in irregular way by internet;
- Working out or mobile teleworking: teleworker has not a fixed work station but he performs his working activity by moving from a place to another and he communicates with the central location through portable devices (mobile phones, tablets, portable computers). Separation with the business location is not total and meetings and periodic contacts with superiors are foreseen: for example, teleworker may go visiting customers and, from there, connect with the office to send orders, to

- make teleconferences with experts and technicians;
- Telecentres or telecottages: working performance is carried out at facilities equipped with all necessary instruments for remote work and communication. They offers work stations to workers of one or more organizations or telematic services to freelancers. Advantages consists mainly of sharing costs among enterprises and the opportunity to develop peripheral or rural zones;
 - Virtual companies: they are constituted by workers which perform their own activity from all of the world only via telematic. A directive centre in a location exists, but the entire activity is performed and coordinated online. This is a company that exists only on the web and it occupies no physical and delimited space. Advantages of this kind of structure, which is completely based on the use of ICT are: zeroing of fixed costs, access to unlimited market, maximum organizational flexibility, direct meeting between lender and user of the service, by producing the immediate effect of an improvement of the service with benefit for the user of the service itself (Ichino, 2017);
 - Virtual groups: they are groups of cooperation among persons thanks to contribution of creative interaction and information technology. This modality allows to use synergies and collaborations, to develop new professional figures, to reduce times and to improve work quality. This is a collective modality of teleworking, in which workers share a virtual space (Toriello, 2012).
 - Teleworking off shore: teleworking may be also performed in a different country of that of the employer, in order to take advantages from the cheaper working force cost and differences of time zone which allow to carry out working activity in a continuous cycle (De Luca Tamajo and Mazzotta, 2018).

4. THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORKING

The concept of teleworking was defined for the first time, by the European Framework Agreement on Teleworking, that was stipulated on the 16th July 2002, in Brussels, with the intent to establish a general structure at European level.

The agreement is based on the involvement of the social partners with the intent to promote new agreements aimed at modernizing work organization towards a society and economy based on knowledge and it does not compromise the right of social parties to conclude agreements that integrate this one, to take into account specific needs of social parties interested (Modesti, 2016).

It was signed among CES (European Confederation of Trade Unions) and ETUC

(European Trade Union Confederation), UNICE (Union of Industrial and Employers' Confederations of Europe) and CEEP (European Centre of Enterprises with Public Participation and Enterprises of General Economic Interest), inside the European strategy for employment, in order to improve the productivity and competitiveness of enterprises in the market, by guaranteeing, at the same time, the necessary equilibrium between flexibility and security (Tuffoletto, 2006; Roccella and Treu, 2016).

The negotiations began following an official consultation of the European social partners by the European Commission on the modernization of employment relations.

For the first time, social parties aimed at concluding an EU framework agreement to be implemented directly by their members, in accordance with the procedures and practices specific to management and labor in the Member States as defined in Article 155 of the TFEU (D'Addio, 2017).

The agreement recalls that teleworkers benefit from the same legal protection as employees working at the employer's premises and it concentrates on the aspects that are specific to distance work and it highlights key areas requiring adaptation or specific attention such as employment conditions, data protection, privacy, equipment, health and safety, work organization, training and collective rights (Arrigo and Casale, 2017).

The agreement still offers today the highest standards for all EU member states: according to social parties, teleworking constitutes a means for companies and public institutions to modernize the organization of work, and an instrument for workers through which they may conciliate their work with social life, offering them more autonomy in performing their tools. Whether Europe intends to take advantages from the society of information, it has to encourage this form of work organization, in order to combine flexibility and security, by improving the quality of workers and also offering to disabled people more opportunities in the labor market.

Teleworking, according to this agreement, constitutes a form of organizing and/or performing of work, using information technology, in the context of a contract or a work relationship, where work, that could also be performed at the employer's premises, is carried out away from them on a regular basis. A teleworker is any person carrying out teleworking as defined above. (Stanchi, 2009; Polliani, 2016; Ray, 2018).

It is the result of a voluntary choice between employer and worker and it may be included in the initial description of worker's performances or voluntarily later. Worker's refusal to accept teleworking neither constitutes a reason of dissolution of the working relationship, nor determines a modification of worker's working conditions.

With regards to the non – discrimination principle, teleworkers enjoy of the same

rights provided for comparable workers that perform their working activity inside the company. Obviously, taking into account of peculiar features of teleworking, parties may rely on specific individual or collective agreements.

Concerning the protection of data, the employer has the responsibility to adopt appropriate measures to protect data used and elaborated by the teleworker in performing his professional activity; employer has also to inform teleworker about all rules related to the protection of data and this last one is responsible of respecting them.

Generally, the employer is responsible for supplying, installation and maintenance of working instruments (unless teleworker uses his own instruments) and he also provides to cover direct costs which derive from the work, particularly those related to communication, as well as he is responsible for loss and damages of working instruments and data used by the teleworker, who, however, has to immediately advise competent structures in case of their breakdown. Furthermore, teleworker has to care for them and he could not collect and illegally publicize materials by the Internet⁶.

In addition, the employer is responsible for the teleworker's health safeguard and professional security: to verify the correct application of this discipline, employer, competent authorities and workers' representations may access to places in which teleworking is performed, inside limits of national legislation and collective contracts; if teleworker performs his activity at his domicile, this access will be subordinated to notice and his consensus and he may, however, ask for inspections.

Regarding the organization of work, in the range of legislation, collective contracts and applicable business directives, teleworker manages the organization of his own working time. The charge of work and performances levels of teleworking must be equivalent to those of comparable workers who perform activities inside the company.

The employer guarantees measures to prevent isolation of teleworker in respect to other company's workers, like the opportunity to meet colleagues and to access company information.

Teleworkers enjoy the same opportunity of access to training and development of carrier of workers that perform their activity inside the company and they also receive a specific training on the use of technical instruments required for this kind of activity.

Besides, they also enjoy collective rights: this means that communication with workers' representatives must not be impeded; in fact they also participate to the elections

⁶ In doctrine, however, it is excluded that teleworker can take on an enhanced custody obligation (by forcing him, for instance, to introduce an expensive electronic anti – theft in his home), unless this is expressly provided by the individual or collective contract of work (Gottardi, 2003).

of workers' representatives.

Teleworking definition contained in this agreement, thus, in a side, covers the three types of teleworking mentioned before, that are «teleworking from home», «mobile teleworking» (via portable communication systems) and «work in teleworking centers» (outstations, neighborhood offices, telecottages), but it also includes both permanent and alternating teleworking, in the sense that worker may spend part of his/her working time at the employer's premises and the rest elsewhere (Tiraboschi, 2017).

The agreement represents a significant experiment of collective bargaining at communitarian level for two substantial profiles and for the approach of method chosen by social parties and European Commission.

Concerning the first profile, social parties have begun the negotiation because of the choice of Commission to promote, under Article 138, paragraph 2, of the TFEU⁷, a consultation of social parties, based on the technique of social dialogue, on prerequisites of redefinition of occupational active policies. Among these policies there is, in force of the objectives of Strategy for Occupation, also that related to the promotion of teleworking.

The second substantial profile, instead, concerns the vertical relationship between National and Community – level trade union organizations. Social parties, in fact, have decided to transpose the European Framework Agreement into the different jurisdictions, by three years of the conclusion of it, through transposition agreements signed at national level by social partners belonging to the trade union organizations of reference in communitarian ambit.

The methodological approach assumes a strong significance for the future of communitarian collective bargaining. Firstly social parties defined the content of the Framework Agreement in relatively fast times; secondly, social parties composed a collective agreement that is applied into the different jurisdiction through a mere transposition of the text translated: this means, in pragmatic terms, that this agreement owns features of a norm which is, de facto, self – executing (Faioli, 2006). Finally, the agreement is an instrument of soft – law: agreements of this type do not create juridical obligations among contracting parties, but only political commitment whose respect is linked to the parties' will (Berti, 2008).

5. TELEWORKING IN ITALY

In the Italian legal system there is an ad hoc regulation of teleworking only when it is

⁷ Treaty on the Functioning of European Union.

inside a contract of subordinate work. The fundamental principle of teleworking is the «voluntariness»: working performance may be adopted only after an agreement, individual or collective, between parties. Generally, it is chargeable to the worker's request and it is always reversible, in the sense that worker may ask to return to carry out his performance at the employer's premises or this last may arrange the return to the place if quality and quantity of the work performed by the teleworker does not satisfy required standards.

If, in Italy, within private sector, teleworking has been object of regulation by collective bargaining, several considerations have to be made in the public sector, where there have been a number of administrative interventions (Ageno, 2004; Pascucci, 2009).

5.1 THE DISCIPLINE IN THE PRIVATE SECTOR

The discipline of teleworking, regarding the private sector, is still lacking of a discipline of legislative source and so it is provided by the Inter – Confederal Agreement of 9th June 2004, through which the greater employers' representatives and the most comparatively representative trade unions organizations (Cgil, Cisl e Uil) have accepted the European Framework Agreement on Teleworking, which was stipulated on the 16th July 2002.

In principle, the Inter – Confederal Agreement provides a general discipline on teleworking, leaving the introduction of rules more detailed to the collective sectoral bargaining (Bosco and Valsiglio, 2013). It is, in fact, foreseen the possibility to adapt the discipline contained into the Confederal Agreement of 2004 to specific collective, territorial and business needs, through next stipulation of trade union agreements of corresponding level (Berti, 2008).

First of all, the Inter – Confederal Agreements foresees that teleworker enjoys of the same rights, guaranteed by the legislation and collective contract applied, the same opportunity of access to training and development of professional carrier, the same charge of work and performance levels and the same collective rights foreseen for a comparable worker which carries out his activity inside the company and the right of a specific training aimed at using technical working instruments (Articles 3, 9 and 10; Frediani, 2004).

Also this Agreement provides for a specific article on security (Article 7) that reiterates that the employer is responsible for the worker's health and professional security protection; the employer, in addition, is charged of informing teleworker about business policies on health and security.

To verify the correct application of the discipline in the ambit of health and security, the employer, workers' representatives and/or competent authorities have access to the

place in which teleworking is performed, within the limits of national legislation and collective contract: if teleworker performs his activity at his domicile, this access is subordinate to the notice and his consensus.

Teleworking, however, is a voluntary choice between worker and employer and it may be agreed at the beginning of the working activity or later and the worker's eventually refuse does not constitute a reason of disciplinary sanction (Toriello, 2012).

On this trail, Article 11, paragraph 2, of the document in exam, imposes the duty to insert into the collective contract or, in lack of it, into the individual contract the reversibility of the decision to switch to the teleworking form.

The document concludes with two paragraphs entitled «Conclusions and Implementation and follow – up» which include, respectively, the value and the intent to implement, by three year, the institute of teleworking.

The Report on the implementation of the European Social Partners' Framework Agreement on Teleworking of 2nd July 2008, is born on the wave of this reflection and will, whose the most relevant points concern: maintenance of all effects of the status of worker, voluntary nature of teleworking and right to conversion in ordinary modality, compulsory information to teleworker, cost coverage by the employer, the right to a continuing training, the security and health protection's right, working time, relationships between company and teleworker, individual and collective rights, modalities of access to teleworking (Berti, 2008).

The same social parties, Cgil – Cisl – Uil, wanted unitarily to state a set of certainties related to conciliation between family and job into the Inter – Confederal Agreement of 7th March 2011, according to which «the best possible balance of work and family time is an important contribution for a lasting well – being, a sustainable economic growth and social cohesion. In addition, parties share the value of a family – friendly flexibility as positive organizational element and, consequently, the importance of flexible modulation of working time, included teleworking. They also agree upon the second level bargaining practice that the best distribution of working time may be ensured, in response to markets' need» (Modesti, 2016).

With respect to the European Framework Agreement, the Inter – Confederal Agreement adds Article 11, according to which it is possible to conclude integrative and adaptive agreement⁸.

Promotional measures of teleworking were reinforced by Article 22, paragraph 5, of

⁸ In relation to these last, it was affirmed, albeit in a doubtful way, that it would be legitimate agreements to introduce derogations, also pejorative, to provisions contained into the Inter – Confederal Agreement.

Law 183/2011 in pursuing three goals: to facilitate the conciliation between life and work times, the insertion of disabled worker and the reinsertion of workers on the move (De Luca Tamajo and Mazzotta, 2018).

5.2 TELEWORKING IN THE PUBLIC ADMINISTRATION

With reference to Italian Public Administration, instead, teleworking is disciplined by a set of administrative interventions. Firstly it is expressly regulated by Article 4 of Law 16th June 1998, n. 191 (so called Law Bassanini ter), according to which, with the scope of rationalizing working organization, public administrations may use remote forms of work and they may authorize their employees to perform, with equal pay, their working activity in different places outside the working location, after determination of the modes to verify the performance of working activity. Employees, however, may be replenished, through request, in the originating working location (Campodall'Orto, 2000).

Teleworking performance may be carried out also at the employee's domicile provided that work environment complies with the general prevention and safety rules of households; employees may be reintegrated, through a written request, into the originally workstation after a congruous period of time fixed by the project (Toriello, 2012).

With Article 4 of the Law 16th June 1998, n. 191, the legislator grants managerial choices and techniques a broader space of decisional autonomy. Slowly public administration shows itself to be sensitive to an evaluation of the work performed in terms of result and no longer just based on the amount of hours affectively worked and the need arises to adapt to various computer technologies. The same Law 191/1998 is inserted in a context, not just of a mere slimming, but of a real rationalization of services, introducing the criteria of evaluation based on costs – benefits analysis, by requiring administrative managers, as well as legal one, even economic and financial.

Teleworking in the public sector, thus, aims at rationalizing working organization and realizing public economies of management; the first one is strictly linked with the concept of flexibility of work, while the second one represents one of the motivations which helped the adoption of teleworking in the public sector. The strong wave of productive decentralization, which involved also public sector, has led to research different typologies of work, by researching for each administration the most appropriate form and modeling it according to its own needs (Di Nicola, 1999).

Teleworking presents itself as a revolutionary novelty, as the result of a double path of reform: the first one of simplification and decentralization of administrative machine; the other one is related to the evolution of tele – administration, that is the long – awaited

paperless administration which sets the ambitious goal of eliminating definitively the paper support. This represents a turning point for the public sector since it shows that a new culture has matured in the organization of the provision of services offered to the generality of associates (Fornari, 2007).

In the sector of public administrations, teleworking is also disciplined by the Decree of President of Republic 8th March 1999, n. 70 and the Framework Agreement on Teleworking, stipulated on March, 23rd of 2000 by ARAN and trade unions confederations.

Between regulation and collective contract a sufficiently defined repartition of competences exists: the first one regulates the organizational modalities of teleworking; the second one, instead, fixes the normative and economic applicable discipline.

Besides, the Framework Agreement disciplines the structure of the collective bargaining, establishing a precise division of the subjects. Sub – sector bargaining may regulate the aspects strictly linked to the specific features of the sector and, in particular: general criteria for the exact individuation of teleworking with respect to other forms of delocalization; general criteria for the articulation of working time and for the determination of the telematic availability ranges; forms of insurance coverage of the equipment supplied and their use; training initiatives linked to the specificity of the sector.

At the individual administration level, on the other hand, additional bargaining determines the possible adaptations of the discipline rendered necessary by the particular conditions of the performance (De Luca Tamajo and Mazzotta, 2018).

Particularly, in the sector of public administration, Article 2, paragraph 1, letter a, of the Decree of President of Republic 8th March 1999, n. 70 identifies teleworking as the performance carried out by the officer of public administration anyplace deemed fit, outside the workplace, where the performance is technically possible, with the prevailing information and communication technologies support that allow the connection with the administration (Pascucci, 2009).

Inside this definition it is possible to individuate four elements constituting the subject:

- a) the existence of a relationship with the public administration: this means, according to the regulation, that teleworking derives from an organizational transformation or modification of the relationship already in progress, but it cannot give rise the establishment of a new and different working relationship and the introduction of teleworking does not modify the organic equipment or the organization of the offices, but it determines a different modality of carrying out a performance already organized (Mazzaro and Silvestro, 2001);
- b) the delocalization of the working activity: the workstation must be located outside the office in which the employee is assigned;
- c) the prevailing support of

information and communication technologies: it has to refer either to the more properly performing phase of the performance or to the act of bringing the data to the administration of belonging; d) the necessity of the connection with the administration to which the performance is inserted: it satisfies the requirement of the continuity of the insertion of the teleworker in the reference organization (Gaeta, Pascucci and Poti, 1999).

According to Article 7, paragraph 5, of the Framework Agreement, forms of prompt communication must be assured to make the worker participative in administrative information. It has been specified that, even if the interactivity between public administration's premise and teleworker's workstation is necessary, however, it is sufficient to guarantee the possibility of connection with the central seat: it is not necessary, instead, that such connection is constantly activated.

In the public sector, the recourse to teleworking is subordinated to the redaction and acceptance of a «project» by the public administration, whose discipline is contained into Article 3, d.P.R. n. 70/1999. In particular, the primary regulatory sources entirely attribute the faculty to the manager to redact the project, providing to dictate the essential elements to enable him to act, following predefined criteria. The project indicates objectives, activities, technologies used, number of officers to involve, times and modalities of realization, direct and indirect costs and benefits and it is approved by the director or responsible of the office where you intend to start forms of teleworking. Article 3, paragraph 1, of the d.P.R. n. 70/99, in fact, links the introduction of forms of teleworking with the relative proposal formulated by the managers of the general management offices; even the final approval of the entire project is entrusted to the manager in charge of the service.

The administration assigns the officer to the teleworking (Article 4, paragraph 1, d.P.R. n. 70/1999) on the base of criteria provided by the collective bargaining which allow to valorize social and personal benefits of it. To succeed teleworking, it is necessary that the modification of modalities of execution of the performance is based on agreement between parties; for this reason, consensus constitutes one of the main principles established by the Collective Framework Agreement 23rd March 2000 to access teleworking.

The d.P.R. n. 70/1999 subjects the act of assignment to teleworking with two restrictions; the first one is constituted by the individuation of criteria of determination of teleworkers, which Article 4 of regulation transfers to collective bargaining. In force of this mandate, the Framework Agreement establishes that «in the ambit of teleworking projects the Administration will proceed to the assignment of teleworking positions of workers that are available to perform such positions, with priority for those who already perform its

tasks or that have work experience in similar tasks to those required, such as to allow to operate independently in the activities of competence» (Article 4, paragraph 1, Collective Framework Agreement of 23rd March 2000). Furthermore, paragraph 2 of the same bargaining disposition, specifies that if requests are more than the number of availabilities the Administration applies these following criteria of choice: a) situations of psycho – physical disabilities which make it difficult to reach the workplace; b) care needs of children under the age of eight, family members or cohabitants duly certified; c) greater travel time from the employee’s home to the office.

The second restriction is constituted by the possibility of teleworker to be reintegrated into the original working seat, after a congruous period of time individuated by the project (De Luca Tamajo and Mazzotta, 2018).

The emplacement of teleworking is a set of devices and software which allow the performance of working activity and it is made available, installed and tested by the administration on which weigh on also costs of maintenance and management. The administration is required to provide the worker with the necessary training so that the working performance is carried out in conditions of safety for himself and people eventually living in environments close to his working space and workstation may be exclusively used for activities that are pertinent with the work relationship (Article 5 d.P.R. n. 70/1999). With regards to the economic and normative treatment, collective bargaining guarantees measures that are equivalent to those of officers that perform their activity in the workplace and it also provides an adequate safeguard of health and security of work (Toriello, 2012; Vallarelli, 2002).

Moreover, technical rules for teleworking in public administrations, under Article 6 of the d.P.R. 70/1999, are contained into the A.I.P.A. Deliberation of 31st May 2001, n. 16⁹.

These rules, generally, are adapted to technological and scientific evolution every two years and they refers to the teleworking project. Particularly, they concern, for example, the workstation’s requirements, techniques of identification and authentication of teleworkers, the administration’s information technologies applications, procedures and periodicity of the security checks adopted, modalities of acquisition, use and maintenance of technologies, IT documents’ procedures of training, management and conservation, types and modalities of technical checks on workstations, aspects related to the security of

⁹ Agenzia Italiana per le Pubbliche Amministrazioni: Regole tecniche per il telelavoro ai sensi dell’art. 6 del Decreto del Presidente della Repubblica 8 marzo 1999, n. 70, 31st May 2001, in http://adapt.it/adaptindice-a-z/wp-content/uploads/2013/09/2001_deliberazione_aipa.pdf

technologies and personal data, the institution of technical assistance centers for teleworkers; the project must also contain an analysis of expected costs and benefits.

In order to promote the use of teleworking, the Stability Law 2012, n. 183/2011 introduced some incentivizing measures for it, aimed at, for example, facilitating the insertion of disabled workers or the reinsertion of workers in mobility through teleworking (Modesti, 2015; A.I.P.A., 2017).

In addition, as foreseen by the Law 17th December 2012, n. 221, which has converted in law the Decree Law 18th October 2012, n. 179 (so called Decreto Crescita 2.0), public administrations, nowadays, are required to draw up a plan for teleworking, in which they have to specify modalities of realization and activities for those it is not possible the use of it.

In 2015, the Jobs Act introduced further news in order to promote the conciliation job – family; in fact, Article 23 of the Legislative Decree 15th June 2015, n. 80, which actualizes the Law n. 183/2014, foresees some benefits for employers that utilize forms of teleworking: particularly, teleworkers may be excluded from the calculation of numerical limits foreseen by law or collective contracts for the application of specific regulations and institutes.

The condition for benefiting from the so – called “ghost teleworker” is the implementation of a collective contract which foresees and disciplines teleworking to satisfy conciliation needs (Carosielli, 2015; Pasquarella, 2017).

Another intervention relatively recent is the Law 7th August 2015, n. 124 (so called Madia Law) that promotes, again, the conciliation of job – life time in public administrations; particularly, Article 14 foresees that public administrations, within limits of budgetary resources, will have to adopt organizational measures to fix annual objectives for the experimentation and actualization of teleworking, which allow, by three years, at least 10% of public employees to use such modality, ensuring that teleworkers are not penalized in terms of recognition of professionalism and career progression. Such measures are object of evaluation within the measurement of organizational and individual performance.

To implement this provision the Presidency of the Council of Ministers issued the Directive 1st June 2017, n. 3, which foresees an experimentation phase aimed at promoting an effective implementation of such measure by public administrations, in the ambit of its own organizational and management autonomy (Troilo and Menegotto, 2016; De Luca Tamajo and Mazzotta, 2018).

5.3 SAFETY IN THE WORKPLACE

Under the profile of the responsibility, taking into account that the environment where the worker works is to be considered an extension of the principal workplace, also for the place where workstation is located, the employer will have to ensure hygiene and safety requirements, as provided by the current law.

The Legislative Decree 81/2008, into Article 3, paragraph 10, provides for this that «to all subordinate workers which carry out a continuative working performance at a distance, by IT and telematic connection, included also those provided by the Decree of the President of the Republic 8th March 1999, n. 70, and by the European Framework Agreement on Teleworking 16th July 2002, dispositions provided by title VII will apply, independently of the ambit in which the performance itself is carried out. The remote workers are also informed by the employer about corporate policies on health and safety at work and, with the end to verify the correct implementation of them, the employer, workers' representatives and competent authorities may access to the place in which work is performed within the limits provided by national law and collective contracts and after the notice and worker's consensus if the performance is carried out in his domicile. The remote worker may ask for inspections and the employer guarantees the adoption of measures aimed at preventing remote worker's isolation compared to other workers inside the company, allowing him to meet with colleagues and access information of the company, with respect of regulations and business agreements».

The INAIL¹⁰, in the ambit of the «Framework Project for Teleworking», as established also by the Framework Agreement of 2000, guarantees for its own employees, the insurance coverage of the premises where the specific activity takes place. Particularly, all computer equipments that are made available to workers are insured, also for eventual damages caused to third persons, independently of the place of utilization (for instance, in occasion of fairs or various events).

According to title VII of the Legislative Decree n. 81/2008, Articles 172 – 179, subordinate teleworker has the right to pause for fifteen minutes every one hundred – twenty of continuous application to the video terminal and he is entitled to be subject to health surveillance by the competent doctor, with particular reference to risks for vision and skeletal muscle system. Besides, the employer is obliged to evaluate ex ante risks connected to the performance of video terminal activities and he has to inform and train teleworkers about applicable measures to the work place, modalities of activity execution,

¹⁰ National Institute for Insurance against Accidents at Work.

protection of eyes and vision. At the same time, teleworker, must care of his health and safety and that of other people present in the work place.

For the purposes of the security of teleworkers, the INPS¹¹, through the circular n. 80/2008, foresaw the habitability requirements, suitable environmental conditions; furthermore, the space intended of work must be distinguish from that reserved for normal domestic and family activities in order to facilitate the separation between rhythms and time of work and those of the private life and to optimize the interaction with other inhabitants of the apartment to not create inconveniences and potentially stressful situations for the teleworker itself (Pascucci, 2009; Toriello, 2012; Stanchi, 2009).

6. A EUROPEAN COMPARATIVE ANALYSIS

The European Commission adopted a broad notion of teleworkin, defining it as «The use of computers and telecommunications to change the accepted geography of work.» (Toffoletto, 2006).

The incidence of teleworking on the world of the work is related not only to technological developments in different countries but also to existing economic structures and cultures of the work, and it varies substantially, depending on the country, occupation, sector and the frequency with which employees engage in this type of work.

Particularly, within EU zone, an average of about 17% of employees are engaged in teleworking and in most countries larger proportions of teleworkers perform their working activity occasionally, rather than on a regular basis, and they are especially professionals and managers, but it is also significant among clerical support and sales workers.

In relation to gender, men are more likely to perform teleworking than women who, however, carry out more regular home – based teleworkin than men (Eurofound, 2017).

Also some States such as Norway and Island have implemented teleworking forms within their borders, despite their failure to belong to the European Union (Berti, 2008).

Regarding the positive effect, workers report a reduction in commuting time, greater working time autonomy leading to more flexibility in terms of working time organization, better overall work – life balance and higher productivity; at the same time, companies benefit from the improvement of work – life balance, in terms of increase of motivation, productivity and efficiency and reduction of turnover, and from a reduction in the need for office space and associated costs.

Concerning disadvantages, instead, they may be related to the tendency to lead to

¹¹ National Social Security Institution.

longer working hours, to create an overlap between paid work and personal life and to result in work intensification. However, to fully harness the potential of teleworking and improve the working conditions of the workers involved, training and awareness initiatives are needed for both employees and managers on the effective use of ITC for remotely working, as well as the potential risks and how effectively manage the flexibility provided by this arrangement.

Under a political point of view, teleworking may play a part in policies that aim to promote inclusive labor markets and societies; in fact, some country examples indicate that it increases the labor market participation of certain groups, such as older workers, young women with children and people with disabilities. For instance, in Italy, France, Germany, The Netherlands, Spain, Sweden and The UK, especially home – based teleworking (which includes employees that regularly work from home, by using ICT) is becoming an increasingly important strategy for struggling groups, in order to combine the daily use of time for various purposes at different locations. Particularly, in France, for example, the number of teleworkers increased from 7% in 2007 to 12,4% in 2012, as well as in Sweden it increased from 36% in 2003 to 51% in 2014: this increase is possibly due to some drivers, such as the growing capacities of ICT devices and the increase in knowledge – based activities, as well as the reduction in some restraining factors, such as managerial resistance. Nevertheless, the expansion of ICT has stagnated in other countries in recent year; in Hungary, for example, the number of regular home – based teleworkers has not grown as expected; in France, instead, teleworking has not yet been rolled out in most large enterprises: 75% of them allow it, but only in pilot projects. Germany, in which the predominant model of telerworking is that of so called «rotary¹²», according to which the performance is carried out in part inside the company and in part at the workstation used for teleworking (Weiss, 2015) is below the EU average: only 12% of all employees work primarily or occasionally from home, although 40% of jobs are suitable for this of work, in that they involve use of ICT and do not require the worker to be a certain location; particularly, the main location for employees using ICT outside the employer’s premises is the employee’s home, followed by cars, trains, hotels and other places. In Spain, data indicate that 6,7% of workers perform their working activity by teleworking, while in the Flemish region in Belgium 60% of the employees who work outside the employer’s premises using ICT do so from home.

Thus, in general, home – based teleworking is more common than ICT – mobile work:

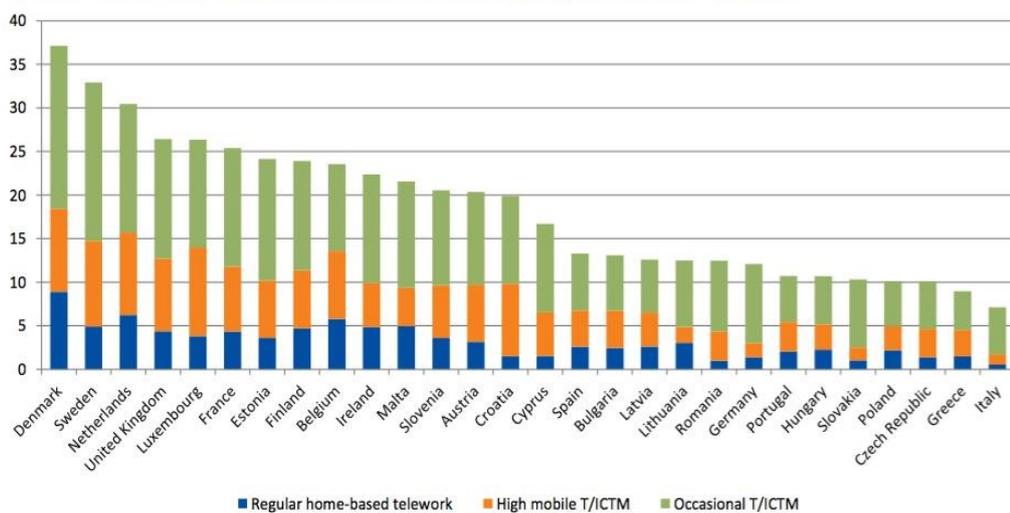
¹² This model is opposed to that of the so called «pure teleworking», according to which the performance is entirely carried out outside the company.

employees, when they use ICT outside the employer’s premises, generally prefer working at home rather than more flexibly in various places or on the road.

The following figure shows the incidence of teleworking among employees in the 28 EU Member States. A higher proportion on employees in the Scandinavian Countries use ICT and work outside the employer’s premises; other EU countries with a relatively high percentage of teleworking are The Netherlands, The UK, Belgium and France.

Other countries like Spain, Lithuania, Germany, Hungary¹³ and Italy, fall, instead, below the EU average: in this countries, besides, almost all teleworkers are occasional (Eurofound, 2017).

Figure 4: Percentage of employees doing T/ICTM in the EU28, by category and country



Source: EWCS 2015.

6.1 SOME EXAMPLES OF IMPLEMENTATION MEASURES

In a vast number of EU Member States teleworking has been implemented through agreements between management and labor. In the majority of cases, namely, Belgium, Denmark, France, Greece, Spain and Luxembourg, the adopted collective bargaining instruments have followed their national industrial relations traditions and led to national and/or sectoral agreements on teleworking. This is also the case in Italy. Nevertheless, in the Italian case, as well as in Germany, a more pronounced trend towards the decentralization of collective bargaining can be observed.

For instance, in November 2005, the Belgian social partners implemented the European Framework Agreement on Teleworking by adopting a national collective agreement in the National Labor Council. In accordance with standard procedure in

¹³ Hungary considers teleworker the one who communicates the results of his work through electronic equipment (Berti Valerio, 2008).

Belgium, this agreement was extended by Royal Decree and, thus, made legally binding for the entire private sector. In addition, the Belgian social partners asked the government to propose a number of legislative changes to integrate the national agreement in the pre-existing regulation.

In Denmark, probably due to the fact that it is one of the EU member states with the highest incidence of teleworking, there was already much collective bargaining on teleworking before 2002. After the adoption of the European Framework Agreement on Teleworking, the Danish social partners signed or renewed several (sectoral) collective agreements. In order to ensure a full coverage of the private sector, the Danish confederation of employers and the main trade union confederations are currently negotiating a national extension agreement that will implement the European Framework Agreement in sectors and workplaces not yet covered.

In France, in 2005, the three main employers' associations and five union confederations signed a national inter – professional agreement on teleworking. This agreement covers the specific aspects of teleworking and ensures equal rights for teleworkers. As is customary, the signatory parties asked the government to extend the provisions of their agreement to all sectors of the economy in order to ensure complete coverage. This was done by a Ministerial Decree of 30 May 2006. Under French law, the modalities of application of this national agreement may be adapted by collective agreements at a lower level, taking into account the specific characteristics of the sector or undertaking. Finally, it is worth noting that there are some company agreements, for instance at Renault, where regulations go beyond the national agreement in an attempt to make teleworking more attractive.

In Germany, teleworking has become, mostly, a matter for company or works agreements (Betriebsvereinbarungen), which are concluded between the employer and the works council. In fact, some of these agreements dealing with teleworking were concluded before the European Framework Agreement, others have been prompted by it. Already in the mid – 1990s, two of the DGB unions signed sectoral agreements in the telecom, chemical, and mining sectors respectively. These agreements were later expanded, partly foreshadowing the European Framework Agreement on Teleworking. Various trade unions, for instance IGMetall, responsible for the engineering sector, and ÖTV, covering most private and public sector service employees, are active in providing «model agreements» for their members and works councils. The German social partners seem to consider this rather decentralized regulation pattern adequate. Labor law experts suggest that the legislator might wish to intervene if teleworking were to become a mass

phenomenon and many workers were to lack coverage, due to the decentralized nature of collective bargaining. In the public sector, the main trade union (Deutscher Beambtenbund, DBB) and the local government employers have both, but separately, produced guidelines and model agreements for their members and for works councils.

In Greece, originally, implementation was foreseen in the national general (cross – industry) collective agreement for 2004 – 2005, signed in 2004, but the agreement that really transposed the provisions of the European Framework Agreement on Teleworking is the national general collective agreement for 2006 – 2007, signed in April 2006. That agreement binds all enterprises in the private sector as well as all types of employers’ and employees’ organizations. In addition, in September 2006, the relevant sectoral employer and union signed a two – gear sectoral collective agreement in the wholesale and retail trade sector that regulates teleworking.

In Luxembourg, the social partners signed a national collective agreement on teleworking in June 2006. This agreement is applicable to all private – sector employees for a period of three years as it has been declared by the government in November 2006 to be legally binding at national level.

Finally, in Spain, although Article 13 of the Workers’ Statute regulates «work from home» the need for the worker to use ICT equipment is not specifically mentioned. Since 2003, the annual national (cross – industry) collective agreements between the central employers’ and trade union organizations have incorporated references to the European Framework Agreement on Teleworking. They mention the commitment of the social partners to ensure the widespread implementation of the EU Framework Agreement and also put forward some concrete priorities and issues to be taken into account by negotiators in social bargaining at the different levels. In the private sector, several collective agreements regulating certain aspects of teleworking have been signed in the IT sector at different bargaining levels. In the public sector, there is a draft bill of 7 May 2007 on teleworking in the state sector based on an agreement between the trade unions (CC.OO, UGT, CSI-CSIF, CIG and ELA) and the General Secretary of Public Administrations (Martin and Visser, 2008).

6.2 ECONOMIC SECTOR, GENDER AND WORKING HOURS

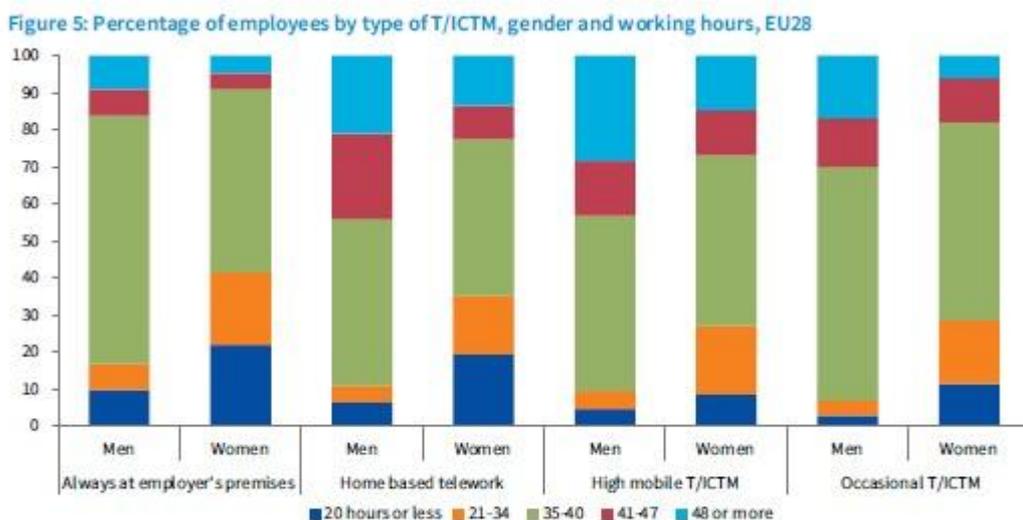
However, not all types of work can be performed outside the employer’s premises and not all jobs depend on ICT. In fact, some occupation, such as shop assistant or those in manufacturing operations, require the employee to work at a fixed workplace in order to perform work – related tasks. Other occupations, such as bus drivers or construction

workers, require the worker to constantly work outside the employer’s premises, but typically do not involve use of ICT.

The highest use of teleworking is normally found among the so called «knowledge workers», which often include highly qualified employees, in managerial and professional positions. In The Netherlands, for instance, teleworking is most prevalent in information and communication (42%), financial and insurance activities (36%) and professional, scientific and technical (28%) sectors; in Hungary, the proportion of teleworkers is higher in services and among non – profit and non – governmental organizations; in Spain, ICT – mobile work seems to be more prevalent in service sector than in agriculture, construction and industry; in Sweden, teleworking is strongly associated in the advanced service sector.

With regards to the gender, available results vary substantially among countries; in Germany and Hungary, for instance, the distribution of teleworkers is almost equal between men and women; by contrasts, in Finland, France, Sweden and The Netherlands, teleworkers are more likely to be men than women.

The fact that teleworking may be performed flexibly produces, of course, potential effects on the number of hours worked; employees are not bound to employer’s premises as a fixed workplace, but rather they are able to perform work – related tasks at any place and any time: this creates opportunities for both longer and more flexibly – arranged working hours. First of all, according to national studies, teleworkers tend to work longer hours than average employees; for example, in Belgium, while non – teleworkers work an average of 42.6 hours per week, teleworkers report an average of 44.5 hours per week. Similar results are given for Finland, The Netherlands, Spain, Sweden and The UK.



Source: EWCS 2015.

Particularly, high – mobile teleworking, not only may be supplemental addition to normal working hours, but it is also often informal and unpaid: in Finland, for instance,

65% of teleworkers reported that they have been contacted about work – related matters outside normal working hours in 2013, mostly via email (Eurofound, 2017).

6.3 INDIVIDUAL AND ORGANIZATIONAL PERFORMANCE

Concerning the effects of teleworking on performance, two levels of performance may be identified: individual and organizational. The causal link between teleworking and job performance is not very clear, but it surely depends on the balance between communication and location which are inherent to all forms of teleworking.

Studies in France, Sweden and The UK suggest that improvements in performance are related to longer working hours and the ability to concentrate on certain tasks due the lack of interruptions that normally occur in the workplace. From the employee perspective, workers in Sweden, for example, feel they are motivated to teleworking, so they can concentrate better or finish their work outside normal working hours.

These aspects can contribute to a higher performance among employees; in fact, nearly 80% of employers in that country stated that allowing employees to sometimes work outside the employer's premises generally leads to higher productivity.

At the same way, a UK study suggests that flexibility and autonomy have a role in improving performance; particularly, according to the study, productivity is higher among home – based teleworkers, for two main reasons: firstly, home – based teleworkers tend to work more unpaid hours than their office – base counterparts: so an increase in productivity is partly due to an increase in actual working time; secondly, home – based teleworkers are more productive because they experience fewer interruptions than office – based workers.

Similar results were found in France, where, according to a study, 84% of teleworkers stated that the increase of their productivity was due to teleworking and according 81% of them their work was of higher quality than their office work. Also in this case, reasons are related to individual work aspects: less interruptions of teleworking by colleagues or their superiors; less time spent to answer phone calls or to communicate via email; they have more time to work due to the fact that they do not have to travel to and from the office.

A rather different approach to improve productivity focuses on making offices more flexible, for example the «hot desking», in order to save costs related to office space: this approach, in fact, consists of using space made vacant by teleworkers for other employees.

The drawback of this approach is that some workers may feel themselves being pushed into involuntary teleworking. However, according to EU national studies, this approach has been developed in Belgium, France, The Netherlands, Sweden and The UK.

In summary, flexibility of space and time enabled by ICT seem to have a positive effect on performance (Eurofound 2017).

7. AN ECONOMIC CONTRIBUTION: COSTS AND BENEFITS ANALYSIS

In order to decide with economic rationality on the choices of work delocalization, it is considered appropriate to make a double passage: a) to individuate typologies of costs and benefits that may accompany the realization of the various form of teleworking; b) to formulate criteria and parameters that are useful for the punctual calculation of the above – mentioned values (costs and benefits).

Regarding the main categories of costs and benefits, purposes of classification that are found in the literature that deals with teleworking are numerous. The most recurring cost items are as follows:

- Desk costs: they are general office costs, such as maintenance, electricity, gas, water, security, cleaning and costs of offices, canteen and parking spaces;
- Equipments costs: hardware, software, internet connection and support structures including videoconferencing, videophone;
- Start – up costs: costs of project planning, consulting costs, costs of training of remote workers, installation of devices and IT connection, common platforms, reorganization of the business asset linked to eventual processes reengineering interventions or structural interventions into the employees' apartment, in case of home – based teleworkers;
- Management costs: costs of internal promotion of the project, mechanisms of coordination and teleworkers' control and visit to the teleworker;
- Telecommunications costs: they depend on the modalities of communication used and typologies of infrastructures adopted (Cavallini, 1997).

Concerning benefits, many authors focus almost exclusively on the productivity, by unanimously declaring that teleworking increases it in a considerable way.

Certainly, teleworkers work better because they may follow their biological rhythms, they are less subject to typical office interruptions (phone calls, contacts with colleagues, coffee – break), they avoid stresses linked with transfers and so on (Craipeau and Marot, 1984; Strassmann, 1985).

Besides, it has been showed that at the beginning of a project of teleworking a natural increasing of productivity exists, due either to the fact that the employer tends to overcharge his own collaborator, in fear of his commitment in the domestic sphere, or to the enthusiasm of the teleworker for the novelty in being.

In order to correctly set up calculations of compared economic convenience, it is firstly necessary to distinguish multi – year costs that are linked with investments, from management costs that are recurring and they are identified in the categories of operating costs, that tend to vary according to the expected activities and factors of complexity to individuate, structure costs, that tend to be fix and are generated by particular choices of reshaping of the same, organizational costs, that are generally fix and linked with the activation of procedures and mechanisms that are functional to the control of the satellite units.

Benefits, instead, are to associate to operating conditions characterized by a greater effectiveness and structural flexibility and a better quality of performances.

Each improvement in one of these areas inevitably determines a costs reduction and, consequently, an economic benefit. A greater effectiveness, in fact, should be translated into less operating costs, a greater flexibility into less investments and less structure costs and, a better quality of performances, in addition to helping to better satisfy customers, may positively affect the economic statement of the company that sees costs of “non quality” decrease (Crosby, 1979).

Besides, the greater flexibility may be measured in terms of reduction of the need for new office spaces, parking, canteens and other common areas, rental costs, possibilities of sub – rent, reduction of the need for equipments and its use.

7.1 COSTS AND BENEFITS ESTIMATION PROCESSES

After having identified and classified the main categories of costs and benefits linked with teleworking, now the attention moves towards the research of criteria that are more adequate for its measurement.

Concerning multi – year costs, they concern investments in technologies and spaces and start – up costs. Particularly, costs related to investments in technologies are easily expressed in monetary terms and they are based on the prevision of all and only «specific investments» of teleworking and on a amortization policy oriented to take account of real life of technologies implemented. Some companies may prefer the leasing of its own equipments, or loaning them so that the operator may became owner at the end of the payment. In other cases, the company is a supplier that puts its employee in the condition of being able to work remotely: if teleworkers already own some equipments, the company only bears the costs of connection and maintenance.

For investments in space, a cost per seat is usually calculated, by preventing, on the basis of the number of teleworkers which you intend to start, either the space that will be

freed inside the company, or that which is necessary outside it.

The reduction in the use of offices spaces is often considered one of the most significant economic advantage of teleworking which takes the form of opportunities for the alienation of part of buildings or rented.

In the case of home – based teleworker, costs may not reduce significantly: some of them, in fact, are transferred to the teleworker, but others remain always with the company and new ones could be added (allowance costs for home as an office, for instance).

Many companies, furthermore, rather than moving into the direction of ceding spaces, merely implement desk – sharing, that is planning every other day of the use of spaces, so that more people take advantage of the same desk and there are no open workstations during the year. Start – up costs, as mentioned above, concern planning, consulting, training and they often influence, in a significant way, the decision to launch a teleworking project.

As already mentioned, management costs includes operating costs, structure costs and organizational costs. Working cost represents, in many cases, the most important operating cost. Operating costs, besides, include costs linked with the use of materials and infrastructures related to telecommunications, such as email, phone, video conference, and costs of services, such as maintenance, electricity, gas, water, security, cleaning: they are, however, variable costs.

Structure costs, instead, are those generated by the single workstation: they, thus, are fix in relation to this last, but variable with respect to the number of stations started. Examples are the costs of setting up decentralized structures, the related amortization and maintenance costs, insurance, the home allowance charges such as office, and so on.

Organizational costs, finally, tend to vary according to some factors of complexity, such as the intensity of coordination, communications and control needs of decentralized units by the central seat, the degree of complexity of technologies: examples are training costs, control and consulting costs.

Concerning the benefits, instead, to measure aspects linked with the improvement of effectiveness, you need to put in direct relation the quantity of inputs used and outputs produced (Arcari, 2007).

7.2 TELEWORKING AS CHOICE BETWEEN MAKE OR BUY

The choices of teleworking may be linked with two typologies of decisions: they are the decisions of «make or buy» that are opposite to those of outsourcing.

The choice of teleworking, in fact, under the decisional perspective of «make or buy»,

can take place on the basis between the current operating cost and the expected cost in the case of outsourcing. In other words, having to identify the most convenient courses among the courses of action, it is necessary for each of them to be esteemed: a) the costs that will be less (ceasing costs); the costs that will raise (emerging costs); c) the net economic benefit deriving from the algebraic sum of the ceasing and emerging costs.

The most convenient decision is the one that generates the greatest economic benefit.

Incremental costs on which to concentrate the evaluation are all those costs that are definable «differential», since they change as result of the decision taken and have a future manifestation.

In this regards it is good to underline that there may be three different categories of differential costs:

- Explicit costs: they are all those costs that have an evident manifestation as consequence of the teleworking decision (for instance, costs related to the change that operators' remuneration undergoes, costs of materials used for teleworking, such as energy, costs of telecommunications);
- Opportunity costs: they are also called «implicit costs» and are commonly defined as the differential benefit that is waived by choosing the less profitable alternative (for example the lack of income connected to the non use of spaces that become free as consequence of the decision in question);
- Expected future costs: they are all those costs, explicit and implicit, that will have a future manifestation (Douglas, 1987; Arcari, 2007).

8. FROM TELEWORKING TO REMOTE WORKING: SOME CONSIDERATIONS

The term «teleworking» does not allude so much and only to a spatial and geographic distance, as mostly regards specific technical modalities of organization and execution that necessarily imply the use of instruments and IT organizational techniques.

«Remote working», is intended as functional concept able to describe the working nomadism in which the company is no longer the place of work, but organization of works and workers (Mannacio, 2009).

The term remote working refers to a work relationship in which the worker's normal activities are carried out in different places from business premises. To simplify and make more clear the analysis field you may distinguish two modalities of remote working: a) home – based teleworking; b) mobile – working.

In the first case the worker operates from his domicile and he communicates by the company's PC, fax mobile or other tools and the computer may be permanently connected

with the business network or only for receiving and sending the job; in the second case, instead, worker is not obliged to work from his domicile: the performance is carried out via laptop and other mobile instruments. Both cases are characterized by the widespread diffusion on new technologies which allow the «external worker» to perform all activities that normally carry out inside the office and to constantly stay in touch with his colleagues by connecting to the business network, using sharing tools.

The attention to the environmental and social safeguard constitutes another important enabling lever. Significantly, reducing worker's movements, the remote working is able to affect traffic decongestion and the emission of carbon dioxide (Co2).

Teleworking, besides, promotes a better balancing between working and private life, allows to satisfy the most flexibility needs of some categories of workers, such as parents with very small children, families that have take care of disabled people, professionals with more o less serious disabilities.

Under an economic point of view, business costs to support a program of remote working are today more manageable and they are broadly repaid in the long run by savings generated for example by a greater rationalization of spaces into offices, less costs linked with movements and a greater effectiveness of the working force.

A good project of remote working, in fact, is based on a relationship of a mutual clarity and trust between the employer and the employee, which makes the worker more responsible. Finally, speaking about professional effectiveness, the remote worker can benefit from a greater concentration and take advantages of the time saved for transfers.

Very interesting in this sense are the experiences already consolidated in some ICT companies, such as British Telecom, SUN, Microsoft that, through teleworking, have reduced transfers and saved in space for offices. Particularly, emblematic is the case of British Telecom that in 10 years has saved more than 300 Million euro on properties (Ladini, 2009).

Another case is that of those who have temporary difficulty or impossibility of working: in this logic, remote working could become a tool to combat absenteeism, or rather to make possible the work that otherwise would not be based on the normal experience (Miscione, 2009).

The remote working, however, seems to be prohibited by our system, by virtue of Article 4 of the Law 20th May 1970, n. 300 (the so called Workers' Statute), that prohibits the installation of any equipment that allows the control of the workers' activity: there seems to be nothing more invasive like remote control of teleworking, in which an employee, connected via computer with his own employer, produces a certain activity that

his hierarchical superior is able to monitor minute by minute, by verifying if the activity performed is exactly that required or if mistakes have been committed, or else how much time is used for each operation, how many breaks are made and so on.

If thus in the nature itself of teleworking is inherent the possibility of a necessarily remote control of the working activity, it will follow that it should be forbidden. In reality, this is not the case, because the same law provides for some exceptions that are represented by cases in which a trade union agreement is stipulated on the modalities or remote control and on the use of this control by the company: in lack of agreement methods of management of the apparatus are dictated by the Labor Inspectorate.

The stipulation of an agreement, either at inter – confederal, and so at national level, or at business level, under Article 4 of Law 300/1970, appears indispensable to make teleworking legitimate.

Surely, technological development is fundamental for our society, and it certainly cannot be prevented or slowed down, but newness and technological developments may not be introduced wildly, without regulation. It is also so for teleworking that may be a big opportunity for the future, but it cannot be introduced if not even most insidious aspects are regulated (Fezzi, 2009).

Recently, important news have been introduced into the Italian legal system, through the introduction of a new flexible form of performing working activity: the so called «Smart Work», which is regulated by the Law 22nd May 2017, n. 81.

A detailed analysis of this institute is offered in the next chapter, in order to understand if it is only a new way of calling teleworking, if it is a sort of evolution of this last or if there are some significant differences between the two institutes.

CHAPTER II – TOWARDS NEW CHALLENGES AND PERSPECTIVES OF THE DIGITAL REVOLUTION: THE DISCIPLINE OF SMART WORKING

1. PREMISE

The affirmation of the computerized economy has implied a change into the quality and nature of work even under a sociologic point of view. And in fact the immaterial and communicative work implies different and news social and cooperative interactions that are not imposed and organized from the external environment but they result to be inside the working activity itself. Substantially it is now the power inherent in cooperation and in particular of immaterial work which allows the work to be valued. In the computerized production work is based on the abstract cooperation, in the sense that communication of knowledge and transmission of information among workers do not require their contextual presence. The coordination of communicative networks allows the virtualization of productive settlements: information networks and abstract cooperativism frees production from territorial constraints (Frediani, 2017).

Needs of spatial and temporal flexibility are conjugated by the so called «smart work» that the legislator intends to promote «as flexible modality of execution of subordinate work relationship» to facilitate conciliation of life and work time, in addition to increase productivity. It is a tool other than teleworking, based on policy of timetables and spaces, since it may be performed in part inside business premises and in part outside them (without a fixed workstation), through technological instruments, and also in «horizontal» modality, which means some hour per day or someday per week, alternated to periods in which the performance returns to be unfold inside the physical space of the company according to the traditional modalities: «smart» performance, in fact, means that it is released from spatial – temporal coordination (Ichino, 2017).

The intent of the legislator is to try to overcome the problems of non – implementation and consequently underutilization of teleworking, that are attributable to the rigid and restrictive nature of the legislation and to the «risk of exclusion of the worker from the business dynamics» and, often, of «reduction of his carrier possibilities».

Just the wide freedom to self – organize favored by this innovative modality of work organization, which is taking hold in our country despite the absence of normative evolutions, should allow workers (women and men) to more easily devote themselves to the needs of family life in the perspective of a «shared conciliation» (Pasquarella, 2017).

This new working modality, promoted by the so called Jobs Act on Self – Employment, is typical of an economic system in which you work «on demand», so when

there is a request, without the guarantee neither of a fixed and indefinite working place, nor of a working emplacement.

In this perspective, the risk consists of stimulating self – employment more and more, within a flexible and precarious labor market, with respect to the most protected subordinate work¹⁴.

2. SMART WORKING AS NEW MANAGERIAL PHILOSOPHY

The obsolescence of working organization leads us to live a kind of schizophrenia so that, while as persons, costumers and citizens we feel flexible and avant – garde, as workers we clash daily with constraints and rigidity that we do not longer recognize and reason to exist. We arrive so to discover as it is a collective irrationality that which brings millions workers to get in line on the same roads and means of transport at peak times and then arrive at the same timetables to carry out activities, such as to elaborate documents or responding to the emails, which could be performed with greater effectiveness at its own home, before reaching the work seat.

The exponential growth of interest in the smart working should be read like the healthy answer to this sense of frustration. The interest of politics, through the bill on smart working, is trying to give a soft legislative framework that serves like incentive and guideline for enterprises that want to change and affirm some workers' fundamental rights such as the right to be disconnected, equality of wage treatment and continuous training.

Waiting for the normative action to remove doubts and alibi for the change, there are more and more companies that take smart working initiatives.

Large companies are the driving force behind change and, among them, during only one year, the number of organizations which implemented structured initiatives of smart working increased from 17% to 30%. You need then to consider that 11% of organizations declare to work under smart working without having introduced any systematic project, while 12% of them are not interested into the adoption of smart working or according to them it may not be implemented inside their own reality.

Concerning small and middle enterprises, although the level of awareness and opening, the number of enterprises with structured projects remains just of 5%.

¹⁴ FLC CGIL: Jobs Act del lavoro autonomo e smart working, 16th June 2017, in http://m.flcgil.it/files/pdf/20170616/scheda-flc-cgil-jobs-act-del-lavoro-autonomo-e-smart-working_1.pdf

But what does really mean to do smart working? Very often smart working is confused with the concept of teleworking or it is connected with welfare policies and forms of conciliation that companies may grant to workers in order that they can be better.

Smart working is something completely different: it is a managerial philosophy, a way of giving the worker back autonomy and flexibility by asking him a responsibility on results.

The real change that derives from it is epoch – making, meaning that we pass from a traditional management oriented to the presenteeism and check on fulfillments to a new one which has principles that are profoundly different: overcoming the culture of suspicion and formalism in favor of the measured and checked trust with regards to the worker, the importance of collaboration, capacity of person to be responsible, opening, flexibility.

To obtain the maximum effectiveness from a project of teleworking enterprises have to act on a variety of factors in a coherent and synergetic way.

Entering more in detail, initiatives to act on to activate the smart working model are: organizational policies, that are rules and guideline related to time (start, end and complex duration) and work place flexibility and to the possibility of choosing and personalize one's own work tools; digital technologies, that may amplify and make virtual the work space, by facilitating communication, collaboration and creation of professional relationships networks among colleagues and external figures to the organization; the physical layout of work spaces which has a significant impact on working modalities and it may influence people's efficiency, effectiveness, flexibility and well – being; people's behaviors and leadership styles, that are aspects linked either with workers' culture and their way of «living» the work, or to the approach of the leaders to the exercise of authority and control.

The expected benefits from the adoption of smart working concerns either companies, in terms of improvement of productivity, reduction of absenteeism, reduction of costs for physical spaces, etc., or people (improvement of work – life balance, increasing of satisfaction, etc.), or the environment with regards to the reduction of pollution and traffic (Corso, 2017).

3. A TERMINOLOGICAL QUESTION

Among the issues launched by this new way of carrying out the working activity there is also that terminological: may the Italian expression «lavoro agile» be considered an effective translation of the English «smart working»?

Recently, the «Accademia della Crusca¹⁵» has intervened on the theme, pronouncing itself in favor of the Italian expression and declaring it a «perfect equivalent» of the alternative Anglicism. Assimilating «lavoro agile» and «smart working» is not, however a simple operation because the English expression is not a phrase that has a satisfactory literal translation, such as, for instance, «lavoro intelligente».

«Smart Working» is a metonymy according to which a tool of the working activity, the smart phone, is assumed as a salient representative of the whole mode of operation of the working activity. Working «smart», like it is «smart» a mobile phone of last generation, means to be versatile, efficient, up – to – date, creative, in addition to being always connected.

In the case of «lavoro agile» we are faced with a metaphor that recalls a gymnastic exercise, exercised with flexibility and speed. The Italian expression seems, in fact, to be a literal translation of the English «agile working», which defines a working modality where the priority is given to the result of the worker's performance rather than to his physical presence in the work place (presenteesim). This expression, combined with the work – life conciliation, evokes the frame of a «gincana», a condition where working is to avoid obstacles, since «to conciliate» presupposes two distinguishable entities.

Nevertheless, «smart working» and «lavoro agile» do not seem to be «perfect equivalent» anyway. In the case of «lavoro agile» an active, but partial, independence linked with life and work time is emphasized; in the case of «smart working», instead, a work more characterized by person's competences is expressed (Manzella and Nespoli, 2016).

4. SMART WORKING IN ITALY

«Smart Working» represents the «tip of the iceberg» of a new flexible development of working performance linked with the technological innovation.

The recent Law 22nd May 2017, n. 81, concerning «Measures for the safeguard of non entrepreneurial autonomous work and measures aimed at promoting the flexible articulation in times and places of the subordinate work», disciplines, in Chapter II, smart working (Camera and Massi, 2017).

This phenomena is strongly growing in our Country, especially in middle – big companies (its spread is instead still limited in small and middle companies) on the base of business collective agreements (Dagnino, Tiraboschi, Tomassetti, Tourres, 2016).

¹⁵ It is an Italian institution that gathers scholars and experts of linguistics and philology of the Italian language and it is based in Florence.

It is not a new contractual typology, but it is a modality of performing the working activity more convenient either for the increasing of the productivity or for the conciliation of private and work life time.

Smart working implies a rethinking of traditional boundaries related to the workplace and working time, aimed to the worker's greater autonomy in defining modalities of work, in the face of his greater responsibility for results (Lai, 2017).

4.1 THE DEFINITION OF SMART WORKING

Smart Working includes all those subordinated work performances that are carried out, at least in part, outside the business premises and, generally, by using IT technologies.

In fact, Article 18 of Law 22nd May 2017, n. 81 defines smart working as modality of carrying out of subordinated working relationship established through agreement between parties, also with forms of organization for phases, cycles and objectives and without specific time or workplace constraints, with the possible usage of technological instruments for the workflow (Corti and Sartori, 2016; Pinto, 2016; Tiraboschi, 2017; Polliani, 2017; Andreoni, 2018).

This formulation risks to affect one of the requirements of subordinated working performance, that is the working time predetermination. Working performance is carried out in part inside workplace and in part outside it, without a fixed emplacement, within limits of maximum daily and weekly working time foreseen by the law and collective bargaining (Article 18, paragraph 1).

The law does not explain what should be understood for company premises nor for «outside of the workplace». It must be assumed that the law allows all possibilities: domiciliary premises or freely chosen by the worker, company branch office, satellite center and even employer's customer premises.

For some agreements already operating on the subject external seats always coincide with business places although different from those of assignment or even with that of the client, while for other agreements smart working is such only if it is carried out outside company premises. Collective bargaining, however, although recognizes that technology allows you to work from anywhere at any time, rarely recognizes the worker full freedom in choosing the place to provide one's own performance, often preferring to refer to his domicile.

Regarding the duration of the performance, in specifying that the only limits are those of maximum legal and contractual duration, it is allowed the possibility of spreading the performance in a non – traditional way, or rather, in spots throughout the entire day.

From the contractual practice up to now performed it emerges that the execution of the working activity outside business premises is limited to a few days a month or a week, or a few hours a day. Therefore, the preponderant part of the working activity is characterized from the execution of the work inside the business premises, according to traditional modalities (De Luca Tamajo and Mazzotta, 2018).

Besides, having referred in definition to an enhancement of the work to objectives therefore involves reducing the relevance of the traditional elements such as work timetable and place.

The technological instrumentation, which was a qualifying and indispensable element for the identification of a teleworking hypothesis, remains in the smart working a simple eventuality, given that the definition contained into the Article 18 provides for only one «possible use» (Frediani, 2017). The areas of application of the smart working are many and can range from performances with high intellectual content, such as advertising graphics, IT technicians working remotely, to those less specialized, such as assigned to home delivery services, onsite maintenance workers, for whom the execution of the working activity inside the company, under the management of the employer or his subordinates, may be necessary only in part, in an inconsistent manner over time or limited during the working day (Santoro Passarelli, 2017).

The employer is responsible for the security and good functioning of technical instruments that are assigned to worker to perform the working activity (Article 18, paragraph 2). The employer, thus, is obliged to make available instruments and equipments that comply with the technological requirements established by the Legislative Decree n. 81/2008, that are adequate and suitable for work to be carried out in a smart manner (De Luca Tamajo and Mazzotta, 2018).

These dispositions are also applied to public administrations' employees (Article 18, paragraph 3).

Finally, there is a particular interest in the clarification according to which tax and contribution incentives, that are eventually recognized in relation to increases in productivity and efficiency of the subordinated work, are applicable also when the working activity is performed through smart working (Lai, 2017). Smart working is, thus, considered by the law as a suitable form of flexibility of working performance to realize the increases of productivity that justify the use of tax and social security contributions. It has thus been observed that the reduction in labor costs resulting from these facilities (contribution rate of 20% and tax rate with separate taxation of 10%) could contribute to orient an employer's choice towards the implementation of smart working (Santoro

Passarelli, 2017).

In reality, the provision under discussion reaffirms what already provided by the Interministerial Decree of 25th March 2016 implementing the provisions of the Law n. 208/2005 (law of stability 2016), on the assumption that from smart working derives a greater productivity of the work that is remunerated not on working timetable, but on a salary of productivity. Indeed, according to Article 2 of the inter – ministerial decree mentioned, to access the tax – facilitated result bonus, business agreements have to provided for examination and measurement criteria of increases of productivity, profitability, quality, efficiency and innovation, and these criteria of productivity measurement may concern the reorganization of the non – extraordinary working hours, but also the recourse to smart working as flexible modality of execution of the subordinate work relationship. To access tax and social security benefits, the agreements have to be filed electronically at the competent Territorial Direction of work with the self – declaration of compliance with the provisions of the decree attached to the same and available on the website of the Ministry of social policies (www.lavoro.gov.it).

4.2 FORM AND CONTENT OF THE «PACT OF SMART WORKING»

The execution of the working activity in smart modality requires a specific individual agreement between the employer and the subordinate worker. It is the so called «pact of smart working», that is added to the contract of subordinate work and it has to respect specific requirements of form and content.

Concerning the form, Article 19, paragraph 1, of the law in exam establishes that the agreement related to the modality of smart working is stipulated in written form. Besides, the same paragraph specifies that the written form is not required «ad substantiam», but with ends of administrative regularity and proof. The law prescribes a formal requirement that, on a side, facilitates administrative compliance, in particular that related to the communication of the introduction of smart working modalities to the competent authorities and, on the other, it provides for the documentary evidence of the agreement intervention having as object the specification of the working performance execution according to smart modalities. Consequently, the written form constitutes condition of formal regulatory of the agreement and it is not a requirement of validity of the negotiating desire, but it is a request to demonstrate the exact content of the same desire. Difficulties of determination of the exact content of the agreement of smart working may therefore arise from non – compliance with the written form.

Concerning the content, the pact of smart working must establish the discipline related

to the following aspects: method of execution of the working performance to be carried out outside the business premises also with regards to forms of exercise of the directive power and instruments used by the worker; organization also for phases, cycles or objectives of the working activity; indication of the worker's rest times in relation to phases in which the performance is carried out in smart working modalities and it is thus subtracted to the ordinary spatial – temporal coordination; individuation of necessary technological and organizational measure to ensure the worker's disconnection from technological instruments, in order to face the so called time porosity, that is the danger of a progressive invasion of working time into the private life times.

The express recognition of the right to be disconnected represents a first step into the construction of a rights system of new generation and modern welfare, able to balance and increase workers' protections with respect to the current and future challenges.

The individual agreement may also contain the discipline of the exercise of control power and typologies of worker's behaviors that, even undertaken outside the business premises, are, however, subject to disciplinary sanctions. Besides, it may exclude specific timetable boundaries, without prejudice to the maximum duration limits established by the law and collective bargaining.

Finally, into the pact of smart working the right to permanent learning may be recognized to the worker, according to formal and informal modalities, and periodic certification of related competences (Article 20, paragraph 2).

The pact of smart working does not substitute the contract of subordinate work: it is rather an additional pact that, in disciplining modalities of carrying out the working performance outside the business premises, coexists with the ordinary modality of performing work (Polliani, 2016; Santoro Passarelli, 2017; Frediani, 2017; Polliani, 2017; De Luca Tamajo and Mazzotto 2018).

4.2.1 DURATION OF THE PACT AND RECESS

The pact of smart working may freely be agreed upon with a fixed date or event: at the end of the term or when the event occurs, the smart modality of execution of the performance in relation to phases, cycles or objective agreed will be cancelled and work relationship will continue according to ordinary modalities. The pact may also be stipulated for an indefinite period and in this case parties may freely recede, with respect of a simple notice of not less than thirty days.

A greater notice is provided in case of disabled workers ex Article 1 of Law n. 68/1999: in such hypothesis, in order to allow an adequate reorganization of work path

with respect to the worker's life and care needs, the employer's recess is subject to a notice of not less than ninety days.

The rule limits the longer notice to the employer alone, so for the disabled worker the term of thirty days is applied.

In the presence of a justified reason, each party may recede before the deadline if the agreement is terminated, or without notice if it is for an indefinite period.

The discipline ruled by Article 19, paragraph 2, concerns the recess from the pact of smart working: this means that, from its exercise derives the disappearance of the accessory agreement, with the consequent restoration of the ordinary methods of carrying out of the subordinate employment relationship. Greater problems arise in the case where the worker has been hired «ab origine» with a contract of smart working: in such circumstance, the rethinking of one of two parties on the modality of smart working could lead to the termination of the entire subordinate employment contract, where it is demonstrated that this last would not have been concluded without the additional pact of smart working (Polliani, 2016; De Luca Tamajo and Mazzotta, 2018).

Smart working is voluntary, both for the company and for the worker. Therefore, if such modality is not included in the letter of employment, the worker will be free to accept or refuse the offer of performing smart working formulated by the employer during the working relationship. Consequently, the decision to move to smart working, if it is not provided by the letter of employment, is reversible. When, in fact, into the text we talk about recess we refer to the interruption of the modality of smart working established into the agreement and not to the end of the underlying employment relationship (Lai, 2017).

4.3 EQUAL ECONOMIC AND REGULATORY TREATMENT

In order to prevent smart working from penalizing the workers concerned, Article 20, paragraph 1, of the law in exam obliges the employer to recognize an economic and regulatory treatment not less than the total applied to workers that carry out the same tasks exclusively within the company. This is not a simple prohibition of differentiation, but rather an application of a principle of treatment equity, understood as a positive obligation to guarantee the smart worker an overall treatment equivalent to that recognized of comparable workers.

For the purposing of respecting the principle of equity treatment, the worker to take into account is that who performs the same tasks inside the company.

The economic treatment guaranteed is parameterized to that overall applied to collective national, territorial or business contracts stipulated by trade unions associations

comparatively more representative.

The affirmation of the principle responds to the need to avoid proliferation of different legal statutes for smart workers prevailing, by the contrary, the reconditioning of the relationship characterized by a different mode of execution of the working performance to a single regulatory paradigm, by avoiding, in this way, the exclusion of some figures of workers from a series of benefits normally recognized to employees which work inside business premises.

The guarantee of the treatment not inferior also concerns the normative one; therefore, the worker who has accepted to carry out the working activity according to smart modalities will not be able to undergo a worse treatment in relation to the progression of carrier, use of permits, changes of location, individual or collective dismissals.

In defining the treatment due to the smart worker, Article 19, paragraph 2, of the law in exam establishes that parties may agree the recognition of the right to permanent learning, according to informal and formal modalities, and period certification of the relative competences.

The recognition of such right is left to parties' negotiation freedom, so that it does not fall within the clauses that must be necessary inserted into the pact of smart work (Polliani, 2016; Frediani, 2017; De Luca Tamajo and Mazzotta, 2018;)

4.4 CONTROL AND DISCIPLINARY POWER

Considering the peculiarities that characterized the execution of the working activity in smart modalities, Article 21 of Law n. 81/2017 recognizes an unprecedented regulatory competence for individual autonomy on certain profiles of two powers typical of the employer, that usually are regulated by law or collective bargaining: a) the exercise of the employer's control power; b) the identification of the behaviors that, despite being implemented inside the company, take on disciplinary relevance.

Concerning control power, Article 21, paragraph 1, states two fundamental rules.

On a side, it assigns to the pact of smart working the task of establishing the discipline of modalities of execution of the control power on the performance rendered outside the company; on the other side it specifies that such regulation must take place in compliance with the provisions of Article 4 of Law 300/1970 (Statute of workers' rights) and subsequent modifications.

This last rule prohibits the control of workers' activities, by admitting the sole deliberate controls, provided they have been previously agreed with trade unions associations or authorized by the Territorial Direction of the work.

Furthermore, paragraph 3 (Art. 4, Law n. 300/1970) expressly allows the employer to collect information acquired remotely by working instruments for all goals linked with the employment relationship, provided that adequate information is given to the worker either on its use or on the possibility and execution of controls on typology of the same.

With regards to this aspect, it appears exclusively opportune to underline the problematic of control of the worker through the geolocation tools now contained and enabled in any electronic device, be it a mobile phone, a tablet, a pc or the same car.

The national labor inspector has pronounced itself on the subject and, through the concept of «nature strictly functional to work performance» it specifies that geolocation systems represent an additional element and as such they are not used primarily and essentially for the execution of the working activity but to respond to further insurance, organizational, productive needs or to guarantee work safety. Consequently, in such circumstances, the case falls within the scope of Article 4, paragraph 1 (Law n. 300/1970) and therefore the related equipment may only be installed after agreement stipulated with the union representation or, in the absence of such agreement, after authorization by the national Inspectorate of work.

In light of this discipline, the balance between the goal of increasing competitiveness and facilitate the work – life conciliation (Article 18 of Law n. 81/2017) and the compliance with the guarantees provided by Article 4 of the Statute of workers' rights must be sought in the pact of smart working that, according to Article 19 (Law n. 81/2017) stands as the fulcrum of the whole case. In fact, into the pact of smart working, the employer must provide a punctual information not only with regards to the modalities of use of instruments given, but also to possible forms of control that may derive from the use of the same instruments. This is to protect the worker's person, whose control, in addition to being derived, is thus made clear and not hidden.

The pact is also valorized concerning the individuation of relevant disciplinary behaviors related to orders missed by the smart working outside the business premises. In fact, Article 21, paragraph 2 (Law n. 81/2017) recognizes individual parties, the only ones able to know the specifics of execution modalities of the smart performance, the faculty to identify that will be punishable in force of the sanctioning apparatus provided by collective bargaining.

Where there has been no written agreement, even any evaluable behavior, provided not in violation of the minimum ethical always collectable, is not contestable and any formalized objections are null and void. In this case, the written agreement does not assume «ad probationem» but «ad substantiam» nature, since in its absence it does not

arise and it may not be exercised (Bellavista, 2014; Frediani, 2017; De Luca Tamajo and Mazzotta, 2018).

4.5 THE HEALTH AND SAFETY DISCIPLINE APPLICABLE TO SMART WORKING

Coming potentially less, by express legislative provision, the constraints of place and time of performance execution in smart modality, it becomes extremely difficult to recompose the health and safety discipline applicable to smart working.

The uncertainty of the applicable preventive framework and the scarce specific discipline set up by the legislator must not induce to think that smart workers' health risks are negligible nor less important than those present in the business context.

Therefore, even if in the operative praxis it is commonly required to workers themselves to choose work place that respect minimum levels of safety, it is however reasonable hypothesize a lowering of these levels compared to those of the ordinary work performance.

On the other hand, it must be added that there are also specific risks linked with this particular organizational modality of the work performance, that are non absent, but at least attenuated, in the ambit of the performance rendered inside the company.

There risks are, in particular, the stress and burnout, that are due, on a side to an intensification of rhythms and, on the other, to the absence of a clear separation between work and private life times, as well as postural and ocular – visual dysergonomies and, finally, the isolation (Malzani, 2017).

It cannot hide that one of the main reasons that induced enterprises to be interested in this new modality of work organization must be identified in the need to escape from teleworking because of the excessive burden of preventive constraints present in the relative discipline (Tiraboschi, 2017).

In accordance with this need of ensuring an alleviation of requirements for which the employer is responsible, the legislator of Law n. 81/2017 has therefore set up a minimalist system in terms of health and safety protection on the work. But even more than the scarce regulation introduced, it is the absence of an express reference to the legislative decree n. 81/2008 to stand out.

The legislator's silence on the point, has generated, in the interpreters, enormous application uncertainties, both in terms of their spread and relevance of their consequences on the front of the repartition of preventive obligations.

Article 18, paragraph 2, of Law n. 81/2018 identifies first of all the employer as responsible of safety and good functioning of technological instruments provided to the

worker for the execution of the work activity. The disposition expressly entitled to the safety on the work is instead contained into the Article 22, paragraph 1, according to which the employer is obliged to guarantee the worker's health and safety in carrying out the performance in smart working modalities. In the same paragraph, it is specified that the employer, grafted by the security obligation, «to this end, submits to the worker or workers' representative for the safety, at least annually, a written notification in which general and specific risks linked with the particular modality of work relationship execution are individuated» (Polliani, 2016).

Among the most important and recurring obligations on the employer are to be included: providing to smart workers necessary and adequate personal protective equipment; requesting observance by individual workers of current regulations, as well as of the company provisions on work safety and hygiene and use of personal protective means and equipment made available to them; fulfilling information and training obligations towards smart working and updating prevention measures in relation to organizational and productive changes (De Luca Tamajo and Mazzotta, 2018).

Article 22, paragraph 2, similarly to the provisions of article 20 of legislative decree n. 81/2008, imposes a duty of cooperation on the worker with respect to the implementation of preventive measures adopted by the employer.

The eventual freedom of the place choice in which render the smart working performance will encounter, in fact, a limit arising from the obligation to protect its own safety that lies on the worker, according to the indications contained in the written notification and according to what learned during special training courses aimed at the conscious selection of external places and work station preparation, at whose frequency by the individual employee it will be good to subordinate his admission to the performance in smart work modalities.

The obligation to deliver the periodic notification may not be considered exhaustive and freeing compared to the more general obligation to guarantee workers' health and safety incumbent on the employer. Such notification constitutes of course one of the compliances through which the employer is called to guarantee the workers' psycho – physical integrity, but the delivery of this document will not be worthy to exonerate the employer from the adoption of other preventive measures imposed by the current discipline.

However, the obligations of information and training provided by the general discipline contained in the legislative decree n. 81/2008 (Articles 36 and 37) remain applicable to smart working. Besides, while it is not provided a specific sanction for the

infringement of the obligation referred to in Article 18, paragraph 1 of Law n. 81/2018, obligations that have just been examined are governed by penal sanctions (Article 55, paragraph 5, letter c, and paragraph 6 – bis, of legislative decree n. 81/2008).

Further confirmation of the applicability of legislative decree n. 81/2008 to smart working is found in the INAIL circular n. 48 of 2nd November 2017, with which it was clarified that to the part of the performance rendered in smart modality will be applied the same tariff clarification subject to the part of processing carried out in the company.

This because «at the same risk, an identical classification for tariff purposes must correspond, in implementation of the principle according to which the smart workers' normative and salary treatment compared to their colleagues operating in the company must be the same, including the adoption of work safety regulations» (Gallo, 2017).

4.5.1 THE APPLICABILITY OF ARTICLE 3, PARAGRAPH 10, OF LEGISLATIVE DECREE N. 81/2008 TO SMART WORKING

Article 3, paragraph 10, of legislative decree n. 81/2008 contains the applicable preventive discipline to «subordinate workers that carry out a continuative performance remotely, by IT and telematic connection», including specifically teleworkers both in the private and public sector.

As regards the exact delimitation of the scope of the aforementioned provision, part of the doctrine considers merely an example the reference to the cases of public and private teleworking, by giving the further category of «remote employment» the function of offering coverage to those individual employment contracts that would escape the application of the Inter – Confederal agreement of 2004 (Peruzzi, 2017).

Other authors, instead, have interpreted the disposition in exam by admitting the possibility that this was aimed at regulating further cases compared to the only teleworking.

Given that, it seems difficult to imagine a work performance without any IT connection with the productive organization, the nodal point for the purposes of smart working subsumption in the category referred in Article 3, paragraph 10 (legislative decree n. 81/2008) seems to be the meaning to be attributed to the «continuative» character of the performance rendered remotely. Here we want to welcome the hermeneutical approach according to which you must intend as continuative each performance that is organized in stable manner, that is with periodical and regularly frequency and that it may not thus be considered sporadic and extemporaneous (Toriello, 2012).

In this perspective it would be an organizational dimension rather than quantitative.

Well, in the legal definition of smart working there are no elements to impose some frequency of the external performance days, but a constant data that emerges from the praxis of the collective and individual bargaining is that, naturally, the performance carried out outside the business premises is programmed and used regularly, leaving the individual parties the concrete definition from time to time of the days destined to smart working, however identifying a maximum frequency on a monthly or weekly basis. It follows that such a structured smart working relationship would be concretely such to render the performance carried out remotely, allowing so the management of the case, on a case – by – case basis, to the applicative sphere of Article 3, paragraph 3, of legislative decree n. 81/2008.

Into the Article 3, paragraph 10, the provisions of title VII of legislative decree n. 81/2008 are recalled, independently from the ambit in which the performance is carried out itself. To the remote work and smart working so dispositions related to the use of video – terminal, concerning, in good substance, obligations of specific risks evaluation, notification and health surveillance, are applied.

In the specific case of smart working, given the absence of a fixed workstation in which the worker carries out the performance outside the company, it would be appropriate for the employer to restrict, by the agreement with the worker, the eligible external environments to the workplace (Assolombarda, 2015).

Given the knowledge and predictability of the places of performance execution, for the employer it would be, in fact, easier to fulfill the obligation to train and inform the worker, even through the compulsory written notification, about the environmental and postural solutions suitable for preserving sight and eyes and for preventing problems related to posture and physical or mental fatigue.

According to the prevailing orientation of the penal jurisprudence, the employer is also responsible for the damage events occurred to the worker outside the business premises, if he has failed to comply with the duties of risk assessment and worker’s training, since each typology of space is considered workplace if at least one job is hosted or if the place is accessible to the worker in the ambit of his own job (Pelusi, 2017).

4.6 PROTECTION AGAINST ACCIDENTS AT WORK

Firstly, the employer is required to give notice of the adoption of smart working modalities to the Employment Centre in which the workplace is located. This communication must be done within the day before the one in which the execution of the work according to smart modalities will start, sending documentation with a certain date of

transmission. Subsequently, all eventual changes to the same pact of smart working will be communicated.

Article 23, paragraph 2, of Law n. 81/2017, deals with insurance protection against accidents at work and occupational illnesses, assuming that those who carries out the working performance in smart modality fully fall under the insurable persons to INAIL, since they possess the subjective and objective requisites established by the current legislation: they are, in fact, subordinate workers that perform dangerous activities since they imply the use of IT and technological equipments that are among those covered by insurance protection (De Luca Tamajo and Mazzotta, 2018)

The smart worker's INAIL protection includes, firstly, the canonical coverage against accidents that occur in performing his activities. These injuries are indemnifiable only on condition that the events present the requirements strictly provided by the law, that is to say the violent cause, the work opportunity, the invalidity, the inability or the death.

In this perspective, Article 23, paragraph 2 (Law n. 81/2017) establishes that the worker has the right to the protection against accidents at work and occupational illnesses dependent on risks related to work performance rendered also outside the business premises.

The area of the workplace is therefore extended in relation to the execution smart modalities of the work performance.

The smart worker has also the right to the protection against accidents occurring during the outward and return journey from home to the place of execution of the work performance outside the business premises (Santoro Passarelli, 2017; Frediani, 2017; Polliani, 2017).

Nevertheless, since during smart work phases the place of execution of the work performance is chosen by the worker, Article 23, paragraph 3, establishes that, for the purposes of configurability of the accident in itinere, the choice of the performance place must be dictated by needs related to the performance itself, or, if it linked with the necessity to coordinate life and work needs, it must meet criteria of reasonableness.

The legislator, thus, recognizes the existence of the risk of includes into the INAIL insurance coverage all accidents occurred to the smart worker on the journey home – work since, during the smart working phases, he is always potentially in itinere (De Luca Tamajo and Mazzotta, 2018).

5. SMART WORKING IN THE PUBLIC SECTOR

Within the public sector, with the Directive of the Ministry for Public Administration

of 1st June 2017, n. 3, Article 14 of the Law 7th August 2015, n. 124 (so called Madia Law), on the reorganization of public administrations, was implemented, in order to promote the conciliation between work – life time: particularly, public administrations, within limits of available budget resources, have to take organizational measures in order to experiment forms of smart working, with specific reference to the need to protect «parental care».

Therefore, the provision allows each administration, in the ambit of its own organizational autonomy to identify innovative modalities, alternative to teleworking, more adequate with respect to its own organization, to workers' needs of work and life conciliation and to the improvement of quality of the services performed.

Accession to smart working must not involve discrimination risks in terms of workers' professional improvement; it should be noted that Article 14 of Law n. 124/2015 establishes, inter alia, that necessary measure must be taken to ensure that employees who use the smart work modalities «do not suffer penalties for the purpose of recognition of professionalism and career progression».

A fundamental role is assigned to managers as promoters of innovation of human resources management organizational systems and, at the same time, guarantors against discrimination. Public managers, in fact, are required to safeguard, against those who use the new modalities of performance execution, legitimate expectations in terms of training and professional growth, by promoting information and training paths that do not exclude those who perform smart working from the labor context, innovation processes in progression and professional opportunities.

These measures have to allow at least 10% of employees, where they require, to use these new spatial – temporal modalities of performing the working activity. Obviously, administrations will have to verify the impact of these measure on the effectiveness and efficiency of administrative action and quality of supplied services (Losito, 2017).

Conciliation measures between working and family life may increase individual and organizational productivity; particularly, each public administration is called: to adopt specific measures to promote conciliation between work – life time in public administrations, through a working organization which is no longer focused on physical presence but on objectively measurable results and performance; to apply this discipline mostly in favor to those are in situation of personal, social and family disadvantage or engaged in volunteering activities; to individuate activities that are not compatible with this kind of work; to fix specific, measureable, coherent and compatible objectives with the organizational context which allow, in a side, staff to feel responsible against the institutional mission and, in the other side, to evaluate and valorize working activity in

terms of performance and effectively achieved results; to promote training courses addressed to managers for greater spread of smart working; to plan the creation of shared physical and virtual spaces, through reorganization and rationalization of them; to promote and spread the usage of digital technologies within working activity.

Managers are called to operate a targeted and constant monitoring, in the process and ex post, recognizing better confidence to their human resources but, at the same time, putting more attention on the achievement of fixed objectives and on the check of the impact on effectiveness and efficiency of administrative action: to this end, each administration identifies, within its systems of measurement and evaluation of the performance, some appropriate indicators.

The directive, in addition, suggests a process, which consists of four steps, in order to activate smart working: a) context analysis: analysis of administration (organizational structure, activities, working force); b) objectives settlement: identification of activities and modalities in which smart working might be implemented and available spaces and technologies; c) start of experimentation; d) monitoring and evaluation of results, in terms of achieved objectives in the considered period.

One of the main innovation of the introduction of smart working in public administrations is the challenge of the organizational culture; new technologies, in fact, allow to overcome the concept of «stamping your card» and «physical presence» in the office.

Many activities may be performed outside the workplace and in hours not necessarily fixed; this is linked to different factors, such as: a greater autonomy, flexibility and decisional capability recognized to workers, developing in them a responsibility based on results rather than on performance; professional relationships based on trust and intelligent management of work, promoting a spirit of sharing; improvement of services, increase of productivity, greater organizational well – being and costs reduction.

Activities may be distinguished in reason of type of performance or space more adequate in which they may be carried out; in addition, you need to consider workers' behavioral features, evaluating their affordability level, organizational and decisional capability, propensity to recruit responsibility.

The same directive specifies, moreover, that the option for smart working does not change the legal nature of the employment relationship, the worker's position inside the administration and it does not modify the related assignment seat. Obviously, the principle of non – discrimination has to be guaranteed, with regards to the smart worker's economic and normative treatment. Potentially, no worker may be foreclosed from the possibility to

organize performances in a smart way, whereby the kind of activity is compatible.

The directive also establishes the need for a written individual agreement in which the concrete modalities of the performance execution outside the administration premises must be defined, and it invites the individual parties to individuate a stable space outside the usual place of work.

Concerning the working hours, the introduction of forms of control and availability bands is hypothesized, also taking into account the enhancement of the activity by objectives (Falasca, 2017; De Luca Tamajo and Mazzotta, 2018).

5.1 THE DIRECTIVE ON SMART WORKING AT THE MIUR¹⁶, 6th MARCH 2018

Smart Working comes to the Ministry of Education, through the departmental decree n. 12 of 6th March 2018, to allow the conciliation of employees' professional and private life times.

The directive identifies the application ambit, requirements and typologies of activities that will be performed according to smart modalities, criteria of priority into the access and the procedure of individuation of personnel interested.

The smart working experimentation is aimed at twenty – six staff units, correspondingly compliant with 10% of the staff in service at the following directions: General Direction for Human and Financial Resources; General Direction for Contracts, Purchases and for Information Systems and Statistics.

The employee may carry out the smart working performance if it is possible to delocalize, at least in part, the activities that have been assigned to him/her, without the constant physical presence in the company; it is possible to use technological instruments that are suitable for the execution of the performance outside the work seat; it is possible to organize the execution of the working performance in compliance with the set objectives and independently.

As a rule, activities such as the predisposition of opinions, regulatory provisions and circulars, activities linked with the participation to international reunions, activities of study, analysis and drafting of administrative measures, decrees, reports, preliminary and inspective activities, may be carried out.

The personnel admitted to the smart working experimentation may carry out the work performance outside the working seat, routinely for a maximum of five days per month, to be agreed with the hierarchical superior. Where necessary, for reasons related to specific

¹⁶ Ministry of Instruction, University and Research.

and documented needs of the single worker or structure, always after agreement with the hierarchical superior, it is possible to increase the number of working days that can be executed according to smart modalities up to a maximum of eight days per month.

For the identification of the personnel of the Administration to be assigned to smart working, priority criteria are used that take into account: care needs for children under twelve, family members or cohabitants; employee's health conditions, duly certified; not effective enjoyment, during the period of smart working execution, of other institutions of flexibility of working time (for example part – time) or of facilitations in terms of paid daily permits and/or hours; greater travel time to reach the workplace; less use of smart working days in the previous year.

The recourse to smart working takes place on the bases of an individual project, with a maximum duration of six months and renewable, that has to be defined in writing in agreement with the hierarchical superior, that approves the contents and methods of implementation in coherence with the organizational needs of the employee's office¹⁷.

6. THE RIGHT TO BE DISCONNECTED

The promoter of the issue of disconnection in the employment relationship has been Jean – Emmanuel Ray¹⁸, according to which it represents «une veille nouvelle question, qui ne se limite plus aux cadres en forfait jours¹⁹, et déborde largement le droit de travail» (Ray, 2016).

The reflection on the need for a right to be disconnected precedes the most recent wave of technological innovation (the so called work digitalization). But it is with this last that the conditions for a first legal recognition are created: firstly in the so called Industrial Relations Law, indeed as regulation of individual employment relationships by collective parts and, then, in dispositions of law inside the French and Italian contexts, although with different ambits of application between the two legal systems (Tiraboschi, 2017).

It is, in fact, in the new technological and organizational context under the banner of working anytime and anywhere that the problem of connection to IT instruments and of the possibility that the employee is constantly reachable arises in undelayable way (Eurofound, 2017).

It is therefore not a case that the issue received specific attention in the ambit much of

¹⁷ MIUR: direttiva sul lavoro agile nella Pubblica Amministrazione, in www.bollettinoadapt.it/miur-direttiva-sul-lavoro-agile-nella-pubblica-amministrazione/

¹⁸ French jurist, specialist in Labor Law and more particularly in Human Resources Management.

¹⁹ Workers whose working activity is not measured in number of hours per day or per week but in number of days per year.

the reflection on the of the worker's health and safety (problems of technostress, technological dependence, overworking, burnout, etc.) as well as with reference to the dynamics of distinction between private and professional life (Moreira, 2017).

According to some authors, in fact, the protection of a right to be disconnected may affect business productivity, since, in general, those who respect the balance between private life and work are much more productive than others: this means that the uninterrupted use of electronic devices emerges as a worrying causal factor for decreasing business efficiency (Poletti, 2017).

6.1 THE FRENCH AND ITALIAN DISCIPLINES ON THE RIGHT TO BE DISCONNECTED

The legal recognition in France and Italy of the right to be disconnected offers the possibility of a compared analysis of the modalities through which the same has been translated in law into the two different national contexts, useful in order to better understand the nature and systematic positioning in the labor law (Allamprese and Pascucci, 2017).

Firstly, the comparison of the disciplines allows to give an account of the context in which the intervention of the legislators within the two systems is set. In both cases, in fact, these are provisions introduced as part of the reform processes of labor law aimed at adapting the discipline to the new reality of work: in the French case the disposition (Article 55 of the so called Loi Travail of 2016) is contained inside the chapter specifically devoted to the «Adaptation du droit du travail à l'ère numérique»; in the Italian case the relevant provision is contained inside the discipline of smart working (Article 19, paragraph 1, of Law n. 81/2017), which fits into a context characterized by organizational models less linked with the worker's physical presence, thanks to the use of technologies, and oriented to objectives and results (Ray, 2016; Del Punta, 2017).

The right to be disconnected notices on a side as a tool to ensure the worker's health against the risk of overworking and the constant connection to the work, on the other side as instrument to maintain a distinction between private and professional sphere and to ensure the possibility of a correct balancing between the personal life and working times.

The profile clearly emerges in the French discipline, where the legislator clarifies that the right to be disconnected has as goal «d'assurer le respect des temps de repos et de congé ainsi que de la vie personnelle et familiale»²⁰ (Ray, 2016).

²⁰ Article L2242 – 8, n. 7, of the Code du Travail.

In the same sense, you may also read the provision contained into the Article 19, paragraph 1, of the Law n. 81/2017.

The French system is characterized by the introduction of a discipline that, although relevant for companies above a certain size thresholds, finds general application, regardless of the concrete working methods; this discipline is accompanied by a similar forecast that operates, regardless of company size, for the regulation of a particular modality of work established into the French system, that is that of the «forfait en jours».

The Italian case differs in a fundamental way because the forecast related to the right to be disconnected are exclusively introduced inside the discipline of a particular modality of work – smart working – that should be characterized, like the French «forfait jours», for greater autonomy by the employee in the management of his own working time and less relevance of the temporal parameter of the performance (Dagnino, 2017).

6.2 A RIGHT TO BE DEFINED

After having defined context, ratio and application ambit, now we need to focus on the central aspect of the right to be disconnected, that related to the nature and effective content of such right. It is on this aspect that the greater doubts have arisen from the doctrine, which has revoked in doubt the usefulness of a right to be disconnected, when a right of rest recognized to the worker exists and it is clearly established by the relevant National and European regulations and from the moment that the worker is required to perform his work only within the limits agreed in the contract of work (working time represents, in this sense, a «temporal» limit to the subordination of the worker inside the contract).

This setting assumes that the right to be disconnected constitutes a substantial prohibition to send e – mails and to speak with the superiors (vertical right to be disconnected) and colleagues (horizontal right to be disconnected) outside working hours even if in the latter case (with the colleagues) is more difficult on the human level (Ray, 2016).

The right to rest cannot be guaranteed only by limiting the possibility of being reached by mail from colleagues and superiors, even because such measure would be inapplicable in contexts with international projection where the temporal dynamics of the performance appear to be engraved by the different time zones of the interlocutors.

Precisely the reference to the provisions introduced in France and in Italy allows to clearly affirm that in both legal systems the right to be disconnected does not pose as a mere prohibition imposed on employers, but like subjective right of workers.

Both in the French context and in the Italian one, the parties are referred to the definition of the concrete methods for the implementation of the right to be disconnected that have to be defined inside collective (in France²¹) or individual (in Italy²²) agreements or, limited to the French case, in exceptional cases they are referred to the unilateral determination of the employer: in case of lack of the agreement the obligation to prepare a «*charte*» with the indication of the modalities of the right to be disconnected is foreseen, leaving in this way the choice of the modes of its implementation to the discretion of the employer and the worker's reaction to the exquisitely tools of private law. One wonders if the right to be disconnected is a right without protection or if, instead, the reserve of the law for proximity agreements²³ and, lastly, for instruments of private law is a strong point (Loiseau, 2017; Poletti, 2017).

Having referred to the parties the determination of the implementation modalities of the right demonstrates an, at least partial, awareness on the part of legislators of the necessity to overcome the logic of mere prohibition and to introduce positive obligations to look for the best solutions to ensure the disconnection. This would be, according to this approach, an organizational and management obligation that affects the protection of workers' health and safety costs of employers and, in a broader perspective, the principle of adaptation of work to man in the perspective of a sustainable job (Ray, 2016).

As it has been pointed out, the provisions concerning the right to be disconnected do not express themselves on the concrete ways of implementing this right: they only specify the instruments through which the part may determine the concrete useful measures for the implementation of the same. Information, awareness and training constitute, in fact, the guidelines for defining the methods for exercising the right to disconnect (Loiseau, 2017).

This choice is linked to the need to adapt the measures aimed at ensuring such right to the organizational and productive context in which they must concretely be applied (Péretié and Picault, 2016).

From this, the uselessness in many cases of the perspective of mere prohibition (of communications outside the working hours) and preparation of radical measures to shut down company servers: these modalities could perhaps work within traditional organizational contexts in which the «forced» disconnection is aimed at avoiding labor

²¹ With the inclusion in Article L2242 – 8, the right to be disconnected becomes object of the «*négociation annuelle sur l' égalité professionnelle entre les femme et les homes et la qualité de vie au travail*».

²² Article 19, paragraph 1, of Law n. 81/2017 establishes that the pact of smart working «also identifies the worker' s rest period as well as the necessary organizational and technical measures to ensure the disconnection of the worker from the technological instruments of work».

²³ Second level agreements, concluded at territorial or company level.

overflow outside the working hours or, at maximum, in order to clearly define the times in which the subject can be «on call».

The agreements that have spread in France already before the introduction of the right to be disconnected demonstrate, consequently, a certain variety in the solutions so as to respond to the different business needs: from good practice guides to awareness and training activities to the pop – up advices, to real disconnection obligations for workers.

As the concrete experimentation have already underlined, there are no single forms of implementation: the obscuring of company servers at a certain time, adequate for some situations, may not to be functional to a worker who chooses to work in particular or changing time or to a worker who is delocalized in geographical areas with different time zones; policies to self – delete emails or messages in certain moments may not always prove suitable when the worker uses the company e – mail address to receive even personal messages; BYOD (Bring Your Own Device) applications, which allow the worker to use his own device with which to connect to company data: if they allow the cohabitation of personal and business uses through the creation of two separate environment, they pose the difficult problem of their possible inclusion among the «instruments of work» (Poletti, 2017).

Compared to the duty of disconnection of the worker, we agree with those who argue that the right should be understood accompanied by a duty of disconnection, but as such to be brought back to the employer (Mathieu, 2016).

As also recalls the legislation on smart working, on the other hand, the worker is «obliged to cooperate in the implementation of the preventive measures prepared by the employer»²⁴, remaining to the latter, in light of the organizational power he enjoys, the preparation of measures (also organizational and managerial) for the protection of workers' health, even with reference to protection against the risks of hyper – connection.

The right to be disconnected is, hence, «une coresponsabilité du salarié et de l'employeur qui implique également un devoir de déconnexion» (Mettling, 2015).

6.3 THE RIGHT TO BE DISCONNECTED AS A RIGH TO THE CONNECTION «CHOISIE»

The comparative analysis has allowed to individuate the nature of the right to be disconnected, that is a subjective right that implies an employer's duty of preparing measures that allow the management of life and work time and the enjoyment of the

²⁴ Article 22, paragraph 2, Law n. 81/2017.

necessary time of rest by the worker.

The «Convention du commerce de gros du 30 Juin 2016», in fact, established a double – side disconnection obligation: for the worker, the obligation to be disconnected from technological equipment, and for the employer the need to ensure compliance of this obligation.

This would be an organizational and managerial obligation and hence the need to delegate the parties closest to the employment relationship (either collective or individual) to the determination of the optimal measures into the concrete case (Ray, 2016).

In this context, the right to be disconnected represents an attempt to reaffirm the protection of the worker through the distinction of life and work time, by trying to recreate areas of complete strangeness from work.

It has been observed that «The useful time for the production, the time that satisfies the organizational interest, that is the time that produces economic value and juridical utility (the so called time – work) is not just actual working time (the so called time – working time)» (Veneziani and Bavaro, 2009). Consequently, also the time spent by the worker in a state of connection with colleagues and superiors through the IT instruments is well within this useful time for production (Dagnino, 2017).

The right to be disconnected could represent, in this context, a way to reaffirm a notion of the non – work time (the rest) as «time of the person free from the bound of production/subordination» (Veneziani and Bavaro, 2009) in the sense that the new organizational and productive methods have determined: faced with the fading of working time and the challenges of constant connection with the work instruments and with a management of the work for objectives and projects, this is a first contribution offered by the express provision of a right to connect.

Since the worker actually enjoys an autonomy in the management of his own work time, even – like in the case of smart working – there are maximum limits set by law or collective contract, the right to be disconnected could well turn into a right to the connection «*choisie*», that is a right to choose moments of connection with colleagues, at work and the project, in the ambit of a common determination with the employer of some moments in which the same (the worker) must provide, for organizational reasons, part of the performance or to be, at least, contactable.

For instance, the «Accord qualité de vie au travail d'Airbus Helicopter du 17 Février 2017» foresees a «droit à la connexion choisie» that declines in these terms: «Face au développement des possibilités de connexion quell que soit le lieu et le temps, il apparaîât nécessaire de préciser les règles d'utilisastion de manière à éviter les abus sans pour autant

bloquer l'accès au salarié. Les parties précisent en ce sens qu'il appartient au salarié de se connecter ou non en dehors des plages habituelles de travail». (Loiseau, 2017).

In other words, the right to the connection «*choisie*» is not the right «to stay off line» or «to unplug», but it is configured as the right to remain in the network selectively, by preventing being searched at certain times of the day to protect yourself from «non – stop» work or working time aimed at generating or encouraging that are defined as workaholism (Clark, Michel, Zhdanova, Pui and Baltes, 2016).

Although the organizational trend does not go in this direction, by requesting that the performance is carried out in temporal correlation with the office timetable, the perspective of a right to the connection «*choisie*» can well be married to the approach of the individual agreement which characterizes smart working: within a framework common to different employees – which is defined according to the organizational reasons of the business complex, preferably within the collective agreements that are already regulating the matter – the space for a common determination of the parts of these time profiles based on the interests of the individual would remain (Dagnino, 2017).

6.4 SOME EXAMPLES OF AGREEMENTS THAT DISCIPLINE THE RIGHT TO BE DISCONNECTED

In recent years, different agreements, both at sectoral or company level, have tried, mostly in France and Germany, to experiment forms of «right to be disconnected», by limiting the functioning of email servers after normal working hours, as well as during those periods that should be considered as rest time for workers, such as weekends and holidays period (Criscuolo, 2016).

Concerning company – level agreements related to the «right to be disconnected», some examples have been developed and implemented in recent years from major automobile companies in Europe. For instance, according to a national study in France, the Renault company included, in its professional agreement on equality, a limitation on sending emails in the evenings and on weekends.

In January 2014, German car manufacturer BMW reached an agreement through which all employees are allowed to register time spent working outside the employer's premises as working time, which opens up the possibility of overtime compensation for the time employees spend responding to emails after the end of their normal working day.

Both policies are designed in order to help reconcile paid work with personal life.

Likewise, German car manufacturer Daimler introduced a new policy allowing employees to set their email inbox to «holiday mode»: this software allows the automatic

deletion of all incoming emails during the set period. Particularly, the sender will receive an auto – response stating that, during a given period, emails will be deleted and he will be invited to contact another employee during this period.

In France, several sectoral agreements related to the right to be disconnected have been signed: the teleworking collective agreement in French Telecommunications Sector (Accord relative au télétravail dans la branche des télécommunications) of 6th October 2006 specifies that the employment contract must include a provision specifying the time periods during which teleworker can be contacted; the right to switch off has also been introduced in the oil sector agreement, according to which a minimum of eleven hours of daily rest between working days are protected.

Always in the sector of telecommunications, also the «Orange Agreement of 27th September 2016» evokes the management of connection/disconnection during working time: «Le managers veillent à organiser des temps collectives en physique durant lesquels l'utilisation des outils numériques sera déconseillée afin d'éviter la sursollicitation. Orange préconise à ses salariés de prévoir des temps de non – utilisation de la messagerie électronique pendant les temps de travail, notamment les réunions ou pour faciliter la concentration» (Ray, 2016).

While in France the right to be disconnected has been inserted inside the Civil Code, in Germany, instead, in September 2013, social parties and government addressed the issue of permanent availability and mobile work in a joint declaration on mental health in the workplace: the purpose is to work collaboratively on the prevision of work – related mental health issues and the reintegration of affected workers into the workplace upon their return from sickness leave.

At the same time, the Ministry of Employment introduced a «minimum intervention in leisure time» policy, according to which managers may contact employees outside of their working hours only in exceptional situations that cannot be postponed until the start of the next working period (Eurofound, 2017).

6.5 A REFLECTION ON DIGITAL RIGHTS

The identification of this new right, certainly the son of the digital age, offers the opportunity for multiple reflections.

Firstly, as mentioned above, it is configured not as the interest not to access the network, but as that to remain in it in selective way.

The right to be disconnected confirms, hence, the tendency to reason for rights in the network or, if you want, to provide the person that operates into the digital environment

with a protection network composed by rights.

The «new» digital rights are exemplary testimony of this trend: the intense debate that concerned the right of access immediately projected its recognition on the constitutional level, giving rise to very stimulating reflections on «digital constitutionalism» (Teubner, 2005).

In our Country, this produced the «Internet Declaration of Rights», approved by the Chamber of Deputies in 2015, in whose preamble it provides that the guarantee of the rights contained in it constitutes «a necessary condition for the democratic functioning of Institutions to be assured, avoiding the prevalence of public and private powers that can lead to a society of surveillance, control and social selection». Besides, it is declared that the Chart constitutes «an indispensable tool to give constitutional foundation to principles and rights in the supranational dimension» (Masera and Scorza, 2016).

The proliferation of digital rights is clearly the result of a situation in which the dynamism of the network and the need to deal with a recognized «multistakeholderism», that refers to the multiplicity of actors which operate in it, need a variety of intervention techniques. The «multistakeholderism» is also projected on the different modes of intervention: in a dimension of co – regulation, multiples techniques, that are generally flexible within them and rigid only in their contours, certainly need the flourishing of right but also the strengthening of duties (Morelli, 2015).

The inalienable use of digital technologies presupposes a qualitative change of relationships inside the companies that must conceive the right to be disconnected not as an impediment of the business activity, but like an opportunity to rethink the processes and to increase the productivity, by starting dialogues, experimentations and new training.

Not always at the speed of the technologies are opposed only the delays of the law, but the slowness with which people and cultures manage to adapt themselves to ever more sudden changes is also added (Poletti, 2017).

7. POSSIBLE COINCIDENCE AND DISTINCTION WITH TELEWORKING

At this point, it may be useful to understand if and how the new discipline of smart working can interact with the discipline and the scope of teleworking.

Firstly, while smart working is characterized by the alternation between periods in which the performance is rendered according to traditional modalities, inside the business premises, and periods in which it is carried out according to smart form, outside the company premises, without a fixed workstation and in absence of a predetermined time by the employer, teleworking is a form of remote work that can exclusively be achieved

through the use of IT instruments installed in a determined place and that allow the connectivity with the business seat. Smart working, instead, although it is performed outside the company premises, does not require a fixed workstation, but the simple use, however not essential, of technological means (Pinto, 2016; De Luca Tamajo and Mazzotta, 2018).

Secondly, smart working, even if with some peculiarities, admits that the performance takes place at least in part inside the company and therefore by definition expresses a different organizational modality from teleworking.

Finally, the defining distinction is characterized by further and relevant effects because, as it has been observed, the discipline of smart working reserves individual autonomy areas of intervention (for instance directive, disciplinary and control power) unknown to the case of teleworking.

Teleworking, hence, appears a modality of execution of the performance that can fall into the contents of a pact of smart working and in such hypothesis it becomes linked with the discipline of smart working in the private sector, at least for the part realized outside the company by means of a telematic connection.

Nevertheless, teleworking may not be considered a synonymous of smart working because the perimeters of the two institutions do not appear totally coincident and because inside the pact of smart working it is possible to find exclusive and completely peculiar contents and effects that explain the much greater diffusion of it (Santoro Passarelli, 2017).

8. DIFFICULTIES AND PERSPECTIVES OF SMART WORKING

In order for there to be a clear awareness of the phenomenon, it is necessary to distinguish those that are wrong beliefs, the so called «false myths» of smart working, from those that are real difficulties.

Firstly, people often tend to take advantage of smart working but the practical experience shows that exactly the opposite is true: people involved in a project of smart working feel more empowered and want to demonstrate their contribution independently of physical presence, working more and better.

Another wrong belief is that smart working is only for those who have the opportunity to work from home: the introduction of this working modality allow people the possibility to choose with autonomy and responsibility among multiple levers of flexibility, of which remote work is only one.

Working hours, configuration and selection of work spaces inside the business seats and flexibility in the use of different technological instruments in response to specific work

needs are equally central levers in smart working.

Finally, it is thought that this work modality creates a sense of isolation in the person, but compared to teleworking, smart working is configured as a form of voluntary flexibility, that can occasionally provide remote work. Thus conceived the dangers of isolation or alienation are negligible.

However, there are real difficulties that are linked with the maturity of the people, the need that managers change their mind set, by planning and delegating objectives.

Making smart working requires questioning, it is a path that requires a mature relationship among people, between people and organizations, among leaders and collaborators; it is a relationship that must be based on trust, on willingness to get involved and on availability to treat the other as an individual with his needs, his characteristics, his talents to be valorized.

At the same time, there are also some «open shipyards» on which to ensure a growing commitment in the next future.

A first construction site on which it is necessary to work concerns the small and middle enterprises, where the culture with managerial approaches mainly based on micro – management represents the real barrier to the diffusion of smart working.

A second construction site concerns public administration, an essential factor for the revival of our legal system. Smart working is a good deal for public accounts, as demonstrated by the benefits gained by private organizations, and it a way to start introducing even in this sector evaluation logics based on results and levels of service rather than on presenteeism or on the fulfillment of bureaucratic procedures. Besides, it is a way of preserving the attractiveness of the public employment towards talents, by not excluding public employees from initiatives that improve the organizational climate and the possibility to conciliate and integrate work and private life.

A third construction site concerns the necessity to make projects of smart working more systematic and pervasive in terms of levers introduced, not limiting to superficial interventions, but also working on regulation in a different way at the level of system contracts²⁵ and second – level bargaining.

A fourth construction site concerns, instead, the role of smart working as enabler of the «digital transformation». The digital is only apparently a commodity. Without a relevant increasing of the availability of technologies and digital competences, the real diffusion and effectiveness of smart working will be limited and entire portions of individuals,

²⁵ They are the so called «contracts of solidarity», aimed at avoiding individual and collective dismissals, by reducing the number of worked hours and, consequently , the retribution: work less to work everyone.

organizations and territories will effectively excluded. Moreover, the diffusion of smart working can be in turn a very powerful factor of acceleration of the digitalization of processes and diffusion of technologies and digital skills.

Finally, a fifth and last construction site on which to work is the progressive extension of smart working to new activities and professional profiles: with the increasing diffusion of new digital technologies and the evolution of professionalism that will happen thanks to the 4.0 Industry, the pool of potential smart workers will become increasingly broad, going to include jobs that today still seem very distant from this new approach, such as workers or maintenance workers. In order for this to be possible, technology is not enough: we need to pay attention to the training and development of competences, considering that digital behaviors are an essential condition of citizenship and inclusion in the world of work. The education system must take care of all those workers who need to acquire a series of skills, habits and tools of collaboration that will allow them to be included and to be part of this phenomena of innovation and transformation.

The challenges and perspectives opened by these construction sites make us think that the paths of smart working is just at the beginning, but it is a road that opens up enormous potentials to make our system of work organization more competitive, fairer, more inclusive: in other words, more smart (Corso, 2017).

In the last years, in fact, collective bargaining began to take an interest on smart working, with forecasts of mainly experimental nature and in the next chapter the thesis will offer (after some examples of implementation of teleworking) a varied panorama of experiences of smart working that have already been implemented.

CHAPTER III – PRAXIS: SOME EXAMPLES OF IMPLEMENTATION OF TELEWORKING AND SMART WORKING

1. PREMISE

Although still rather limited, at least from a quantitative point of view, nowadays the company agreements on teleworking and smart working are constantly growing. This chapter, in fact, does not offer a quantitative analysis, but a qualitative, paradigmatic, empirical study.

In particular, the interventions of the collective bargaining (at national level and mostly at company level) are mainly concentrated in some sectors, such as alimentation, energy, information and communication technology, in the banks and insurance companies and some areas of public administration. Interventions of collective bargaining are not lacking in some highly technological companies, even if, in these cases, unilateral initiatives are still prevailing and they tend to be aimed only at the most qualified professional profiles, sometimes through internal regulations.

The analysis of collective bargaining is of particular importance, not only in terms of contribution to the diffusion and promotion of these new modalities of execution of the working activity, but rather it focuses on the normative perimeters that underline the differences between the two institutions (Tiraboschi, 2017).

2. SOME EXAMPLES OF IMPLEMENTATION OF TELEWORKING

In this section the thesis offers some examples of implementation of teleworking, such as the agreements stipulated by Nestlé Italiana S.p.A, Birra Peroni S.r.l., GDF Suez Energia Italia, Almaviva S.p.A. and CNP UniCredit Vita S.p.A., and it also describes the situation of teleworking inside the University of Palermo.

2.1 THE TELEWORKING AGREEMENT OF NESTLÉ ITALIANA S.P.A.

On the 16th July 2010 the NESTLÉ ITALIANA S.P.A. stipulated an agreement of teleworking with CGIL, CISL UIL. According to it, teleworking is implemented on voluntary basis and it represents only a mere variation of the place of fulfillment of the performance, not going to affect the insertion of the worker in the company organization and allowing the employer to exercise his powers of direction, address and control.

Teleworking does not determine any change in the legal nature of the relationship or in the work seat and it does not involve any prejudice to the classification, the salary level, the possibilities of career, training and professional growing.

Concerning the applicability, taking into account the technical and organizational needs, the experimentation disciplined by the present agreement is addressed to permanent workers of all Italian seats of the company belonging to the categories of employees and middle managers and the 8% of them may simultaneously be active.

If the requests are greater than this numerical limit, the followings circumstances will constitute subjective conditions of priority: return from motherhood (this condition is also extended to the father); need to look after children under the age of three; parent only with cohabiting minor child; distance between home and work place that requires a commuting time for each journey of more than one hour; other eventual subjective conditions different from those above mentioned, provided they are relevant, are taken in consideration for the purpose of evaluating the existence of the priority.

The request for access to the experimentation is examined in the light of the following requirements: the physical presence of the worker at the work seat must not be an absolute necessity, but the activity may be performed remotely, through the usual use of telematic means, without prejudices for the productivity, expected results or the colleagues' work: in fact, activities that ordinarily or predominantly involve the presence inside the company are excluded (for instance, the selling); the worker has to maintain the same professional commitment, providing a performance in line with that normally rendered inside the company; he must provide an environment suitable for carrying out the activity, in compliance with the regulations on the protection of workers' health and safety.

The number of positions available for the experimentation of teleworking is identified by the HR Direction, after having heard the individual Company Directions and in a balanced way among the single functions.

Concerning the modality of execution of the working activity, also in order to favor the maintenance of the interrelation with the colleagues, teleworking is normally implemented part – time and, consequently, for a number of days predetermined during the week or month. In the other working days performance are rendered at the workplace where the worker is on the staff.

To perform teleworking, the Company provides a laptop connected to the business computer system, an ADSL line devoted exclusively to the working activity and a mobile phone whose private use may be authorized in advance by the Company in accordance with the company policy: such instruments must however comply with the provisions of the law on the worker's protection of health and safety. The Company also bears the related purchase, installation, fee and management fees.

The performance under teleworking modalities is characterized by an autonomous

management of the work time, within the limits of the total duration of the performance provided in the national collective contract of employment.

Moreover, teleworkers retain the existing union rights and may participate in all union initiatives at the unit of belonging.

The current regulations on safety and protection of health provided for workers who perform their activity inside the company are applied to teleworkers who carry out the same activity (but under teleworking modalities)²⁶

2.2 TELEWORKING IN THE BIRRA PERONI COMPANY

This agreement was stipulated on the 5th April 2012, in Rome, between the Birra Peroni company and CGIL, CISL and UIL. Parties individuated into teleworking a possible modality of execution of the working activity that may concretely contribute to better conciliate the work with other personal needs of the worker, such as commuting and managing family situations. In particular, parties adopted the «Experimental project of teleworking» from the 1st April 2012 until the 31st March 2013.

After having resumed the definition of teleworking contained in the Inter – Confederal Agreement of 9th June 2004, parties established that the experimentation disciplined by the agreement in exam is applied to permanent workers belonging to the categories of Employees and Middle Managers of all business directions, with the exception of production plants and sales force.

The request to access the experimentation is examined by the company Direction, taking in to account the following requirements: the physical presence of the worker must not be an absolute necessity, but the activity may be carried out remotely, through the usual use of telematic means, without prejudice to productivity, expected results or colleagues' working activity; the worker has to ensure the maintenance of the same professional commitment, providing a performance in line with that normally rendered inside the place of work; the worker must have completed at least two years of effective service in the company; the worker must make available an environment suitable for carrying out the working activity according to modalities of teleworking in compliance with the regulations on the protection of workers' health and safety, where there is coverage for the Internet that preserves the same level stability, efficiency and safety, to dedicate exclusively to the

²⁶www.bollettinoadapt.it/adapt-indice-a-z/nestle-italiana-s-p-e-il-coordinamento-nazionale-rsu-assistito-dalle-segreterie-nazionali-di-fai-cisl-flai-cgil-uila-uil-16-luglio-2010-accordo-su-adozione-del-progetto-sperimentale-di/.

working activity.

During the experimentation, a number of teleworkers up to 8% of the workforce in open – ended contracts on the date of stipulation of this agreement, on a yearly basis, can be active at the same time. If the requests are greater than this numerical limit, we need to consider the same subjective conditions of priority provided by the previous agreement analyzed (stipulated by the NESTLÉ ITALIANA S.P.A.)

During the experimentation period, teleworking refers to a fixed term for a period identified by the company Direction, taking into account both the technical, organization and productive needs of the company and the personal/family needs of the worker.

To carry out the activity, the technological instruments (a personal laptop, an ADSL line and a mobile phone that are dedicated exclusively for business use) are provided by the Company that will take care of all the related purchase, installation, management and maintenance expenses.

The worker, however, manages his own time of work, guaranteeing the presence at the workplace on the days eventually established by the individual contract.

Besides, in addition to the training courses provided for the generality of workers, the access to teleworking may be accompanied by specific modules aimed at the people directly involved.

Also in this case, workers in teleworking system preserve the existing union rights: they, in fact, may participate in all the union initiatives at the unit of belonging and they are obliged to the utmost confidentiality on the company data and information they hold, by adopting all the necessary precautions to ensure their protection²⁷.

2.3 TELEWORKING IN THE ENERGY SECTOR: THE AGREEMENT STIPULATED BY GDF SUEZ ENERGIA ITALIA

This agreement was stipulated between GDF SUEZ ENERGIA ITALIA²⁸ and CGIL, CISL and UIL on the 10th April 2013, to start a trial of the home teleworking institute for all the personnel of all the Group companies.

The parties agree that the transformation of the employment relationship into teleworking follows from a voluntary choice of the employer and the worker interested through the signing of an individual agreement between the parties.

The Company, for motivated technical, organizational and productive needs, can

²⁷ www.bollettinoadapt.it/adapt-indice-a-z/soc-birra-peroni-s-r-l-assistita-da-unindustria-confindustria-roma-e-fai-cisl-flai-cgil-uila-uil-5-aprile-2012-verbale-di-intesa-su-progetto-sperimentale-di-telelavoro/.

²⁸ It is a group of companies which includes GDF SUEZ ENERGIE SpA, GDF PRODUZIONE SpA, ROSEN Rosignano Energia SpA and VOGHERA ENERGIA SpA.

arrange the restoration of the worker's performance at the reference office, giving notice with at least one month. At the same time, the worker who wants to return to the company seat of reference, has to make a written request, justifying the reasons, at least one month in advance and, however, at least one year after the start of teleworking. Possible future requests for passage to teleworking will be evaluated by the Company, taking into account the accrual of work experience such as to allow the subject interested to operate independently in the activities that he will have to perform, the existence of a full – time employment relationship and the particular personal/family needs (necessities related to the care of children/elderly, disabilities, commuting, etc.) that will be reported by the worker.

The teleworker continues to be subject to the ordinary normative discipline regulating the employment relationship for what concerns the direction, coordination and control powers by the hierarchical structure and he performs his activity respecting the ordinary weekly working hours provided for by the collective contract applied and any overtime work must however be requested and authorized. It is besides admitted that, considering the availability of the worker, the professional performance takes place at times differently distributed with respect to the work seat of belonging, being able to place within the time slot 8 a. m. – 8 p. m. from Monday to Saturday and however in compliance with the weekly timetable provided for by the collective agreement.

The worker has to make available a portion of his own home of adequate size and he must also apply the company safety guidelines, being responsible for taking care of his own health and safety and that of other people in his own domicile. Moreover, he is obliged to promptly report to the employer any situations that may represent a danger and to take all appropriate precautions to eliminate them. The Company can carry out specific inspections and technical checks by the competent structures and the worker must, upon appropriate notice, allow their access.

The economic and normative treatment applied to the teleworker is that envisaged for the personnel of the company seats of reference.

The employer guarantees the adoption of measures aimed at preventing the teleworker's isolation compared to the other workers of the Company, favoring, in addition to the normal use of business communication tools, the opportunities of integration and direct communication inside the structure of belonging through periodic returns (at least one per month and however according to the organizational needs of the structure of belonging) in the Company for reasons related to the execution of the performance, with particular reference to training interventions and work planning.

The instruments of work (a personal computer, a telephone line with ADSL connection

and an ergonomic chair) are provided by the Company and the worker must exclusively use them for reasons of service; in the event of malfunction he must immediately inform the company competent structures. In addition, in the face of the use of his own home and energy consumption, the worker will receive a flat – rate annual reimbursement of 900 €.

Teleworkers enjoy the same union rights and the same opportunities for access to training and career development as comparable workers who perform activities inside the business premises and they also receive a specific training for the use of the technical instruments of work²⁹.

2.4 TELEWORKING IN THE INFORMATION AND COMMUNICATION TECHNOLOGY SECTOR: THE CASE OF ALMAVIVA S.P.A.

This agreement was stipulated in Rome on the 17th February 2015 and according to it teleworking performance can be requested by all permanent workers with the qualification of employee and middle manager and at least three year of seniority, with the exception of apprentices.

The working performances must be such that they can be carried out remotely and for this reason workers on time and expenses, workers engaged in client companies and workers engaged in the management of assets or equipment present at the company seat are excluded from the applicability of this agreement.

Teleworking does not constitute a change in the workplace: the worker will therefore remain in staff at the production unit in which he is in force at the time of signing the teleworking agreement.

The necessary contact between the teleworker and the Company takes place through telematic connection and interruptions in the electronic circuit or any stops due to faults or accidental causes or in any case not attributable to the worker are considered to be borne by the Company that undertakes to intervene to solve the fault. If the fault cannot be resolved in reasonable time, the Company may dispose the return of the worker to his office, only for the time necessary to restore the system.

The Company provides the teleworker with suitable equipment compliant with the current safety regulations and he may exclusively use them in the interest of the company.

The number of simultaneously active teleworkers cannot exceed 3% of the total

²⁹ www.bollettinoadapt.it/adapt-indice-a-z/gdf-suez-energia-italia-e-filctem-cgil-cisl-femca-cisl-uilcem-uil-10-aprile-2013-verbale-di-accordo-per-la-sperimentazione-dellistituto-del-telelavoro-domiciliare/.

workforce, with peaks of up to 5% per single production unit³⁰.

2.5 TELEWORKING IN THE BANKING – INSURANCE SECTOR: THE AGREEMENT STIPULATED BY CNP UNICREDIT VITA S.P.A.

This agreement was stipulated on the 3rd June 2010, by the CNP UniCredit Vita S.p.A. and CISL in order to implement the home – based teleworking.

After having defined teleworking as «a working activity performed entirely or partially outside the workstation in place of the activity carried out at the site, favored by the use of technologies that allow and facilitate communication between the company and workers», parties establish the following.

Teleworking represents a mere modification of the place of working performance fulfillment, which does not affect the insertion of the worker in the company organization nor the consequent subjection to the managerial and disciplinary powers of the employer.

Home – based teleworking relationships can only be established after being hired and through the worker’s request.

Teleworking can be accessed by all employees in permanent service for at least one year and with a full – time schedule that are recipients of tools for remote and external access to company information systems, after evaluation, by the Company, of the objective compatibility of home – based teleworking with the task and the organizational and technical needs of the Company. In case of multiple requests at the same time, a maximum of home – based teleworkers equal to 8% of employees, on an annual basis, may be active. If requests are greater than the threshold mentioned above, in this case, the Company takes into account the greater seniority of company service.

The teleworking activity takes place at the employee’s domicile but the storage of the workstation at its headquarter remains confirmed; the Company, in fact, provides for the provision, installation and maintenance of the workstation at the teleworker’s domicile: maintenance is carried out on site only if portable equipment is provided to the worker. Also in this case, the teleworker must make available a space suitable for carrying out the work activity in compliance with the provisions of current regulations on safety at work.

Teleworker enjoys the same rights guaranteed by the law and the national collective contract of employment intended for a comparable worker who carries out his own working activity inside the business premises. He may also access the same training paths as other workers usually working at the headquarters of the Company.

³⁰ www.fim-cisl.it/accordi.

Concerning the trade union rights, full participation in the activities and initiatives of trade union nature is assured, guaranteeing communications with the worker's representatives.

During the teleworking, activities return to the workplace can be scheduled for reasons connected to the execution of the performance, to the planning of the work and further needs of integration and direct communication, to training interventions that are not provided according to e – learning modality.

Moreover, the Company guarantees that workplace and material available to the worker is compliant with the current regulations on the subject of environment, safety and health in the place of work. In order to have the correct application of the discipline on health and safety verified by the employer, workers' representatives and/or competent authorities, the worker must allow access to his home; such access is subject to the worker's notice and consent, within the limits of the law and the collective labor agreement. In addition, the worker undertakes to use the IT equipment at his disposal exclusively to perform the teleworking activities agreed and in case of its malfunction he must immediately notify the competent structure and he has to allow the appropriate maintenance operations to be carried out. In addition, he is obliged to perform his activity with diligence and confidentiality, to take care of the work tools, to keep the secret of all information made available to perform his tasks and to follow the instructions given by the company for the execution of the work.

The home – based teleworker is also entitled to a flat – rate reimbursement of 100 € per month as contribution of energy consumption and use of housing³¹.

2.6 TELEWORKING INSIDE THE UNIVERSITY OF PALERMO

Within the University of Palermo, teleworking is born on the initiative of FLC³² – CGIL.

As Dr. Enrico Capuani³³ observes, the University of Palermo has its own Regulation governing the teleworking of Technical, Administrative and Librarian Staff.

This Regulation, approved in May 2014, disciplines the case of home – based teleworking that concerns the possibility of the employee to work at his own domicile, through the adoption of technological tools which allow remote connection and adequate

³¹ www.bollettinoadapt.it/adapt-indice-a-z/cnp-unicredit-vita-s-p-fiba-cisl-fisac-cgil-3-giugno-2010-accordo-sul-telelavoro-carattere-sperimentale/.

³² Federazione Lavoratori della Conoscenza is an organization of CGIL which operates in sectors such as Education, University, Research and High Artistic and Musical Education.

³³ Trade Union Director of the FLC – CGIL inside Unipa.

communication with the office of belonging during the daily coexistence bands.

The University's administration recognizes the value of teleworking, in terms of rationalization of work organization, realization of management economies, through the flexible use of human resources, the foreseeable improvement of the organizational climate and the consequent abatement of absenteeism rates related to the lack of reconciliation of the life and work times of the employees in particular situations of personal and/or family distress and the reduction physical movements of employees³⁴.

In 2014 the first pilot project was launched, which provided for six teleworkers for 2015; in 2015 another pilot project was launched, providing for the same number of teleworkers for 2016 (six); in 2016 the number of teleworkers to be involved was extended to twelve for 2017; last year, the number of teleworkers to be involved was extended to fifteen³⁵, which is, hence, the current number of teleworkers inside the University of Palermo.

This scenario denotes that the trend is hopefully that the number of teleworkers increases up to, at least, 10% of employees, as provided by Article 14, paragraph 1, of Law n. 124/2015 (Madia Law), concerning the implementation of teleworking in the public sector.

Actually, to date, the percentage of teleworkers inside Unipa is equal to 1% of non – teaching staff in service at the 31st December 2017 (15 teleworkers out of 1561 employees which belong to the non – teaching staff).

These projects of experimentation have an annual duration and they must be oriented towards ensuring the university administration with the concrete opportunity of making functionally use of this form of working flexibility, so that you can join the best and continuously available professional skills, as well as to seize new opportunities in the organization of work, efficiency and global level of the service's quality, giving workers, at the same time, the possibility to conciliate personal and/or family needs with the maintenance and preservation of the continuity of the working performance, expectations of training and professional growth, within a working context that guarantees information, innovation and socialization.

Through a specific analysis it is possible to identify activities that lend themselves to being teleworkable, determining for each process some objective (for instance the level of

³⁴ www.unipa.it/amministrazione/arearisorseumane/settorecarrieredirigenti/tab/formazione/.content/News_2014/avviso-di-selezione-telelavoro.doc&ved=2ahUKEwjwmueZ-uTbAhVJWxQKHeJVBMoQFjAAegQIAxAB&usg=AOvVawIY7WxSzk0WWj_W3-e2pT1f.

³⁵ www.unipa.it/snalspa/documenti/2017/bando-telelavoro-2017.pdf&ved=2ahUKEwji-MtieXbAhXFPRQKHR1LC60QFjAAegQIARAB&usg=AOvVaw0LdM2ty5e9yFfR1JeNXeod.

digitalization of documents and the level of standardization of procedures) and subjective (skills and features that have to be owned by the staff involved in teleworking).

The activity carried out by the teleworker is controlled by the administrative manager of the structure who is required to verify the degree of realization of the activities previously assigned to the teleworker.

Concerning the modality of execution of the working activity, it is carried out for 50% at home, according to teleworking modality, and for 50% at the working seat: the working activity, since it is teleworkable, is completely the same; generally, during the days of return, the activity is performed at the office, while on other days it is carried out at the teleworker's domicile.

With regards to the protection of business data treated by the teleworker from the remote seat, the mechanism adopted is to use a secure and encrypted channel, the so called VPN (virtual private network), through which the teleworker will continue to authenticate with username and password, guaranteeing an appreciable level of security for the company.

Moreover, the Prevention and Protection Service carries out checks to verify that the teleworking seat is suitable for workers' health and safety.

From the analysis carried out it is possible to observe how up to now the reports have been showing a positive trend, from which emerges an effective and efficient management of time and activities performed according to teleworking modalities. The administration recorded savings on the provision of the meal voucher, that is for the teleworker only on the days when the working activity is carried out at the ordinary workplace; there was also a decline in sick leave during the year and a high achievement of the organizational well-being of the worker has been achieved: he was able to conciliate his personal and family needs with the maintenance and protection of continuity of work performance, expectations of training and professional growth.

3. SOME EXAMPLES OF IMPLEMENTATION OF SMART WORKING

Concerning the smart working, it is important to underline how, also in the case of the absence of the law, the collective bargaining establishes the minimum limits governing the execution of the working performance according to smart modality: this confirms how, in fact, collective bargaining anticipated the law.

In particular, in this section the thesis offers some concrete examples of agreements of smart working, such as those implemented by Barilla G e R. Fratelli S.p.A. and Barilla

Holding S.p.A., Enel, MPS³⁶ Bank, Presidency of the Council of Ministers, FCA³⁷ Group and University of Trento.

3.1 SMART WORKING INSIDE THE BARILLA G. AND R. FRATELLI AND BARILLA HOLDING S.P.A.

On the 2nd March 2015 the Barilla G. and R. Fratelli and Barilla Holding S.p.A. stipulated an agreement in order to experiment smart working.

The scope is to improve the business performances and the achievement of more challenging business results; in this perspective, smart working may contribute to a better work – life balance and to the realization of positive impacts on environmental factors, in a framework of greater accountability, autonomy and results orientation by the people involved.

The implementation of this new flexible modality of execution of the working performance involves staff with permanent contracts and with a fixed – term contract (full time and horizontal part – time³⁸).

The person involved by the project of smart working, on voluntary basis, may carry out up to a maximum of thirty – two hours of his monthly working performance in a place other than the working place. Nevertheless, in the following conditions there is the possibility to use sixty – four monthly hours of smart working: for women, from the communication of the state of pregnancy until the child’s age is one year old; for men from the child’s birth until his age is one year old; for staff with a disability of more than 80%; staff who are carrying out life – saving therapies; staff with an underage child who is carrying out life – saving therapies. The non – use of available hours in smart working in a month, however, may not be used in a subsequent month.

Smart Working, therefore, represents, into the exception of the present agreement, a mere variation of the place of performance fulfillment, not going to affect the insertion of the worker in any way into the business organization; in addition, it does not imply any impact on the framework and the salary level of the single worker.

The project foresees a preventive planning of the working activity, in a coherent manner with the organizational, functional and technical needs of the company.

The smart worker is bound to the utmost confidentiality on the business data and

³⁶ Monte dei Paschi di Siena.

³⁷ Fiat Chrysler Automobiles.

³⁸ The reduction in time compared to full time is carried out by reducing the normal daily working time; according to the vertical part – time, instead, the working activity is carried out full – time but only in certain periods of the week, the month or the year.

information in his possession and/or that are available on the company computer system or paper documents, as well as to take all the necessary precautions to ensure the safeguard and the performance of activities in safe conditions. He must take care of his own safety and his own health and that of the people present near the chosen work space for carrying out their activity in smart working modality.

In this case, however, unlike the teleworking agreements analyzed above, each economic amount connected directly or indirectly to the execution of the working performance with smart working modality (for instance electricity, heating, ADSL, etc.) is not reimbursed by the Company³⁹.

3.2 THE ENEL AGREEMENT ON SMART WORKING

The various collective agreements before the Law n. 81/2017 also include the Enel agreement of 4th April 2017 that provides a rather clear definition of smart working, described as «mere variation of the working performance fulfillment that is carried out outside the business premises, in a non stable and non continuative way, through the support of technological systems».

The parties, in fact, point out the smart working integrates a flexible way of performing the working activity, «not going to engrave on the type of work relationship that remains, to all the contractual and statutory effects, subordinate work» (Monterossi, 2017).

In particular, according to the agreement, the place of the performance fulfillment is totally remitted to the autonomous determination of the employee; this means that, unlike other collective agreements that almost always refer to the smart worker's domicile, the agreement in exam leaves ample freedom for the worker who can choose any place to perform the working activity according to smart modalities, provided it is adequate in terms of safety, confidentiality and connectivity (Dagnino, Tiraboschi, Tomassetti and Tourres, 2016).

Besides, while the planning of smart working days must be agreed with the company responsible, there is no similar provision requiring prior notification to the employer the place individuated, except that the worker's preference falls on a different location from that assigned. The definition of the location of spatial coordinates would seem to be, therefore, totally removed not only from the decision – making power, but also from the control power of the employer, with inevitable health and safety implications.

³⁹ www.fim-cisl.it/accordi.

The recourse to smart modality is expressly admitted, at maximum, for one day per week.

The activity is performed outside the company «in a non stable and non continuative way»: this clarification is linked with the intention of the parties to differentiate smart working from the specific case of the teleworking, characterized, instead, by the regular execution of the performance outside the business premises (Gottardi, 2003; Dagnino and Tiraboschi, 2016).

The other identifying element of smart working is represented by the use of the technological instruments that, obviously, become indispensable in most cases also to convey the exercise of managerial and control power (Dagnino, Tiraboschi, Tomassetti and Tourres, 2016).

Work tools retain the nature of a company asset and, therefore, the obligation is incumbent on the worker, while the responsibility for the safety and correct functioning of the same rests on the employer.

In particular, the parties also specify that «the employee is required to report immediately the non – functioning or any faults that affect the correct use of the tool and the ability to connect, if the problem cannot be solved by the remote assistance centers». Consequently, the worker who has diligently informed the employer of the malfunction of the instruments cannot be subjected to any disciplinary prejudice in the event of total or partial non – compliance. The employer, instead, is exonerated from any responsibility when the tools are owned by the worker.

Concerning the working time, the agreement provides that the smart worker is required to comply with the same time he observes when he performs his activity at the assigned headquarter.

With regards to the ambit of application, the agreement clarifies that the identification of units compatible with the use of the institution is referred to the company's evaluation; the apprentices and employees in the first year of employment are however excluded, since in these cases the guarantees of trust, experience, competence and responsibility that have to support the adaption of the smart work are presumed to be unfulfilled. Smart Working may not be use even by the workers with vertical part – time: in this case the intent is to avoid the professional isolation of an employee who, for the characteristics typical of the contract type of employment, may not guarantee a constant presence into the company.

From the point of view of the smart worker's rights, he is in all respects contractual and legal a subordinate worker and he is equivalent on the economic and regulatory treatment to the employee who carries out the same activities exclusively inside the

Company. This implies that the variation of the place of the performance fulfillment does not affect the amount of remuneration nor, by way of example, the discipline of holidays or permits or the enjoyment of trade union rights (Monterossi, 2017).

At the same time, the smart worker remains subject to compliance with due diligence, obedience and loyalty obligations, as well as the subjection to the employer's managerial, control and disciplinary power remains unchanged. In particular, concerning the employer's managerial power, the employer remains free to modify, permanently or temporarily, the work seat only for the part of the performance to be carried out at the place of assignment: the device act, instead, has no effect on the residual part that remains anchored to the place indicated unilaterally by the smart worker (Pinto, 2016). With regards to the disciplinary power, instead, if the worker accesses the day of smart work without respecting the rules defined by the agreement itself or he does not return to the office in the foreseen cases, his absence will be considered unjustified and the conduct may be object of evaluation.

Concerning the safety profile, the Enel agreement establishes that the employer fulfills his security obligation by delivering, at least annually, to the worker and the manager of the workers for safety a written notice in which the general and specific risks related to the particular mode of execution of the working relationship are indicated. At the same time, the worker, in the wake of Article 10 of Legislative Decree 81/2008, is required to cooperate for the implementation of prevention measures prepared by the employer to face the risks connected to the execution of the performance outside the business seat; he must also take care of his own safety and that of other people in the vicinity of the chosen space. The guarantee debt of the smart worker expands, however, beyond the boundaries outlined by the aforementioned decree: he, choosing unilaterally where to perform the performance, assumes the responsibility to identify places, behaviors and modalities to work in health and safety. Besides, the agreement specifies that the Company is relieved on any responsibility in case of non – compliance by the smart worker to the given indications and improper use of the equipment or risks situations caused by unsuitable behaviors adopted.

As the Enel Agreement shows, the protective role incumbent on the employer is rather achieved on the front of the addressing of employees to sure behaviors, through information and specific training that becomes a condition of stipulation of the smart working pact.

Finally, in the event of an accident, the present agreement only considers that occurred «during the performance of smart working», by imposing on the worker the obligation to provide timely and detailed communication to the employer, who remains bound to the

consequent communication to INAIL.

Under this profile, unless the performance is rendered in other company seat, we must consider how complex it is for the employer to ascertain the existence of the causal link between working activity and accidental event, above all considering that the place outside the company premises where the performance takes place can coincide with an environment in which other extra – work activities related to private and family life are carried out (Monterossi, 2017).

3.3 SMART WORKING IN THE BANKING SECTOR

The MPS Bank and Trade Union Organizations, on the 29th May 2017, stipulated an agreement to experiment the smart working inside the Bank's structures, in order to allow employees better work and life time management, through new forms of performing the working activity that are characterized by flexibility and autonomy and based on principles of enhancement of commitment, responsibility and trust relationship between Employee and direct Manager.

The first part of the agreement contains the definition of «smart working», that identifies the main features of the institute: the use of IT instruments, the exercise of the working activity in part inside the Company and in part outside it without a fixed workstation, the same rights and duties of the Employer and workers who perform the working activity inside the Company.

Recipients of the experimentation object of this agreement are the MPS's Workers, hired on permanent contracts (also part – time), belonging to the professional Areas, Managers and Executives with roles and tasks compatible with the smart working modality.

MPS's employees may join the experimentation on a voluntary basis and the authorization to access smart working is granted after evaluation of the compatibility with the job and with the role held by the HR Manager. After having received the authorization, the smart working performance becomes object of an individual agreement between the Company and the smart worker. In the event of serious incompatibility of a productive and organizational nature, the Company, with a ten – days notice and providing specific motivation, may recede from the individual smart work agreement. Even the smart worker, for personal reasons, can exercise the contract termination. In both cases, the ordinary working activity will be reinstated in the usual place of work.

The working performance according to smart modality may be carried out, compatibly with the organizational needs of the structure of belonging, for one working day per week,

up to a maximum of four days per month.

If more workers in the same production unit are allowed to smart working, in order to safeguard the organizational, productive and functional needs of the Structure, the planning of smart working days takes place taking into account the following priority criteria: proven health needs of one's own and family members, assistance for children under fourteen or non self – sufficient elderly, greater distance between residence/domicile and workplace.

The smart working performance is carried out in temporal correlation with the standard daily time band of seven and half hours and according to the autonomous and flexible organization of working hours that is typical of smart working. During the smart working days, additional work and/or overtime work will be provide and authorized.

During the smart working performance the worker must be available and promptly notify his manager of any eventual even temporary absences from the work station.

In case of technical malfunctions of any kind that prevent the carrying out of the smart working activity, a timely communication must be given to the head of the Structure of belonging that may evaluate the return of the Resource to the workplace for the remaining part of the working day.

The lack of use, for any reason, of the day in smart working in no circumstances gives rise to the right to recovery of the same.

Moreover, for the workdays in a smart manner, the payment of the commuting allowance to which the employee is eventually destined is not recognized.

The IT instruments to carry out the smart working performance are made available by the Company that also takes care of their maintenance, except the internet connection that, instead, is dependent on the smart worker. The employee, however, undertakes to keep and use the equipment provide by the Company in compliance with the relevant company regulations.

As required by Article 22 of Law n. 81/2017, the agreement in exam provides that the discipline on health and safety contained into Legislative Decree 81/2008 is applied to the smart worker. In particular, the Company will provide specific training and adequate information about the correct use of the equipment, the general and specific risks, as well as the optimal methods of carrying out the activities with reference to personal protection. To this end, the employer gives the worker and the workers' representative for Safety, at least annually, a written notice in which the general and specific risks connected to the particular mode of execution of the employment relationship are identified.

With reference to the discipline on controls, the Company confirms that the exercise of

the control power on the performance carried out outside the business premises is performed in full compliance with Article 4 of the Law n. 300/1970 and subsequent modifications.

The agreement also guarantees the contractually provided coverage in case of injuries suffered by the employee in the place of carrying out the working activity according to smart modalities: the smart worker must promptly communicate the event to the HR Administration, providing the circumstances of the accident and the documentation eventually required⁴⁰.

3.4 SMART WORKING INSIDE THE PRESIDENCY OF THE COUNCIL OF MINISTERS

The experimentation of smart working inside the Presidency of Council of Ministers responds to the purpose of allowing 10% of employees to make use of new spatio – temporal modes of carrying out the working performance, with the guarantee not to suffer penalties. For this reason, on the 5th April 2017 the Administration and Trade Union Organizations of the sector and area VII of the Presidency of the Council of Ministers have stipulated a protocol of understanding for the experimentation of smart working, within a management culture oriented to work for goals and results.

The aim is to strengthen the conciliation measures of the life and work time and to promote sustainable mobility by reducing home – work – home travel.

Also in this case, the protocol includes the main features of the smart working: a) execution of the working performance carried out partly outside the usual workplace and with only the maximum time constraints deriving from the law and the collective bargaining; b) possibility of using technological tools; c) absence of a fixed workstation.

Concerning the ambit of application of the experimentation, the working performance according to smart modality may be carried out by all the employees, including managers, with permanent or fixed contracts, in service at the Presidency of the Council of Ministers.

The working performance according to smart modality takes place outside the Administration's workplace, also without the need for equipment and connections to be provided to the smart worker by the Administration.

As mentioned before, the carrying out of the working performance may not give rise to penalties for the purposes of recognition of professionalism and career progression, nor can

⁴⁰www.fabimps.it/public/Accordi/170529_Verbale%2520Accordo%2520Lavoro%2520Agile.pdf&ved=2ahUKEwjGt7rGvtPbAhUBrRQKHRA9DKsQFjABegQIAhAB&usq=AOvVaw13m8q6UFOT5VJdRVn_dWwW.

it affect the economic treatment in enjoyment.

Also in this case, in the days of smart working the travel treatment is not recognized, extraordinary services are not configurable and smart workers are not entitled to receive the meal voucher.

Furthermore, the smart worker is required to keep diligently the documentation used, data and technological tools eventually made available by the employer.

The administration guarantees the worker's health and safety consistent with the exercise of work activity in a smart manner and it provides to the individual employee, at least annually, a written information with indication of the general risks and specific risks related to the particular mode of execution of the working performance.

Moreover, the Company organizes training and information activities for employees, in relation to the risks connected to the particular modality of carrying out the performance outside the business premises, the use of the tools eventually provided and the behavior to be taken in the event of an accident⁴¹.

3.5 THE IMPLEMENTATION OF SMART WORKING BY THE FCA GROUP

On the 12th March 2018, the FCA Group and the national trade union organization FIM – CISL, UILM – UIL, FISMIC and UGL Metalmeccanici stipulated an agreement in order to experiment smart working inside the Group.

In the first part of the agreement a definition of smart working is contained: it is identified as a mode of execution of the subordinate work relationship, without precise constraints of time or place of work and that allows to carry out the working performance partially outside the business premises through the IT tools made available by the Company, with the aim of increasing the competitiveness of the Company, implementing a better balance between professional life and private life.

The agreement in exam provides that smart working has to be carried out exclusively in the Italian territory and the performance according to smart modality has to be carried out in a manner consistent with the technological, organizational and functional needs of the Company.

The pilot project of smart working is activated through the stipulation of individual agreements to which all the workers of the Company IUVO⁴² s.r.l. with the legal category of employee or middle managers with full – time, a permanent or fixed term, subordinated

⁴¹ www.presidenza.governo.it/AmministrazioneTrasparente/Personale/ContrattazioneIntegrativa/Protocollo_di_Intesa_lavoro_agile.pdf&ved=2ahUKEwiY1_u2jtXbAhVHkRQKHf2JBLEQFjAAegQIAhAB&usg=AOvVaw30bJNV6GXbBYDeVAWP34tJ.

⁴² Organizational unit of Pontedera, a town in the province of Pisa.

employment contract, compatibly with the technical and organizational needs of the Company, taking also into account the professional profile of the single worker.

To participate in the smart pilot project, the worker must have a personal business laptop supplied, equipped with a VPN device for connection to the company network, a keyboard and mouse and a mobile phone or business smart phone.

Concerning the modality of execution of the performance in smart working, according to the agreement in exam, the worker has to perform his working activity inside the Company for at least the 20% of the contractual working hours envisaged, over forty hours per week, and he may perform the remaining work performance, even in a discontinuous manner, at another suitable place, with the obligation to connect through the aforementioned IT tools, excluding the slot between 8 p.m. and 8.30 a.m. of the next day (slot of disconnection).

The performance of overtime hours is allowed only on non – working days (such as on Saturdays, Sundays and holidays) or during the slot of disconnection (from 8 p.m. to 8.30 a.m.), in the case of actually exceptional situations previously authorized by the reference company manager.

Under the safety profile, the smart worker has to perform his activity choosing adequate places, that allow him to work according to safety conditions from the point of view of his physical integrity and of others⁴³. Besides, as required by Legislative Decree n. 81/2008, during the days of smart working, the worker has to take care of his own safety and health as well as those of other people near the place where the performance takes place. To this end, the worker receives adequate and preventive training/information provided by the reference Responsible of Security Prevention and Protection (RSPP) and appropriate information documentation.

The agreement also covers the hypothesis of accident during the performance in smart working: in this case the smart worker must provide timely and detailed information to the Company that proceeds to activate the related procedures laid down by the provisions in force concerning accidents.

Moreover, the smart worker has to ensure that during the performance in smart modalities the IT connection to the business network takes place exclusively through the equipment provided by the Company and that the use of business IT equipment is carried out in compliance with the guidelines and company policies on the matter.

As provided by Law n. 81/2017, smart working is a mere variation of the place of

⁴³ Article 2087 of Italian Civil Code.

fulfillment of the working performance, not going to affect the role of the worker in any way inside the company organization and on the relative power of direction, control and discipline exercised by the employer which remains, hence, unaffected.

In addition, smart working does not imply any impact on the framework and the salary level of the single worker and on opportunities with respect to professional paths and training initiatives: during smart working, in fact, the worker must ensure the maintenance of the same professional commitment, continuing to guarantee a performance, for qualitative and quantitative levels, in line with that requested and made at the company seat of belonging.

The parties may recede from the individual agreement for the participation in the pilot project of smart working by written notice of such willing to the other party.

Finally, in order to provide the workers participating in the smart working pilot project an adequate information on smart working and rules of functioning provided by the agreement in exam, the Company has prepared an introductory training plan for the same⁴⁴.

3.6 AT THE UNIVERSITY OF TRENTO, WORK BECOMES «SMART»

The University of Trento is the first public university that has experimented the smart working through a trade union agreement; in fact, in the last few months it has started an experimental phase to introduce this new flexible modality of execution of the working activity among the ordinary working methods.

In detail, in the University thirty – five teleworking positions and sixty – three projects of smart working, out of a total of six hundred and sixty people in service (10% of technical and administrative staff), have already been activated. In the experimental phase it was envisaged, for smart working, to activate up to one hundred positions, albeit with a limit in the number of days in which it is possible to work according to smart modality.

The University has planned an activity of monitoring the progress of the experimentation and a series of organizational steps aimed at optimizing the implementation of smart working, considered one of the tools for improving the efficiency of the Organization.

As Mario Depaoli, the manager of Human Resources and Organization of UniTrento Direction, observes, the University has disciplined the introduction of smart working in its

⁴⁴ www.fim-cisl.it/wp-content/uploads/2018/03/20180312-FCA-verbale-di-accordo-firmato-smart-working.pdf&ved=2ahUKEwjF8NDcy9fbAhUBJsAKHf9IBHQFjABegQIARAB&usg=AOvVaw3k-LMbhLbFpaiVPOSWto3s.

integrative collective Contract 2016 – 2018; later, the good quality of trade union relationships has allowed to define a specific agreement aimed at the participatory management of the experimental phase, imagined to optimize what will be, in two years' time, the stable introduction of this institute within the University.

Besides, in a context where all organization have to deal with the concept of work – life balance, UniTrento continues in the wake of management innovation in the belief that, next to computerization and re – engineering processes, it is necessary an evolution on the cultural level and the sharing of objectives to be realized even through working modalities that privilege the pursuit of the objectives rather than the execution of the mere performance defined with the parameter of the worked hours.

Smart working, hence, is intended as a tool for a better conciliation between private and work life, to adequate the environment of the activities to carry out, to valorize the autonomy and to make responsible individuals and public administration to give their best.

Finally, smart working could be an ally to manage the ageing of staff, in the perspective of having, in the next future, an average age of workers over the age of fifty. In the context of Age Management policies, the smart working tool represents a doubly challenging frontier because, next to innovative ways of work and organization, it implies a cultural leap to be carried out by a population which, on average, is not used to seizing digital opportunities⁴⁵.

⁴⁵ www.pressroom.unitn.it/comunicato-stampa/alluniversita-il-lavoro-diventa-smart.

CONCLUSIONS

The thesis, structured in three chapters, offered an analysis on teleworking and smart working: they are not new kinds of employment contracts, but they are two new flexible forms of execution of the working activity that, even if it may be performed inside the company, is carried out (regularly, in the case of teleworking, and partially in the case of smart working) outside it.

In particular, the first chapter focused on teleworking, the second one on smart working and the last one offered some examples of implementation of teleworking and smart working.

Concerning teleworking, their advantages, in brief, may be analyzed under three perspective:

- worker's perspective: teleworker is better able to conciliate his working activity with his family and personal life in general, by managing working times;
- employer's perspective: he may introduce activities based on flexible instruments, trying to reduce absenteeism and management costs related to physical work places, with the scope of reaching productivity increasing;
- social (or spread) perspective: it only appears if teleworking is used on a large scale and it refers, for example, to benefits linked with the reduction of traffic and, consequently, atmospheric and acoustic pollution (Cavallini, 1997).

Teleworking, at the same time, may generate also disadvantages, like the isolation of workers, with less opportunities for information and comparison, less integration with the company, possibility of external distractions, less data confidentiality (Campodall'Orto, 2000; Arcari, 2007).

In recent years, we have seen the emergence of new needs, both in working life and in free time: the direction of these needs is in the sense of a greater attention to the quality of life, that is summarized in a desire for independence, subjectivity, personal realization, reappropriation of individual times, overcome of the rigid separation between working time and free time. According to the doctrine, it is a change so profound as to require a real cultural review (Giordano, 1997).

Within the European context, it is true that the alternation between work inside the company and work outside it affects the largest percentage of teleworkers in most European countries. Some policy suggestions have been designed to promote, for example, partial and occasional teleworking, while restricting informal and supplemental teleworking, excessively long working hours and high levels of mobility and work intensity and a better training for both the employees affected and their managers on the

effective use of ICT when working remotely, the potential risks, and how effectively manage the flexibility that this work arrangement provides.

These policy suggestions, however, point to the importance of informing all parties (workers, employers and public authorities) about the advantages and disadvantages of teleworking and how to implement such work arrangements effectively, with the scope of paving a way for its adaptation to the rapidly changing world of work in the 21st century.

With regards to smart working, the absence of a fixed workstation appears to be a distinctive feature in respect to teleworking, even if there are not any normative elements which identify the presence or not of a fixed workstation as hallmark between the two cases. Unequivocal, in this sense, is the definition contained in the Article 2 of the European Framework Agreement of 16th July 2002, according to which the working activity of teleworking, that could also be performed inside the company, is «regularly carried out outside it». Teleworking's hallmark, thus, is not the presence of a fixed workstation, rather the «regularity» and so the continuity of the performance carried out outside the company premises through a telematics and IT connection. Concerning smart working, hence, although it is performed outside the company premises, it does not require a fixed workstation, but the simple use, however not essential, of technological means.

Behind the theme of the «right to be disconnected», analyzed in the last part the second chapter, it is necessary to identify effective remedies against the risk of a constant commingling between private and working life: in such dynamics, as seen in France and Germany, company and category agreements represent the main tool for the protection of workers' rights, by allowing a co – management of technological progress between workers and employers (Bologna and Iudicone, 2017).

In the last chapter, the thesis focused on some examples of implementation of teleworking and smart working that have already been implemented by some companies in sectors such as alimentation, energy, information and communication technology, banking and public administration. This overview tried to underline how, also in the case of the absence of the law (mostly in the case of smart working), the collective bargaining establishes the minimum limits governing the execution of the working performance according to smart modality: this confirms how, in fact, collective bargaining anticipated the law.

In the complex, in the most recent category national collective bargaining, teleworking and smart working have had both the same objective of promoting new flexible forms of work that are able to improve the quality of it and to conciliate working activity with workers' private life. The development of new technologies, thus, requires the elaboration

of new conceptual instruments and contractual and legislative techniques for the safeguard of workers' individual and collective interests (D'Antona, 1995).

In conclusion, the road is still long and fraught with legislative, economic, social and cultural difficulties. Experience and cases of excellence considered mature suggest that success factors for the development of teleworking and smart working must move from government support and clear and concrete strategies by the companies: mobile business is now an interesting reality with a future that has overcome every physical barrier (Ladini, 2009; Varaldo, 2009).

I like concluding this work with a citation of Karl Polany⁴⁶:

«work is only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored or mobilized».

⁴⁶ An Hungarian philosopher, economist and sociologist. He is famous thanks his main work: *The great transformation*.

BIBLIOGRAPHY

- Agena C. (2004), *Forme atipiche di lavoro nelle società commerciali e nelle cooperative. Lavoro a progetto – Telelavoro – Job sarin – Job on call – Staff leasing – Lavoro nei gruppi di imprese*, Cedam, Padova, pp. 80 – 93.
- Allamprese A., Pascucci F. (2017), *La tutela della salute e della sicurezza del lavoratore «agile»*, in “Rivista Giuridica del Lavoro e della Previdenza Sociale”, I, n. 2, pp. 307 and later.
- Andreoni A. (2018), *Il lavoro agile nel collegamento negoziale*, in *Il lavoro autonomo e il lavoro agile alla luce della legge n. 81/2017*, by Carabelli Umberto and Fassina Lorenzo, in “i Seminari della Consulta giuridica della CGIL”, n. 1, Ediesse, Roma, pp. 31 – 39.
- Arcari A. (2007), *Il telelavoro e le aziende pubbliche. Modelli di valutazione economica delle scelte di delocalizzazione del lavoro*, in “Azienda Pubblica”, n. 2, pp. 269 – 294.
- Arrigo G., Casale G. (2017), *International Labour Law. Handbook from A to Z*, G. Giappichelli Editore, Torino, pp. 286 – 287.
- Bellavista A. (2014), *Gli accordi sindacali in materia di controlli a distanza sui lavoratori*, in “Il Lavoro nella giurisprudenza”, pp. 737 – 744.
- Berti V. (2008), *Osservatorio di giurisprudenza e politiche comunitarie del lavoro – Il telelavoro nel contesto europeo tra nozione comunitaria e sistemi giuridici statali*, in “Diritto delle Relazioni Industriali”, n. 4, pp. 1230 – 1234.
- Biagi M., Treu T. (2002), *Lavoro e information technology: riflessioni sul caso italiano*, in “Diritto delle Relazioni Industriali”, pp. 5 and later.
- Bologna S., Iudicone F. (2017), *Il lavoro agile e il telelavoro nello scenario europeo e comparato: dinamiche emergenti, effetti sulla qualità del lavoro e strumenti di regolazione*, in “Rivista Trimestrale – Quaderni di Rassegna Sindacale”, Ediesse, Roma, pp. 113 – 126.

- Bosco A., Valsiglio C. (2013), *Guida pratica: contratti atipici e flessibili*, Il Sole 24 ORE S.p.A., Milano, pp. 273 -275.
- Camera R., Massi E. (2017), *Il lavoro agile dopo la riforma*, in “Diritto & Pratica del Lavoro”, n. 28/2017, Wolters Kluwer Italia s.r.l., pp. 1727 – 1734.
- Campodall’Orto S., Gori M. (2000), *Conoscere il telelavoro. Caratteristiche, esperienze, guida all’utilizzo*, FrancoAngeli s.r.l., Milano, pp. 26 – 48, 163 – 183.
- Carosielli G. (2015), *La conciliazione vita – lavoro nel cd Jobs Act: alcuni spunti di riflessione*, in www.bollettinoadapt.it/la-conciliazione-vita-lavoro-nel-cd-jobs-act-alcuni-spunti-di-riflessione.
- Carinci F. (2007), *Commentario di Diritto del Lavoro*, Wolters Kluwer Italia Giuridica S.r.l., Milanofiori Assago, pp. 1993 – 2001.
- Castronovo V. (2007), *Le rivoluzioni del Capitalismo*, Laterza, Roma – Bari, pp. 107 – 109.
- Cavallini A. (1997), *Guida al Telelavoro*, Jackson Libri, Bresso (MI), pp. 1 – 73.
- Cecora G. (1999), *Le modificazioni principali istituti dell’impiego pubblico introdotte dai primi contratti collettivi di diritto comune*, in “Dall’impiego pubblico al rapporto di lavoro con le pubbliche amministrazioni”, Milano, pp. 25 and later.
- 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*, in “Journal of Management”, p. 1836.
- Corso M. (2017), *Sfide e prospettive della rivoluzione digitale: lo smart working*, in “Diritto delle Relazioni Industriali”, n. 4/XXVII – 2017, Giuffrè Editore, Milano, pp. 978 – 984.

- Corti M., Sartori A. (2016), *La legge di stabilità e i nuovi progetti governativi sul lavoro autonomo e lo “smart working”*, in “Rivista Italiana di Diritto del Lavoro”, n. 2, pt. 3, Giuffrè Editore, pp. 165 – 171.
- Craipeau S., Marot J. C. (1984), *Telework. The impact of Living and Working Conditions*, European Foundation for the Improvement of Living and Working Conditions, Dublin.
- Criscuolo C. (2016), *Il controllo sugli account di posta elettronica e di messaging aziendale*, in “Rivista Italiana di Diritto del Lavoro”, pp. 284 and later.
- Crosby P. B. (1979), *Quality is free: the Art of Making Quality Certain*, McGraw – Hill, New York, pp. 15 and later.
- D’Addio F. (2017), *Considerazioni sulla complessa disciplina del telelavoro nel settore privato alla luce dell’entrata in vigore della legge n. 81/2017 e della possibile sovrapposizione con il lavoro agile*, in “Diritto delle Relazioni Industriali”, n. 4/XXVII – 2017, Giuffrè Editore, Milano, pp. 1006 – 1023.
- Dagnino E. (2017), *Il diritto alla disconnessione nella Legge n. 81/2017 e nell’esperienza comparata*, in “Diritto delle Relazioni Industriali”, n. 4, pp. 1024 – 1030.
- Dagnino E. and Tiraboschi M. (2016), *Verso il futuro del lavoro. Analisi e spunti su lavoro agile e lavoro autonomo*, in “Adapt Labour Studies”, e – Book series, n. 50, Adapt University Press, pp. 15 and later.
- Dagnino E., Tiraboschi M., Tomassetti P., Tourres C. (2016), *Il “lavoro agile” nella contrattazione collettiva oggi*, in “Working Paper ADAPT”, n. 2, ADAPT University Press, pp. 75 – 99.
- D’Antona M. (1995), *Limiti costituzionali alla disponibilità del tipo contrattuale nel diritto del lavoro*, in “Argomenti di Diritto del Lavoro”, pp. 63 and later.
- De Luca Tamajo R., Mazzotta O. (2018), *Commentario breve alle leggi sul lavoro*, Sesta edizione, CEDAM, Milano, pp. 1327 – 1332, 3128 – 3136.

- Del Punta R. (2017), *Un diritto per il lavoro 4.0*. Contribution to the volume by Cipriani Alberto, Gramolati Alessio, Mari Giovanni, *Il lavoro 4.0. La IV Rivoluzione Industriale e le trasformazioni delle attività lavorative*, University Press, Firenze, pp. 225 – 250.
- Di Nicola P. (1999), *Quale flessibilità? Lavoro atipico e part – time in Italia e in Europa*, in “Economia e Lavoro”, Roma, pp. 21 and later.
- Douglas E. J. (1987), *Managerial economics: Analysis and Strategy*, Prentice – Hall Editions, Englewood Cliffs, New Jersey, pp. 32 and later.
- Eurofound. (2017), *Working anytime, anywhere: The effects on the world of the work*, in <https://www.eurofound.europa.eu/publications/report/2017/working-anytime-anywhere-the-effects-on-the-world-of-work>.
- Eurofound. (2017), *Work – life balance and flexible working arrangements in the European Union*, in <https://www.eurofound.europa.eu/it/publications/customised-report/2017/work-life-balance-and-flexible-working-arrangements-in-the-european-union>.
- Faioli M. (2006), *Telelavoro (postilla di aggiornamento)*, in “Enciclopedia Giuridica”, Istituto della Enciclopedia Giuridica fondata da Giovanni Treccani S.P.A., Roma, pp. 1 – 3.
- Falasca G. (2017), *Pubblica amministrazione, smart working anche per i dirigenti*, in “Il Sole 24 Ore” (www.ilsole24ore.com/pagina/AETQt7SB).
- Fezzi M. (2009), *Diritti sindacali, controllo del remote worker e contrattazione collettiva*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 669 – 670.
- Flammia R. (1996), *Telelavoro*, in “Enciclopedia Giuridica”, Istituto della Enciclopedia Italiana fondata da Giovanni Treccani S.P.A., Roma, pp. 1 – 5.
- Fornari P. (2007), *Il telelavoro come strumento di modernizzazione della Pubblica Amministrazione in un’ottica di genere*, in “Quaderni amministrativi”, n. 2, pp. 21 – 28.

- Fornego G. (2003), *Il lavoro delle donne*, in “La libertà delle donne in Europa e nel mediterraneo”, pp. 329 and later.
- Frediani M. (2017), *Il lavoro agile tra prestazione a domicilio e telelavoro*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 630 – 636.
- Frediani M. (2004), *Telelavoro ed accordo interconfederale*, in “Il lavoro nella giurisprudenza”, pp. 824 – 827.
- Gaeta L., Pascucci P., Poti U. (1999), *Il telelavoro nelle pubbliche amministrazioni*, in “Il Sole 24 Ore”, Milano, pp. 13 and later.
- Gaeta L. 1998, *Telelavoro e diritto*. G. Giappichelli Editore, Torino, p. 261.
- Gallo M. (2017), *Smart working e sicurezza del lavoro, quali gli obblighi del datore?*, in “Guida al Lavoro”, n. 45, p. 13.
- Giordano S. (1997), *L’Information technology e la riforma della pubblica amministrazione*, in “L’Amministrazione Italiana”, n. 9, Roma, pp. 1318 and later.
- Gottardi D. (2003), *Voce Telelavoro*, in “Voce per l’Appendice del Digesto delle Discipline Privatistiche”, UTET, pp. 906 – 918.
- Ichino P. (2017), *Le conseguenze dell’innovazione tecnologica sul Diritto del lavoro*, in “Rivista Italiana di Diritto del Lavoro”, Giuffrè Editore, Varese, pp. 525 – 562.
- Ladini R. (2009), *Remote working. L’inquadramento socio – economico dei temi*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 657 – 660.
- Lai M. (2017), *Evoluzione tecnologica e tutela del lavoro: a proposito di smart working e di crowd working*, in “Diritto delle Relazioni Industriali”, n. 4/XXVII – 2017, Giuffrè Editore, Milano, pp. 985 – 1005.
- Linee guida elaborate da Assolombarda, (2015), *Indicazioni per la gestione degli aspetti di salute e sicurezza legati al “Lavoro Agile/Smart Working”*, p. 14.

- Loiseau G. (2017), *La déconnexion. Observations sur la régulation du travail dans le nouvel espace – temps des entreprises connectées*, in “Droit Social”, n. 5, Editions Dalloz, pp. 463 – 470.
- Losito A. (2017), *Telelavoro dipendenti pubblici 2018: cos'è e come funziona lo smart working*, in “Guida Fisco” (<https://www.guidafisco.it/telelavoro-dipendenti-pubblici-smart-working-1823>).
- Malzani F. (2017), *Il lavoro agile tra opportunità e nuovi rischi per il lavoratore*, in www.lavoroeconomiadigitale.it.
- Mannacio G. (2009), *Dal Telelavoro al Remote Working. I lineamenti del problema*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 655 – 656.
- Manzella P., Nespola F. (2016), *Le parole del lavoro: agile o smart?*, in “Verso il futuro del lavoro. Analisi e spunti su lavoro agile e lavoro autonomo” by Dagnino E. and Tiraboschi M, Adapt Labour Studies, e – Book series, n. 50, Adapt University Press, pp. 23 – 25.
- Martin N. R. and Visser J. (2008), *A More ‘Autonomous’ European Social Dialogue: The Implementation of the Framework Agreement on Telework*, in “The International Journal of Comparative Labour Law and Industrial Relations”, Volume 24/4, Kluwer Law International BV, The Netherlands, pp. 511 – 548.
- Masera A., Scorza G. (2016), *Internet, i nostri diritti*, Editori Laterza (Appendice. Dichiarazione dei diritti in Internet), Roma – Bari, pp. 97 and later.
- Mathieu C. (2016), *Pas du droit à la déconnexion (du salarié) sans devoir de déconnexion (de l'employeur)*, in “Revue de Droit du Travail”, n. 10, pp. 592 – 595.
- Mazzaro R., Silvestro C. (2001), *L'introduzione del telelavoro nella pubblica amministrazione: dalla Bassanini ter all'Accordo Quadro Nazionale*, in “Diritto&Diritti” (www.diritto.it/articoli/amministrativo/mazzaro_silv.html).

- Méda D. (2016), *The future of work: The meaning and value of work in Europe*, in “International Labour Office Research”, n. 18, pp. 10 – 26.
- Mettling B. (2015), *Transformation numérique at vie au travail. Rapport*, in <https://zevillage.net>.
- Miscione M. (2009), *Diverse tipologie contrattuali: remote working, telelavoro e digital workplace*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 663 – 668.
- Modesti G. (2016), *Il telelavoro*, in “Ragiusan”, n. 379 – 380, pp. 217 – 233 (<http://www.diritto.it/docs/38008-il-telelavoro>).
- Monterossi L. (2017), *Il lavoro agile nell’Accordo Enel 4 Aprile 2017, anche alla luce della sopravvenuta L. 81/2017*, in “Rivista Italiana di Diritto del Lavoro”, n. 3, Giuffrè Editore, pp. 199 – 217.
- Moreira T. C. (2017), *L’impatto delle nuove tecnologie nella conciliazione tra vita e lavoro*, in “Labour & Law Issue”, n. 1, pp. 1 – 31.
- Morelli A. (2015), *I diritti e la Rete. Notazioni sulla bozza di Dichiarazione dei diritti in Internet*, in “Federalismi.it”, pp. 9 – 19.
- Nevens, K. (2010), *Home Work, Telework and the Regulation of Working Time: A Tale of Partially Similar Regulatory Needs, in Spite of Historically Rooted conceptual Divergence*, in “The International Journal of Comparative Labour Law and Industrial Relations 26”, n. 2, Kluwer Law International BV, The Netherlands, pp. 193 – 216.
- Pascucci P. (2009), *Tutela dei telelavoratori nell’ordinamento italiano. La tutela della salute e della sicurezza dei telelavoratori nell’ordinamento italiano*, in “BollettinoAdapt” ([http://adapt.it/adapt-indice-a-z/p-pascucci-tutela-dei-telelavoratori-nellordinamento italiano-2009/](http://adapt.it/adapt-indice-a-z/p-pascucci-tutela-dei-telelavoratori-nellordinamento-italiano-2009/)).
- Pasquarella V. (2017), *Work – life balance: esiste un modello italiano di “conciliazione condivisa” dopo il Jobs Act?*, in “Rivista Italiana di Diritto del Lavoro”, Giuffrè Editore, Varese, pp. 41 – 75.

- Pelusi L. M. (2017), *La disciplina di salute e sicurezza applicabile al lavoro agile*, in “Diritto delle Relazioni Industriali”, n. 4/XXVII – 2017, Giuffrè Editore, Milano, pp. 1041 – 1057.
- Péretié M – M., Picault A. (2016), *Le droit à la déconnexion répond à un besoin de régulation*, in “Revue de Droit du Travail”, n. 10, pp. 595 – 598.
- Peruzzi M. (2017), *Sicurezza e agilità: quale tutela per lo smart worker?*, in “Diritto della Sicurezza sul Lavoro”, n. 1, p. 8.
- Pinto V. (2016), *La flessibilità funzionale e i poteri del datore di lavoro. Prime considerazioni sui decreti attuativi del “Jobs Act” e sul lavoro agile*, in “Rivista Giuridica del Lavoro e della Previdenza Sociale”, n. 2, pt. 1, pp. 345 – 372.
- Poletti D. (2017), *Il c. d. diritto alla disconnessione nel contesto dei «diritti digitali»*, in “Responsabilità Civile e Previdenza”, n. 1, pp. 8 – 26.
- Polliani P. (2017), *Approvazione della nuova disciplina sul “Lavoro agile”*, in “Cooperative e Enti non profit”, n. 8 – 9, pp. 35 – 37.
- Polliani P. (2016), *In arrivo lo “smart working”*, in “Cooperative e Enti non profit”, n. 4, pp. 38 – 39.
- Ray J. E. (2018), *De la question sociale du XXI^e siècle au télétravail*, in “Droit Social”, n. 1, Editions Dalloz, pp. 52 – 58.
- Ray J. E. (2016), *Grande accélération et droit à la déconnexion*, in “Droit Social”, n. 11, Editions Dalloz, pp. 912 – 920.
- Roccella M., Treu T. (2016), *Diritto del Lavoro dell’Unione Europea*, Wolters Kluwer Italia S.r.l., Milano, pp. 264 – 266.
- Santoro Passarelli G. (2017), *Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro*, in “Rivista Italiana di Diritto del Lavoro”, n. 3, Giuffrè Editore, pp. 369 – 382.

- Santoro Passarelli G. (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, n. 327/2017, Centre for the Study of European Labour Law “Massimo D’Antona”, Università di Catania, pp. 1 – 16.
- Scarpitti G., Zingarelli D. (1998), *Il telelavoro: Teorie e applicazioni*, FrancoAngeli s.r.l., Milano, pp.15 – 46.
- Stanchi A. (2009), *Il controllo dell’adempimento della prestazione lavorativa, la data privacy e la responsabilità organizzativa dell’impresa*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 671 – 680.
- Strassmann P. (1985), *Information Payoff. The transformation of Work in the Electronic Age*, Free Press, New York, London, pp. 41 – 90.
- Teubner G. (2005), *La cultura del diritto nell’epoca della globalizzazione. L’emergere delle costituzioni civili*, Armando Editore, Roma, pp. 17 and later.
- Tiraboschi M. (2017), *Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro*, WP CSDLE “Massimo D’Antona”. IT, n. 335/2017, Centre for the Study of European Labour Law “Massimo D’Antona”, Università di Catania, pp. 1 – 50.
- Tiraboschi M. (2017), *Teoria e pratica dei contratti di lavoro*, ADAPT University Press, p. 27.
- Toffoletto F. (2006), *Nuove tecnologie informatiche e tutela del lavoratore. Il potere di controllo del datore di lavoro. Il telelavoro*, Giuffré editore S.p.A., Milano, pp. 56 – 82.
- Toriello S. (2012), *Il punto sul telelavoro*, in “Rivista degli infortuni e delle malattie professionali”, n. 3, pt 1, pp. 683 – 703.
- Troilo F., Menegotto M. (2016), *Il lavoro agile nella PA: mission impossibile?*, in “BollettinoAdapt” (www.bollettinoadapt.it/il-lavoro-agile-nella-pa-mission-impossibile).

- Vallarelli A. (2002), *Il lavoro flessibile: Part – time, Telelavoro, Lavoro interinale, Rapporti a tempo determinato, Incarichi fiduciari. Altri strumenti flessibili di lavoro e di organizzazione. Problemi e casi pratici*, Giuffré Editore S.p.A., Milano, pp. 35 – 65.
- Varaldo P. (2009), *Remote working. Nuove tecnologie ed organizzazione del lavoro: sfide, opportunità e limiti*, in “Il lavoro nella giurisprudenza”, n. 7, pp. 661 – 662.
- Veneziani B., Bavaro V. (2009), *Le dimensioni giuridiche dei tempi del lavoro*, in “Tesi sullo statuto giuridico del tempo nel rapporto di lavoro subordinato”, Cacucci Editore, Bari, pp. 22 – 25.
- Weiss M. (2015), *Il telelavoro tra legge e contrattazione collettiva: il caso tedesco*, in “Diritto delle Relazioni Industriali”, n. 3, pp. 667 – 674.
- Weiss M. (2016), *Ricerche tecnologia, ambiente e demografia: il diritto del lavoro alla prova della nuova grande trasformazione. Digitalizzazione: sfide e prospettive per il diritto del lavoro*, in “Diritto delle Relazioni Industriali”, n. 3, pp. 651 – 658.