



TELEWORK IN ITALY: THE LEGAL FRAMEWORK AND THE REALITY

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WHERE TO START?

REGULATORY FRAMEWORK

- **1998 / 2000** → Act no. 191/1998 followed by the Presidential Decree no. 70/1999 and the National agreement concluded in 2000 by ARAN and CGIL-CISL-UIL → First attempt to regulate telework in the public sector → Unsuccessful. No implementation at the workplace level ...
- **2002** → European framework agreement on telework → New starting point of the debate on “if” and “how” to regulate telework in Italy → Full awareness of the advantages for both employers (productivity, flexibility, employee loyalty ...) and employees (better work / life balance, reduced commuting-related stress ...).
- **2004** → National cross-industry agreement transposing the EU framework agreement into Italian legislation, followed by several sectoral and plant-level agreements → Soft law measures ... no hard law initiatives (at least in the private sector).

TELEWORK: THE REGULATORY FRAMEWORK (I)

PRIVATE *VERSUS* PUBLIC SECTOR: DIFFERENT REGULATORY STRATEGIES ...

☞ PRIVATE SECTOR: TELEWORK IS NOT REGULATED BY SPECIFIC LEGISLATION (ONLY GUIDELINES FROM CROSS-INDUSTRY AND SECTORAL COLLECTIVE BARGAINING)

☞ PUBLIC SECTOR: TELEWORK IS REGULATED BY LAW NO. 191/1998 (IMPLEMENTED BY PRESIDENTIAL DECREE NO. 70/1999)

... HOWEVER THE RESULTS ARE
(MORE OR LESS) THE SAME

☞ NO CONCRETE DEVELOPMENT RELATED TO TELEWORK IN THE ITALIAN LABOUR MARKET

TELEWORK: THE REGULATORY FRAMEWORK (II)

👉 A PROCESS OF MERE AND FORMAL TRANSPOSITION OF THE EU FRAMEWORK AGREEMENT THROUGH COLLECTIVE BARGAINING

- Looking at the 2004 Interconfederal Agreement, one might note that the social partners have implemented the guidelines and the provisions of the 2002 European Framework agreement to the letter, especially the definition of telework and the other aspects concerning safeguards.
- The same holds for collective bargaining at the sectoral level, which obsequiously follows the indications contained in the Interconfederal Agreement by adding standard clauses which only rarely have been implemented by Italian companies.
- The situation is slightly different at the company level, either because of the existence of collective agreements or negotiations carried out individually between the employer and the employees. Yet these are exceptions that only rarely attract the attention of the experts in the field and public opinion. (There is no obligation to lodge a copy of collective agreements and the terms of individual bargaining becomes of public domain only if litigation arises between the parties).

AGAIN: WHERE TO START?

THE REALITY OF TELEWORK IN ITALY

- In considering the disheartening situation provided by the legal framework, it might be useful to take a step backwards and reflect upon the reasons for the poor implementation of telework in Italy by providing a comparison with other countries.
- In reality, no official national statistics exist which provide a breakdown of the total number of teleworkers in the private sector. Also, no analysis has been carried out at the national level and in the private sector that examines teleworkers according with the type of contract, occupation, skills, age, and gender.
- The only available data on telework concern the annual survey on the use of information and communication technologies (ICT) in companies with more than 10 employees, carried out by the National Institute of Statistics (ISTAT). In this case, teleworking refers to employees who spend some time – for example, half a day or a number of weekly working days – outside the main office, working at external facilities or at home and using a computer and related equipment through which they can interact with the employer's premises.

TELEWORK HAS FAILED TO TAKE OFF

DISPIRITING, UNRELIABLE AND OLD STATISTICS

- **No official statistics are available on telework that consider the labour market. Data only concern the type of employment contract (either a permanent or a flexible one) but not the organizational modalities for which technologies and telework can be used.**
- **Unofficial sources report that less than 2% of workers make use of telework.**
- **The only detailed analysis – the Italian survey for the Dublin Foundation – dates back to 2006 and stated that the spread of telework was higher in the following sectors: posts and telecommunications (24.63% of all companies in the sector developed one or more forms of telework), chemical (14.39% of the companies in the chemical sector used some forms of telework), as well as wholesale and retail trade (8.39% of all companies implemented one or more forms of telework).**

TELEWORK HAS FAILED TO TAKE OFF

DISPIRITING, UNRELIABLE AND OLD STATISTICS

- In terms of business size, telework was more widespread in large companies: in 2006, 31.18% of companies with 250 or more employees developed one or more forms of telework, while only 2.9% of enterprises with 10 to 49 employees made use of telework. This trend is confirmed in all the sectors mentioned. With regard to geographical position, in 2006, the companies using telework were more concentrated in the North-West (5.43% of all companies) and North-East (4.38% of all companies) of Italy; only 2.27% of the firms located in the South of Italy made use of telework.
- The situation is different in the public sector. Statistics from the State General Accounting Office (Ragioneria generale dello Stato) showed that, in 2005, the number of teleworkers rose to 470 – that is 0.1% of all employees in the sector. Of the 470 teleworkers employed in Public Administration, 314 were women, while the majority (365 workers) worked for local authorities.

WHY DID TELEWORK FAIL TO TAKE OFF?

SOCIO – CULTURAL FACTORS

Some social and cultural factors contributed to the little implementation of telework in Italy:

- **Low employment rates for young people and females – who are more likely to enter telework – which stand at 15% and 46%, respectively;**
- **The idea, which is still rooted among employers, that telework should be the preserve of the most disadvantaged groups (young people, women, disabled persons) as a tool to reconcile work and family life;**
- **The spread of undeclared work which, despite the lack of official statistics, suggests that telework is entered into sneakily to escape relevant costs and legal obligations;**
- **The recourse to quasi-salaried employment (e.g. project work) allowing employers to circumvent the safeguards in place for salaried employment and those concerning telework laid down in the legal definition of the European Framework Agreement and Italian legislation. An example of this is call centre workers when engaged in telemarketing.**

WHY DID TELEWORK FAIL TO TAKE OFF?

POLITICAL AND TRADE UNION ISSUES

- The transposition of the 2002 European Framework Agreement into Italian law took place during the heated debate involving policy-makers and trade unions and concerning the enforcement of the Biagi Law, which did not deal with telework.
- To ensure compliance with EU requirements, the social partners asked the Government not to be involved in this issue in order to conclude an agreement to transpose the Directive, which was signed in 2004. As seen, the agreement did not deal with the most critical aspects of telework, such as monitoring and employer's liability.
- The Government did not step in and limited itself to acknowledge the agreement between the social partners without making any effort to support the implementation of telework, as the focus at the time was only on the enforcement of the Biagi Law
- The debate on flexible forms of work that characterized the Biagi law paralysed company-level collective bargaining, somehow playing down the issue of contractual flexibility within which telework was erroneously included.

WHY DID TELEWORK FAIL TO TAKE OFF?

ECONOMIC, PRODUCTIVE, ORGANIZATIONAL AND MANAGEMENT ISSUES

- Higher direct and indirect costs of telework, in contractual and management terms, and increased duties and responsibilities for the employer (who either does not understand or does not acknowledge the advantages of telework in terms of productivity).
- Outdated Enabling Technology (e.g. platforms) and facilities.
- Management Patterns based on hierarchy and the employee's physical presence at the workplace.
- Lack of legal rules to guide employers.
- An adversarial and non-participative system of industrial relations also at the company level (with the exception of such firms as Epson, Alcatel-Lucent and IBM, which have already changed their offices, converting them to a meeting place for workers).
- Economic crisis, high unemployment, widespread use of measures to suspend the employment relationship (e.g. redundancy funds) that still do not enable to review organizational models and do business.

WHY DID TELEWORK FAIL TO TAKE OFF?

LEGAL HURDLES

Besides cultural, socio-economic and organizational factors, some legal hurdles exist hinting that legislation is outdated, a fact that acts as a hindrance to the development of telework in Italy. Specifically:

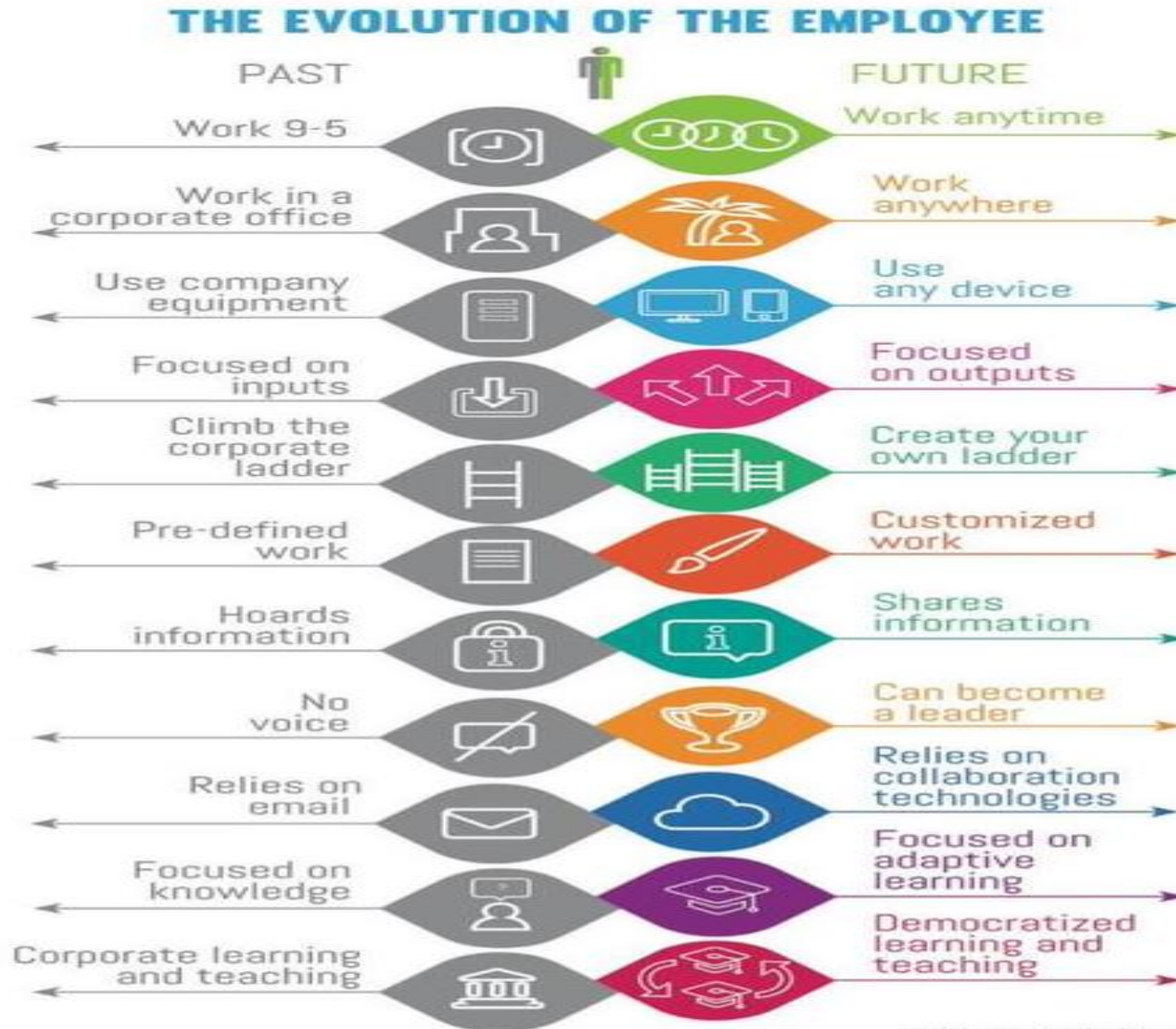
- Some critical issues in terms of health and safety regulation of telework which extend and complicate the employer's responsibilities. A willingness thus emerges to circumvent it;
- Some critical issues concerning legislation on the use of technologies, which still draws on Article 4 of Law 300 of 20 May 1970 (The Workers' Statute) when different technological tools were in place;
- Some critical issues related to collective bargaining, as that carried out at the national level is still given priority over the company one (See Decree Law 138/2011 that attracted much criticism as it allows collective agreements concluded at the company level to derogate to those concluded at the national level, being the latter regarded as a statutory provision);
- The rigidity of the legal and contractual systems concerning employment grading and assignment of tasks, which are hardly compatible with telework;
- The idea that telework is a mere contractual arrangement and not an innovative form to organize work and manage staff according to the development of technologies of new generation

INDUSTRY 4.0: TELEWORK OR THE END OF IT?

 **INDUSTRY 4.0: A CONCEPT STILL POORLY KNOWN IN ITALY / EUROPE BUT HAS BEEN THE SUBJECT OF A DETAILED ANALYSIS IN THE USA**

- In relation to the effects on work, new technologies will allow to work remotely, with physical spaces which will be no longer necessary, since everything will be monitored via webcam.
- For this reason, one might say that all the work performed in the industry 4.0 era can be seen as “telework”, since it will be managed through new communication and digital technology. So if all the work is carried out through telework, the form of telework as it was understood in the last decade no longer exists, as it is not representative of a stand-alone activity.
- People can stay at home and do whatever they want with the iPad and the Cloud.
- Generally, people would also work more in offices than in shop floors.
- Work will be more performance-based, moving away from the mere execution of tasks and assignments. This is because workers will have the technical expertise to run things (unlike the past where technical knowledge was in the employer’s hands).

NO LONGER TELEWORK BUT MOBILE WORK



THE CONTRIBUTION OF LABOUR LAW

- ➡ **REMOVING THE LEGAL HURDLES AND THE RELATED TECHNICAL DETAILS AND RETHINKING THE VERY IDEA OF WORK, AS WELL AS THE LEGAL CLASSIFICATION THAT STILL TODAY IS DOMINATED BY THE NOTION OF LEGAL SUBORDINATION.**
- ➡ **THE KEY ISSUE IS THAT THE CURRENT REGULATION OF LABOUR LAW FAILS TO ACKNOWLEDGE THAT A GREAT TRANSFORMATION OF WORK IS CURRENTLY IN PLACE DUE TO DEMOGRAPHIC, TECHNOLOGICAL, CLIMATIC AND ENVIRONMENTAL FACTORS.**