



# The Agreement between the European Social Partners for a Shared Directive on Remote Work: An Occasion to Bring Italy's Debate on Smart Working back on Track

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Twenty years after the conclusion of the [Framework Agreement on Telework of 16 July 2002](#) – and in keeping with the [European Social Dialogue Work Programme 2022-2024](#) – the European social partners have revived the idea of a common framework for all EU countries. This is so especially after national lawmakers have recently attempted to move away from a regulatory framework that was no longer suitable to govern third generation telework (see E. Dagnino, *What does telework mean in the 21st century? Face to face with Jon Messenger*). Italy is a case in point, as here the efforts to regulate new types of remote work gave rise to provisions on ‘agile’ work which feature a series of overlaps with and deviations from the rules laid down in the European Framework Agreement and the collective agreements concluded to transpose it (M. Tiraboschi, *Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro*).

This attempt of the European social partners is interesting both in relation to the methodology and the content of the document, especially considering that it deals with an issue which cannot be faced in a simplistic way and without taking into account aspects such as OHS and the new working environments. The first part of the agreement concluded on 28 June 2022 states that in order to adapt the regulation of telework to the new needs arising from the digitalisation of work (e.g. hybrid work, the right to disconnect, work organisation, health and safety and data processing), it is necessary to “revise and update the 2002 agreement on telework, with these changes that should be made legally binding through a directive”.

In methodological terms – and in line with what happened for fixed-term contracts and also in 2002 – the aim is to lay down an agreement and have it implemented by the EU institutions (i.e. statutory agreements) and not “according to the procedures and practices of the social partners and Member States” (i.e. non-statutory agreements). This approach might have serious consequences, as it might give national lawmakers’ little leeway, due to the fact that the direct effectiveness of autonomous agreements is excluded or challenged by most scholarly work (in tema F. D’Addio, *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 *DRI*, 2017, 4, 1012-1015). Conversely, implementation by means of a directive ensures national lawmakers more room to manoeuvre. Furthermore, the new agreement will also deal with the right to disconnect, meaning that it might challenge the [Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect \(2019/2181\(INL\)\)](#) in which the Commission was called upon to submit a


proposal for a directive on the matter, downplaying the role of other actors with respect to this 'new generation' right.

**As for content, the 2022-2024 programme contains some interesting elements also for the Italian context and in consideration of the fact that a parliamentary debate is underway to review Italy's remote work, i.e. agile work, (M. Menegotto, *Lavoro agile: prospettive accidentate di riforma*). On this point, the European social partners intend to bring together the new forms of "remote work" (as has been the case in Italy through Article 3(10) of the Consolidated Text on Health and Safety, which has a broad scope of application) by adapting legislation to the new forms of telework. This is done in order to avoid legal segmentations in relation to the definition of telework and prevent misinterpretations which are often ill-founded (e.g. the assumption that telework requires a fixed workstation or that this working scheme is incompatible with the alternation of remote and on-site work).**

**In addition to the problems resulting from working remotely during the pandemic, increased control (often referred to as 'surveillance'), as well as issues arising from the attempts to strike a balance between work and family life, the agreement makes express reference to hybrid work.** In this sense, a more flexible approach emerges, which could already be seen in 2002 (see M. Biagi, T. Treu, *Lavoro e Information Technology: riflessioni sul caso italiano*, in *Diritto delle Relazioni Industriali*, 2002) and which contrasts with that of national lawmakers, who are still focused on employee subordination. Consequently, a new awareness is evident whereby what will matter in the future when engaging in telework is not so much simplified requirements (i.e. those concerning costs and health and safety) but its review according to new work organization "in particular the management of online workers and the link with working-time, health and safety, work life balance, surveillance, privacy, and data protection".

**Accordingly, one should not underestimate the effects of this regulatory process at the national level.** Once again, it will be the supranational legislator – the European social partners in this case – who will fix the inconsistencies of Italy's regulatory framework on remote work, bringing our legal system into line with the European best practices. Finally, and in relation to the pro-active approach used in the context of agile work – the Consolidated Text currently under discussion sums up ten different proposals – it might be sensible to review the relevant legal framework according to the request made by EU institutions.

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