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## **Workplace Reloaded. Ensuring Well-Being in the Modern ‘Worksphere’**

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ABSTRACT

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Despite considerable policy attention on well-being at work, existing legal frameworks fail to sufficiently address the psychological risks associated with modern work environments. Changes to the spatio-temporal aspects of work, which have become ubiquitous since the Covid-19 pandemic, necessitate a reassessment of how the law ensures workers' well-being.

Based on an interdisciplinary approach integrating legal and psychological perspectives, this paper introduces the concept of the 'worksphere', which is understood as the boundaryless range of situations typically associated with the performance of work activities, to such an extent that they cannot be differentiated based on whether they occur at the employer's physical premises – the workplace – or elsewhere. This novel concept of the 'worksphere' serves as an analytical instrument to envisage a more comprehensive regulatory approach to well-being at work, overcoming the existing fragmented legal instruments, exemplified by the recent EU initiatives on the right to disconnect and on fair telework.

**Keywords:** employment law, well-being, mental Health, telework, worksphere

<https://doi.org/10.60923/issn.2421-2695/23596>

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## Workplace Reloaded. Ensuring Well-Being in the Modern 'Worksphere'

SUMMARY: 1. Introduction. – 2. The challenge of defining and operationalising the concept of well-being. – 3. Ensuring well-being at work in the digital age. – 4. The dissolved spatio-temporal boundaries of the workplace. – 5. From a dissolved workplace to the modern worksphere. – 6. Conclusion.

### 1. Introduction

In an action brought before the General Court of the EU on 14 January 2021 – PJ v EIT (Case T-12/21), the applicant Ms. PJ challenged the decision of the director of the European Institute of Innovation and Technology (EIT) to dismiss her request to work from her country of origin, different from her country of employment. She claimed that such a decision violates the principles of 'equal treatment, right to private and family life, wellbeing at work, the principle of legal certainty and predictability' (emphasis added).<sup>(1)</sup> The case has been amicably resolved by the parties and, thus, no ruling has been issued in this case. <sup>(2)</sup> Ms. PJ was eventually authorised to telework from her place of origin, subject to justification by the circumstances relating to the Covid-19 pandemic and without prejudice to the requirement that the worker would travel to her place of employment on an ad hoc basis for reasons relating to the interests of the service. <sup>(3)</sup>

This case is a telling illustration of one of the key phenomena shaping the work dynamics in today's world, namely the growing dissolution of the workplace, and of the societal and regulatory expectations thereof. The progressively prevalent remote or hybrid work arrangements, and the spreading of work mediated through digital labour platforms, are emblematic of the technologically-enabled shift away from work at employers' premises to de-spatialised forms of work. This change is in parallel with an increasing emphasis on accommodating workers' individual needs (e.g., in view of work-life balance), the pursuit of ever-more flexible work arrangements, and, crucially, the imperative of ensuring well-being at work.

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\* We have no conflicts of interest to disclose. This work was supported by a grant of the Institute for Advanced Studies (IAS) at the University of Luxembourg under the AUDACITY scheme to L. Ratti, A. Kornadt & C. Vögele.

<sup>(1)</sup> Action brought on 14 January 2021 – PJ v EIT (Case T-12/21) at <https://curia.europa.eu/juris/document/document.jsf?text=%2522wellbeing%2Bat%2Bwork%2522&docid=238693&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2998013#ctx1> (last visited 4 February 2025).

<sup>(2)</sup> Case T-12/21, PJ vs European Institute of Innovation and Technology, ECLI:EU:T:2021:563.

<sup>(3)</sup> Case T-12/21 R, PJ vs European Institute of Innovation and Technology, ECLI:EU:T:2021:184.

Yet, the question is whether the law is equipped to govern new work modalities, and to protect workers from the intensified psychosocial risks emerging therefrom. In particular, how should legal systems adapt to the spatio-temporal changes in the way work is performed, with a view to ensuring well-being at work? This paper addresses this question by i) investigating the ultimate significance of the notion of well-being from a legal standpoint informed by psychological insights; ii) tracing the policy developments relating thereto; and iii) discussing the spatial boundaries of the notion of a workplace in view of its increasing dissolution.

The paper introduces the concept of 'worksphere' as a novel point of departure towards a more holistic conceptualisation of work environments. We understand 'worksphere' as encompassing the boundaryless range of situations associated with the performance of work activities, so much that they cannot be distinguished by whether they are performed at the employer's premises – the physical 'workplace' – or elsewhere. Such a concept is needed to overcome the systemic spatio-temporal limitations of the law, and the current regulatory fragmentation, enabling a comprehensive protection of workers' well-being.

The analysis provided in this paper is based on findings from psychology and the health sciences <sup>(4)</sup> to inform the discussion on the gaps in the current legal framework and potential ways forward. First, we show that the very concept of 'well-being', which is sometimes conflated with the term 'mental health', is multifaceted and hardly feasible to operationalise in legal terms. Second, we discuss a number of psychological stressors, understood as 'aspects of work design and the organization and management of work, and their social and environmental contexts, which have the potential for causing psychological, social or physical harm' <sup>(5)</sup> but also resources that can be used to promote well-being. In conclusion, we argue that recent policies at the EU level attempting to address changes in work organisation only partially respond to the core issue of well-being protection. We posit that the changes to the modern workplace and the emergence of a 'worksphere' require a renewed reflection on the ways legal systems ensure workers' well-being.

The paper is structured as follows. At the outset, we discuss the meaning(s) of well-being from the psychological and legal perspectives, showing considerable conceptual inconsistencies within and across the respective disciplines. We then provide an overview of EU legal and policy instruments addressing (some aspects of) well-being at work, demonstrating that, despite significant attention paid to this issue, important legislative flaws persist. We further examine and critically evaluate the policy measures focusing on telework and the right to disconnect as the most recent 'flagship' initiatives on workers'

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<sup>(4)</sup> Sabine Sonnentag, Louis Tay, Hadar Neshet Shoshan, 'A review on health and well-being at work: More than stressors and strains.' (2023) 76 *Personnel Psychology* 2.

<sup>(5)</sup> Tom Cox and others, 'Organisational interventions for work stress A risk management approach' (2000) HSE Contract Research Report, 14.

well-being put forward by the EU legislator. <sup>(6)</sup> In view of the fragmented, haphazard boundaries of work environments, we posit that the existing limitations to a comprehensive understanding of well-being at work can effectively be overcome by using the broad concept of a 'worksphere'. We conclude that the usefulness of the proposed concept not only lies at the interpretative level but also calls for normative innovations.

## 2. The challenge of defining and operationalising the concept of well-being

### *Psychological conceptualisations of well-being*

The concept of well-being emphasises the personal experience of individuals' evaluations of their lives. <sup>(7)</sup> It is primarily a psychological construct and is referred to as "subjective well-being" (SWB). SWB encompasses a wide range of notions, from momentary moods to overall life satisfaction judgments. It includes feelings of pleasant or positive affect and feelings of unpleasant or negative affect. Together, both categories of feelings constitute the affective component of SWB. In addition to affect, evaluations of life (e.g., life satisfaction) are also significant. Unlike affective experiences, evaluations often require reflection on circumstances and standards. Assessments of life satisfaction or life evaluation are, therefore, referred to as the cognitive component of SWB. Although the affective and cognitive components are often correlated, they are associated with different outcomes. <sup>(8)</sup>

SWB is sometimes referred to as hedonic well-being due to its focus on a pleasant and satisfying quality of life. <sup>(9)</sup> This contrasts with eudaimonic well-being, which includes constructs such as meaning, personal growth, and authenticity. <sup>(10)</sup> Eudaimonic well-being emphasises fulfilling the needs necessary for individuals to reach their full potential, while the SWB approach does not specify the "ingredients" required for well-being.

The assessment of SWB is subjective, in as much as individuals report their own happiness and satisfaction without reference to any specific template of life conditions or experiences. Instead, they evaluate their well-being using the standards that are personally

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<sup>(6)</sup> Cf. 'First-phase consultation of social partners under Article 154 TFEU on possible EU action in the area of telework and workers' right to disconnect.' Brussels, 30.4.2024. C(2024) 2990 final.

<sup>(7)</sup> Claus Vögele, 'Health and well-being from a psychological perspective' in Andreas Heinen and others (eds), *Wellbeing and health in adolescence: Theoretical perspectives, empirical findings and approaches in practice* (Springer VS, 2022).

<sup>(8)</sup> Luis Tay & Ed Diener 'Needs and subjective well-being around the world.' (2011) *Journal of Personality and Social Psychology*, 101.

<sup>(9)</sup> W. Tov, 'Well-being concepts and components.' in Ed Diener, Shigehiro Oishi, & Luis Tay (eds.), *Handbook of subjective well-being*, (Salt Lake City, UT, Noba Scholar: 2018).

<sup>(10)</sup> Veronica Huta & Antonio S. Waterman 'Eudaimonia and its distinction from hedonia: Developing a classification and terminology for understanding conceptual and operational definitions.' (2014) 15 *Journal of Happiness Studies*; J. Vittersø (ed.). *Handbook of eudaemonic well-being* (Springer Cham: 2016).

relevant and important to them. The distinction between subjective and objective does not imply that one is more valid than the other; it simply indicates the level of observation.

SWB measures are associated with important outcomes, despite a lack of understanding of the mediating mechanisms or factors. For example, higher levels of life satisfaction and positive affect predict lower susceptibility to health problems and increased longevity, while higher levels of negative affect tend to predict poorer health outcomes. <sup>(11)</sup> Pertinent to this paper, SWB has also been demonstrated to be linked to numerous positive individual and organisational outcomes, such as lower absenteeism, organisational citizenship behavior, and work performance. <sup>(12)</sup>

In terms of well-being as it is linked to the workplace, oftentimes this is referred to as occupational health or occupational well-being. As argued here and in the following paragraphs, well-being and health, and in particular mental health, are distinct although related constructs.

Problematic from an assessment point-of-view is the fact that there is no unitary approach to measuring well-being. Instead, the assessments used in the studies and institutional reports seeking to quantify quality of life and, relatedly, well-being, vary greatly. <sup>(13)</sup> To give an example, a Eurofound study published in October 2024 identified six composite indicators of well-being, namely indicators related to economic performance, living conditions, institutional quality, digitalisation, climate change, and social cohesion. <sup>(14)</sup>

Much research in organisational, occupational and health psychology is devoted to understanding how workplace characteristics and organisational structures impact employees' well-being and how it can be maintained or improved. <sup>(15)</sup> These studies focus on individual or organisational characteristics, highlighting the challenge to translate and implement legal frameworks, which concern the macro-level structure, into individual well-being via organizational structures, such as the setup and structure of workplaces. <sup>(16)</sup> Thus,

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<sup>(11)</sup> Ed Diener, Sarah D. Pressman, John Hunter, Desiree Delgado-Chase, 'If, Why, and When Subjective Well-Being Influences Health, and Future Needed Research' (2017), 9 (2) *Applied Psychology: Health and Well-Being*, 133–167.

<sup>(12)</sup> J. K. Harter, F. L. Schmidt, C. L. M. Keyes, 'Well-being in the workplace and its relationship to business outcomes: A review of the Gallup studies' in Corey L. M. Keyes and Jonathan Haidt (eds.), *Flourishing: Positive psychology and the life well-lived* (American Psychological Association, 2003).

<sup>(13)</sup> See, e.g., the OECD Better Life Index, which includes 24 indicators ranging across 11 topics: Housing, Income, Jobs, Community, Education, Environment, Governance, Health, Life Satisfaction, Safety, and Work–life balance. The Human Development Index (HDI) focuses on three main dimensions: life expectancy, education, and income.

<sup>(14)</sup> Paola Asja Butera, Living conditions and quality of life Composite indicators in key areas of well-being: Literature review. Available at <https://www.eurofound.europa.eu/en/publications/eurofound-paper/2024/composite-indicators-key-areas-well-being-literature-review>

<sup>(15)</sup> Sabine Sonnentag, 'Dynamics of Well-Being' (2015) 2 *Annual Review of Organizational Psychology and Organizational Behavior* 1.

<sup>(16)</sup> Paul A. Schulte, Rebecca J. Guerin, Anita L. Schill, Anasua Bhattacharya, Thomas R. Cunningham, Sudha P. Pandalai, Donald Eggerth, and Carol M. Stephenson, 'Considerations for Incorporating "Well-Being" in Public Policy for Workers and Workplaces', (2015) *American Journal of Public Health*; Aditya Jain, Luis D. Torres, Kevin Teoh, Stavroula Leka, 'The impact of national legislation on

while there is a significant body of research linking workplace well-being with OSH legislation, there are substantial variations in the implementation and success of its translation into actual organizational practice,<sup>(17)</sup> which might also stem from different or unclear conceptualizations of well-being and their inclusion in the underlying legal frameworks. Thus, a clearer integration of the legal and psychological perspectives might help in the development and implementation of regulatory approaches.

*The legal conceptualisation of well-being at work*

At the global level, 'ensuring healthy lives and promotion of well-being for all at all ages' constitutes one of the Sustainable Development Goals (SDG 3).<sup>(18)</sup> Promoting and keeping 'the highest degree of physical, mental and social well-being of workers in all occupations' is indicated as the core aim of occupational safety and health (OSH) in the definition adopted by the ILO/WHO Joint Committee.<sup>(19)</sup> As highlighted by the International Labour Organisation (ILO), the promotion of well-being at work benefits not only individuals but also society as a whole as most people spend a considerable proportion of their time engaging in gainful employment or other types of work.<sup>(20)</sup>

The well-being of EU citizens is even listed as one of the objectives of the EU, as explicitly stated in the Treaty on European Union (TEU) (Article 3 (1)). The pursuit of ensuring well-being, therefore, serves as a foundational principle of the entire EU social framework.

Despite its firm expression as a policy objective, well-being (at work) is not legally defined in policy or regulatory instruments at the international, European, or domestic levels. A notable exception is Belgium, where the 'Code on Well-being at Work'<sup>(21)</sup> was introduced already in 1996. Article 4 of this Code enumerates the measures used to strive for well-being, i.e., work safety; protecting workers' health at work; psychosocial aspects of work; ergonomics; work hygiene; embellishing the workplaces; and the enterprise's measures regarding the natural environment, relating to their influence on the

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psychosocial risks on organisational action plans, psychosocial working conditions, and employee work-related stress in Europe', (2022) 302 *Social Science & Medicine*.

<sup>(17)</sup> Jain, Aditya, Juliet Hassard, Stavroula Leka, Cristina Di Tecco, and Sergio Iavicoli, 'The Role of Occupational Health Services in Psychosocial Risk Management and the Promotion of Mental Health and Well-Being at Work' (2021) *International Journal of Environmental Research and Public Health* 18 (7) 3632; Stavroula Leka, Aditya Jain, Gerald Zwetsloot, Tom Cox, 'Policy-level interventions and work-related psychosocial risk management in the European Union' (2010), 24(3) *Work & Stress*, 298–307; Stavroula Leka, Aditya Jain, Sergio Iavicoli, Maarit Vartiainen, Michael Ertel, 'The role of policy for the management of psychosocial risks at the workplace in the European Union' (2011) 49 (4) *Safety Science*, 558–564.

<sup>(18)</sup> <https://sdgs.un.org/goals/goal3> (last visited 4 February 2025).

<sup>(19)</sup> <https://www.ilo.org/publications/improving-health-workplace-ilos-framework-action> (last visited 4 February 2025).

<sup>(20)</sup> Duncan Campbell, 'Well-being and the non-material dimension of work' (Geneva: ILO, 2012), 5.

<sup>(21)</sup> Law of 4 August 1996 in relation to the workers well-being during work performance (*le Code sur le bien-être au travail*)

abovementioned areas. The introduction of these measures was seen as a progressive move towards a more humanistic approach to workers and a stronger emphasis on psychosocial and organisational risks at work. <sup>(22)</sup> Some countries, such as Italy, define health according to the definition adopted by the World Health Organisation (WHO), reaffirming it as a 'state of a complete physical, mental and social well-being and not merely the absence of disease and infirmity'. <sup>(23)</sup> What emerges from such a definition is an integrative notion of health encompassing well-being in a three-fold sense, that is physical, mental, and social. <sup>(24)</sup>

Based on new approaches and in contrast to the WHO definition, health has more recently been defined as the ability to adapt and manage even in the face of adversity. <sup>(25)</sup> With such a definition of health, the concept of wellness can be understood as its proactive complement, which reflects the ability to fulfil one's personal and collective human potential. From this perspective, health and wellness, as complementary entities, would constitute the conceptual building blocks of well-being, which is conceived of as a state, not an ability. <sup>(26)</sup>

In most EU countries, in turn, regulations concern 'health', sometimes also explicitly including 'mental health', <sup>(27)</sup> but failing to address the concept of well-being. Domestic case law provides little guidance in conceptualising well-being at work as an enforceable right, for which employers can be held accountable. In the rare cases where the term 'well-being' appears, it mostly refers to specific issues such as violation of working time regulations, (psychological) harassment, discrimination, or work-life balance. Paradigmatic is a recent judgement from the UK High Court, which included 'workers' under the Health and Safety at Work etc. Act 1979 (HSWA), but failed to discern well-being as self-standing ground for protection. <sup>(28)</sup> In other words, the violation of workers' well-being as such does not seem to have been mobilised in courts, and it has not been used as an independent argument for workers' claims.

Conceiving well-being as a self-standing legal category would be, indeed, problematic. In fact, 'it is difficult for the law to affirm itself in the field of well-being at work since it represents a way of organising that does not necessarily match with the reality

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<sup>(22)</sup> F. Dorssemont, K. Naert and A. Van Regenmortel, 'Well-Being at Work in Belgium: A Matter of Co-operation' in Edoardo Ales (ed.) *Health and Safety at Work, European and Comparative Perspective* (Alphen aan den Rijn: Wolters Kluwer Law & Business, Kluwer Law International, 2013), 97.

<sup>(23)</sup> Art. 2 (1) (o) of Legislative Decree no. 81.2008.

<sup>(24)</sup> E. Ales, L. Miranda, A. Giurini, 'Italy: From Occupational Health and Safety to Well-being at Work' in Edoardo Ales (ed.) *Health and Safety at Work, European and Comparative Perspective* (Alphen aan den Rijn: Kluwer Law International, 2013), 199.

<sup>(25)</sup> Machteld Huber and others, 'How should we define health?' (2011) *BMJ*, 343, d4163.

<sup>(26)</sup> Vögele, n 7 above.

<sup>(27)</sup> E.g. the French Social Modernisation Law (Loi no. 2002-73, JORF du 18 janvier 2002, 1008).

<sup>(28)</sup> UK High Court of Justice, *R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions and another* [2020] EWHC 3039 (QB) (Admin).

and practice.’<sup>(29)</sup> Even in Belgium, the term well-being ‘is not easily accepted’<sup>(30)</sup> and fails to be used consistently, while the notion of ‘health and safety’ is applied to describe the employees’ and employers’ obligations.<sup>(31)</sup> Furthermore, legislative instruments oftentimes fail to recognise that well-being can be measured,<sup>(32)</sup> therefore as such should be protected.

This does not mean, however, that well-being is outside the scope of health and safety regulations. On the contrary, it can be argued that even though well-being per se is typically not a legal category, at least some of its aspects can be distilled from the occupational safety and health (OSH) legislation. Notably, at the international level, the Occupational Safety and Health Convention, 1981 (No. 155) expressly notes that the term health, in relation to work, means not only the absence of disease or infirmity but also the physical and mental elements affecting health which are directly related to safety and hygiene at work. In other words, the scope of occupational health and safety also incorporates some aspects psychological and social well-being. Such a broad, ‘evolutionary point of view’ on OSH, departing from the focus on the physical, material notion of safety, is crucial for ensuring well-being at work.<sup>(33)</sup> This conceptualisation of well-being at work, which ultimately is closely related to the very dignity and integrity of individuals, and to standards of decent work, makes it a fundamental social right.<sup>(34)</sup> It should be recalled that the right to safe and health working environment has recently been elevated to the status of a fundamental right and principle at work, which is to be followed by all ILO Member States by virtue of their belonging to the organisation.<sup>(35)</sup> Against this background, even if not legally defined, well-being emerges as a ‘new protective paradigm for labour and labour relations’.<sup>(36)</sup>

### *Mapping the protection of well-being at work in EU law*

When speaking of the legal instruments promoting well-being at work, interesting examples come from EU’s OSH legislation. The right to safe and healthy working conditions is well-established at the EU level. It is enshrined in Article 31 of the EU Charter

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<sup>(29)</sup> Loïc Lerouge, ‘Well-being at Work: a Few Considerations Under a Legal Perspective’, in Tindara Addabbo, Edoardo Ales, Ylenia Curzi, Iacopo Senatori (eds.), *Well-being at and Through Work* (2017), Giappichelli, 15-32.

<sup>(30)</sup> ILO, n 20 above, 71.

<sup>(31)</sup> For example, the employers bear due diligence obligations with regard to ‘the work done in decent circumstances with regard to ‘the health and safety’ of the employees’ (Art 20).

<sup>(32)</sup> For further references see n 8 above.

<sup>(33)</sup> Edoardo Ales, ‘Well-being at Work: A New Paradigm for Labour Relations’, in Edoardo Ales (ed.) *Health and Safety at Work, European and Comparative Perspective* (Alphen aan den Rijn: Kluwer Law International, 2013), 25.

<sup>(34)</sup> See the analysis of Art 31 of the EU Charter of Fundamental Rights, E. Ales, ‘Article 31 CFREU. Fair and just working conditions’ in Edoardo Ales and others (eds.) ‘International and European Labour Law : article-by-article commentary’ (Baden-Baden: Nomos - München: C.H. Beck; 2018).

<sup>(35)</sup> Following the resolution adopted at the 110<sup>th</sup> International Labour Conference Session in June 2022.

<sup>(36)</sup> Lerouge, n 29 above, 23.

of Fundamental Rights, which provides every worker with the 'right to working conditions which respect his or her health, safety and dignity', and it is likewise expressed in Article 3 of the Revised European Social Charter which protects the right of all workers 'to safe and healthy working conditions'.

The key instrument targeted at ensuring workers' health and safety in the EU is Directive 89/391/EEC (the so-called OSH Framework Directive).<sup>(37)</sup> It sets out general principles concerning the prevention of occupational risks, mandating the employer to ensure the safety and health of workers 'in every aspect related to the work' (Article 5 (1)). Employers shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks, and shall adjust such measures taking account of changing circumstances, including technology (Article 6 (1)). The Court of Justice of the European Union (CJEU) has favoured a broad interpretation of the notions of 'working environment', 'health', and 'safety' in that Directive.<sup>(38)</sup> While the Directive's provisions do not mention well-being, they are interpreted to implicitly encompass also psychosocial risks.<sup>(39)</sup> Consequently, employers are obliged to put in place risk prevention measures specific to mental health in the workplace and to conduct risk assessments in that regard.

Another important legal instrument is Directive 2003/88/EC laying down minimum safety and health requirements for the organisation of working time (Working Time Directive, WTD).<sup>(40)</sup> Based on the OSH Framework Directive, the WTD refers to occupational health and safety without being explicit about mental health or well-being. It distinguishes between working time as opposed to rest time, setting out minimum rest periods and maximum weekly working time, and regulating certain aspects of night work. Though not overtly, the WTD constitutes an important measure towards ensuring well-being, as working time arrangements have a direct bearing on work-life balance and mental health.<sup>(41)</sup> In particular, excessive working time, extended availability, and work

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<sup>(37)</sup> Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC).

<sup>(38)</sup> Starting with the well-known Sunday trading cases concerning the UK, the CJEU held that «[t]here is nothing in the wording of Article 118a to indicate that the concepts of 'working environment', 'safety' and 'health' as used in that provision should, in the absence of other indications, be interpreted restrictively, and not as embracing all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment, including in particular certain aspects of the organization of working time. On the contrary, the words 'especially in the working environment' militate in favour of a broad interpretation of the powers which Article 118a confers upon the Council for the protection of the health and safety of workers.» See CJEU, Case C-84/94, *United Kingdom of Great Britain and Northern Ireland v Council of the European Union*, ECLI:EU:C:1996:431, para 15.

<sup>(39)</sup> 'Interpretative Document of the Implementation of Council Directive 89/391/EEC in relation to Mental Health in the Workplace' (EU Commission, 2014) at <https://osha.europa.eu/en/legislation/guidelines/interpretative-document-implementation-council-directive-89391eec-relation-mental-health-workplace> (last visited 4 February 2025).

<sup>(40)</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

<sup>(41)</sup> Cf e.g., 'Working time patterns for sustainable work' (Eurofound, 2017) at <https://www.eurofound.europa.eu/en/publications/2017/working-time-patterns-sustainable-work>;

intensification are some of today's most prevalent psychosocial risks at work, which can be amplified through telework. 'Time porosity', understood as the interference between working time and personal time, poses multiple challenges to measuring working time, and the limitations thereof. <sup>(42)</sup> The WTD sets out certain safeguards, even though it falls short of providing full and effective protection against the risk factors associated with this phenomenon.

While the OSH legislation is the backbone of the protection of workers' well-being, three recent EU instruments also provide safeguards that can have an indirect impact thereon. First, Directive (EU) 2019/1158 <sup>(43)</sup> (Work-Life Balance Directive) plays an important role in contributing to the well-being of workers falling under its scope, e.g., by giving the right to request flexible working arrangements for caring purposes for workers with children up to a specific age (Art. 9). <sup>(44)</sup> Nevertheless, not all workers benefit from the right to flexible working arrangements facilitating the reconciliation of work and life under this instrument, but only those workers who are parents or carers. Although understandable in view of the goal of the Directive, namely the ensuring of equality between men and women rather than protecting health and safety (Art. 31), this is an inherent limitation of the Directive meaning that workers without caring responsibilities are out of its scope.

A second important piece of EU law is Directive (EU) 2019/1152 (Transparent and Predictable Working Conditions Directive). <sup>(45)</sup> The Directive provides safeguards against the unpredictability of employment through an obligation for the employer to provide workers whose schedules are not predictable with adequate prior information on, inter alia, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours, the reference hours and days within which the worker may be required to work, and the minimum notice period to which the worker is entitled before the start of a work assignment (art. 4), thus significantly contributing to workers' well-being. <sup>(46)</sup>

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'Working Time and Work-Life Balance Around the World.' (ILO, 2022) at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_864222.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_864222.pdf) (last visited 4 February 2025).

<sup>(42)</sup> Émilie Genin, 'Proposal for a Theoretical Framework for the Analysis of Time Porosity', (2016) 32 *International Journal of Comparative Labour Law and Industrial Relations* 3.

<sup>(43)</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

<sup>(44)</sup> For a discussion on the impact of work-life balance on well-being, see e.g., 'Psychosocial risks to workers' well-being: Lessons from the COVID-19 pandemic' (Eurofound, 2023) at <https://www.eurofound.europa.eu/en/publications/2023/psychosocial-risks-workers-well-being-lessons-covid-19-pandemic> (last visited 4 February 2025).

<sup>(45)</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on Transparent and Predictable Working Conditions in the European Union.

<sup>(46)</sup> On the impact of unpredictable working conditions on workers' well-being, see Julia Schoellbauer and others, 'I'd rather know what to expect ... Work unpredictability as contemporary work stressor with detrimental implications for employees' daily wellbeing' (2022) 36 *Work & Stress*, 3.

Finally, Directive (EU) 2024/2831 on improving working conditions in platform work (Platform Work Directive, PWD) <sup>(47)</sup> addresses important aspects of well-being at work. According to its Art. 12 (3), digital labour platforms shall not use algorithmic management (AM) in a way that creates risks to the safety and physical and mental health of platform workers, including by putting them under 'undue pressure'. Crucially, this is the first ever instrument at the EU level that explicitly refers to the mental health of workers <sup>(48)</sup> and targets OSH risks related to the (semi)automated systems on workers' health. The PWD may thereby contribute to the improved well-being of platform workers, even if only AM-driven hazards are addressed.

As mentioned previously, despite an overlap in acknowledging well-being at the workplace as a central issue, and the definition thereof from both legal (in terms of OSH regulations as a framework to safeguard health and well-being in the workplace) and a psychological viewpoints (in terms of the links between OSH legislation and individual worker well-being), there is still a divide in terms of translating legislation into organizational frameworks, and ultimately, well-being. The way an increasing attention to workers' well-being has emerged in EU law demonstrates the need to assess the law's potential to address certain aspects of workers' well-being. Crucially, protections deriving from EU secondary law are contingent upon employment status, leaving a significant proportion of vulnerable individuals – including casual workers and the self-employed – outside its scope. Much of the regulatory framework is narrowly tailored to specific categories of workers (e.g., parents, carers, or platform workers) and targeted risk factors (e.g., lack of job predictability, difficulties in reconciling care responsibilities with professional obligations, and occupational safety and health (OSH) risks associated with algorithmic management).

Consequently, the current regulatory measures address only a fraction of the broader challenges at hand. The need for a more comprehensive reconceptualisation is increasingly urgent. The following section examines the approaches being developed from both psychological and legal perspectives to address the rapid digital transformation of work induced by information and communication technologies and the ongoing erosion of the traditional workplace.

### **3. Ensuring well-being at work in the digital age**

#### *The psychological effects of telework – a double-edged sword*

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<sup>(47)</sup> Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work (Text with EEA relevance).

<sup>(48)</sup> Aude Cefaliello, 'An Occupational Health and Safety Perspective on EU Initiatives to Regulate Platform Work: Patching up Gaps or Structural Game Changers?' (2023) 1 *Journal of Work Health and Safety Regulation*; Nastazja Potocka-Sionek, 'Gestión de algoritmos. El caso del trabajo en plataformas' (2024) *LABOS Revista De Derecho Del Trabajo Y Protección Social*, 5, 47-67.

As in other areas concerned with occupational health, psychological perspectives on well-being in increasingly digitalised workplaces were investigated long before the Covid-19 pandemic. <sup>(49)</sup> Nevertheless, the significant shift to telework work in the wake of lockdown measures during the pandemic increased the interest in factors that promote or endanger workers' well-being in virtual work arrangements. <sup>(50)</sup> It is widely acknowledged that telework considerably alters the characteristics of the work that is performed by employees as well as the psychosocial work environment. <sup>(51)</sup> This can result in both increased well-being, for instance due to increased autonomy, flexibility and improved work-life balance, but also reduced well-being, for example because of technostress, social isolation and blurring boundaries between work and private life. <sup>(52)</sup>

In a recent review of the pertinent literature, Hill and colleagues identified positive and negative well-being effects of a multitude of factors related to virtual work, among them flexible connectivity, and out-of-office work location as two aspects that impact the time and space of work when teleworking. These two aspects were investigated in 35% of the studies identified in the review. <sup>(53)</sup>

Flexible connectivity, which primarily refers to the use of smartphones and other digital technologies for the performance of work, had the strongest impact on well-being through the blurring of home-work boundaries, and thus, reduced boundary control, which can increase stress, and decrease life and job satisfaction. <sup>(54)</sup> Furthermore, several studies found that being constantly available has the effect of extending working hours. <sup>(55)</sup> Despite these negative influences, there is also evidence for positive aspects of flexible connectivity in that several studies found better coordination and more adaptivity in work

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<sup>(49)</sup> Ravi S. Gajendran and David A. Harrison, 'The good, the bad, and the unknown about telecommuting: Meta-analysis of psychological mediators and individual consequences' (2007) 92 *Journal of Applied Psychology* 6.

<sup>(50)</sup> In the remainder of this paper, the terms 'telework', 'remote work', 'virtual work', and 'working from home', will be used interchangeably, as describing work performed outside traditional workplaces, whether or not by digital means. As it will be observed, this transliteration of meanings allows to accommodate existing research findings from both psychology and law, while aligning with the terminology commonly used in policy documents.

<sup>(51)</sup> 'The influence of digitalization and new technologies on psychosocial work environment and employee health: a literature review' (Jan Olav Christensen and others, Statens Arbejdsmiljøinstitut, Nationalt Forskningscenter for Arbejdsmiljø, 2020).

<sup>(52)</sup> N. Sharon Hill, Carolyn Axtell, and Niina Nurmi, 'Unpacking virtual work's dual effects on employee well-being: An integrative review and future research agenda' (2022) 50 *Journal of Management* 2. See further Elizabeth Marsh, Elvira Perez Vallejos, Alexa Spence, 'The digital workplace and its dark side: An integrative review' (2022) 128 *Computers in Human Behavior*.

<sup>(53)</sup> Hill et al., n 52 above.

<sup>(54)</sup> Joni Delanoetje, Marijke Verbruggen, and Lynn Germeys 'Boundary role transitions: A day-to-day approach to explain the effects of home-based telework on work-to-home conflict and home-to-work conflict.' (2019) 72 *Human Relations* 12.

<sup>(55)</sup> Marta Choroszewicz and Fiona Kay, 'The use of mobile technologies for work-to-family boundary permeability: The case of Finnish and Canadian male lawyers.' (2019) 73 *Human Relations* 10; Niina Nurmi and Pamela J. Hinds 'Work design for global professionals: Connectivity demands, connectivity behaviors, and their effects on psychological and behavioral outcomes.' (2020) 41 *Organization Studies* 12.

and non-work time management. <sup>(56)</sup> Greater autonomy in determining when and where work is performed, as well as increased flexibility in time allocation, has been shown to positively impact well-being.

Taken together, positive effects of flexible connectivity and telework on employee well-being often outweigh the negative aspects, although these findings confirm the notion of telework as a 'double-edged sword'. There is no simple answer, therefore, on the question of whether and when telework has positive or negative effects on individual well-being. <sup>(57)</sup> Organisational and individual aspects need to be taken into account to understand the direction and intensity of effects. Important factors include perceived autonomy and control over when and where to work in terms of the use of working time, working after hours, and the intensity of telework and connectivity, which might facilitate positive effects of flexible and digital work arrangements. In contrast, fewer organisational and individual resources to perform work digitally and from home, high demands from others, the extension of working time and workload through connectivity and telework, and intrusive leadership might be potential amplifiers of negative effects. <sup>(58)</sup>

In a recent study, we analysed the relationship of working from home and psychological distress as well as life satisfaction from the beginning of the Covid-19 pandemic up until 2.5 years later in five European countries. <sup>(59)</sup> Findings from dense, three-monthly measurements indicate that the relation between teleworking and well-being is far from linear. While more teleworking was related to increased distress and reduced life satisfaction at the beginning of the pandemic, we could find no evidence that teleworking has had an impact on life satisfaction and psychological distress after these initial months. There are several factors that might have contributed to these findings. The ergonomic setup and prerequisites for teleworking (e.g., software) might not have been in place in the early stages of the pandemic, contributing to distress while working from home. As the pandemic progressed, however, most companies developed and implemented the necessary infrastructure for teleworking, which might have mitigated the negative early effects. Furthermore, in many countries, schools reopened and (child)care opportunities were reinstated, which might have eased stress and increased well-being for those with care duties. Another important factor that might have driven the differential impact pre- vs. post-pandemic is that while teleworking was often mandatory early in the pandemic, it

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<sup>(56)</sup> Daantje Derks and others, 'Work-related smartphone use, work-family conflict and family role performance: The role of segmentation preference.' (2016) 69 *Human Relations* 5.

<sup>(57)</sup> Cort W. Rudolph and Hannes Zacher, 'Working from home: When is it too much of a good thing?' (2024) *Human Resource Development Quarterly*.

<sup>(58)</sup> See e.g., Nicola Magnavita, Giovanni Tripepi, and Carlo Chiorri, 'Telecommuting, Off-Time Work, and Intrusive Leadership in Workers' Well-Being' (2021) 18 *International Journal of Environmental Research and Public Health* 7; Shuang Ren and others, 'Digital connectivity for work after hours: Its curvilinear relationship with employee job performance' (2023) 76 *Personnel Psychology* 3; n 36 above; n 42 above; Hannes Zacher and Cort W. Rudolph, 'Workplace digitalization and workload: changes and reciprocal relations across 3 years' (2024) 14 *Sci Rep*, 5924.

<sup>(59)</sup> Anna Kornadt et al., 'Working from home and well-being during the pandemic and beyond. A longitudinal analysis in five countries' (2025) 25 *BMC Public Health*, 1183.

became more of a choice as the pandemic progressed. Thus, individual differences and personal preferences might have a stronger impact on the likelihood and frequency of teleworking compared to general regulations. That is, if teleworking is more of a choice than a mandate and more in line with how often one prefers to work from home, employees might be more satisfied and content when working from home.

The conclusion that can be drawn from research regarding the relationship of teleworking and well-being is that whether teleworking has a positive, negative or no effect on individual well-being seems to depend on several factors, such as organisational support, leadership behavior, job characteristics, personal preferences, and the possibility to set boundaries between work and private life.<sup>(60)</sup> This complexity of the relationship between telework and well-being, and it being contingent on a variety of organisational, work-related, and individual factors, proves challenging for the establishment of a consistent overarching legal framework.

*Addressing well-being at work through the right to disconnect and fair telework in the EU*

While overtime and extended availability have been prevalent in both remote and on-site work settings long before the Covid-19 pandemic, evidence suggests that they have intensified with the massive increase of (full or hybrid) remote work arrangements in the wake of the pandemic. Much of the debate on workers' well-being has revolved around the regulatory response to digitally-enabled permanent connectivity, especially in the context of telework.<sup>(61)</sup>

Well-being at work has long been a prominent topic on the EU agenda. It has not been discussed as a separate category but jointly with mental health. The European Pact for Mental Health and Well-being (2008), the European Framework for Action on Mental Health and Wellbeing (2016),<sup>(62)</sup> and the EU-Compass for Action on Mental Health and Wellbeing<sup>(63)</sup> are just examples of policy initiatives focusing on the well-being of people in the EU at large, including some references to well-being at work.<sup>(64)</sup> The attention to

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<sup>(60)</sup> Paulin Gohoungodji et al., 'What makes telework work? Evidence of success factors across two decades of empirical research: a systematic and critical review' (2022), *The International Journal of Human Resource Management*, 34(3), 605-649.

<sup>(61)</sup> 'Study exploring the social, economic and legal context and trends of telework and the right to disconnect, in the context of digitalisation and the future of work, during and beyond the COVID-19 pandemic' (European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Martinaitis, Ž., Sadauskaitė, A., Garbašauskaitė, A., 2024) at <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8595&furtherPubs=yes> (last visited 4 February 2025).

<sup>(62)</sup> [https://ec.europa.eu/research/participants/data/ref/h2020/other/guides\\_for\\_applicants/h2020-SC1-BHC-22-2019-framework-for-action\\_en.pdf](https://ec.europa.eu/research/participants/data/ref/h2020/other/guides_for_applicants/h2020-SC1-BHC-22-2019-framework-for-action_en.pdf)

<sup>(63)</sup> [https://health.ec.europa.eu/non-communicable-diseases/mental-health/eu-compass-action-mental-health-and-well-being\\_en](https://health.ec.europa.eu/non-communicable-diseases/mental-health/eu-compass-action-mental-health-and-well-being_en)

<sup>(64)</sup> Mental health and well-being at work was a priority area of the EU Compass in 2017. See [https://health.ec.europa.eu/document/download/acc791c9-f6ac-42ba-aa92-ccb7753c42fc\\_en?filename=2017\\_mh\\_work\\_schools\\_en.pdf](https://health.ec.europa.eu/document/download/acc791c9-f6ac-42ba-aa92-ccb7753c42fc_en?filename=2017_mh_work_schools_en.pdf)

well-being significantly increased in the wake of the Covid-19 pandemic. For example, the EU strategic framework on health and safety at work 2021-2027, <sup>(65)</sup> called for an increased focus on psychosocial risks. Much attention to the challenges related to digital and remote work has been given in the European Parliament Resolution of 5 July 2022, which called on the Commission to propose a legislative initiative on the management of psychosocial risks and well-being at work to effectively prevent psychosocial risks in the workplace, including work performed online. <sup>(66)</sup> The Communication on a Comprehensive Approach to Mental Health, adopted in June 2023, heralded the beginning of a 'new strategic approach to mental health, cross-sectoral in nature, going beyond health policy'. <sup>(67)</sup> As one of the flagship initiatives, it announced the Commission's intention to conduct 'a peer review on legislative and enforcement approaches to address psychosocial risks at work in the Member States with a view (...) to present an EU-level initiative on the psychosocial risks in the medium term.' In parallel, the Council Conclusions on mental health and precarious work of October 2023 <sup>(68)</sup> invited the Member States to analyse the implications of new forms of work, particularly 'in cases where the employer and employer's responsibilities may be blurred'. <sup>(69)</sup>

Through a Resolution of 21 January 2021, the European Parliament called upon the Commission to propose a Directive establishing standards and conditions regarding the right to disconnect, and a legislative framework providing minimum requirements for telework. <sup>(70)</sup> This was followed by the Council Conclusions on Telework (14 June 2021) and a Conference on the Future of Europe (15 March 2022) exploring the challenges and opportunities of the right to disconnect and telework. <sup>(71)</sup> In June 2022, the European cross-sectoral social partners <sup>(72)</sup> signed a social dialogue agreement with European trade union representatives, in which they committed themselves to negotiate a legally binding

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<sup>(65)</sup> COM(2021) 323 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU strategic framework on health and safety at work 2021-2027 Occupational safety and health in a changing world of work', at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0323&qid=1626089672913#PP1Contents> (last visited 4 February 2025).

<sup>(66)</sup> Ibid, point 30.

<sup>(67)</sup> COM(2023) 298 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a comprehensive approach to mental health, at [https://health.ec.europa.eu/document/download/cef45b6d-a871-44d5-9d62-3cecc47eda89\\_en?filename=com\\_2023\\_298\\_1\\_act\\_en.pdf](https://health.ec.europa.eu/document/download/cef45b6d-a871-44d5-9d62-3cecc47eda89_en?filename=com_2023_298_1_act_en.pdf) (last visited 4 February 2025).

<sup>(68)</sup> Council Conclusions on mental health and precarious work, at <https://data.consilium.europa.eu/doc/document/ST-13937-2023-INIT/en/pdf> (last visited 22 July 2014).

<sup>(69)</sup> Ibid, point 23.

<sup>(70)</sup> P9\_TA (2021)0021 European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

<sup>(71)</sup> See the report on the Final outcome of the discussions held at that conference at <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf> (last visited 4 February 2025).

<sup>(72)</sup> ETUC, Business Europe, SGI Europe and SMEunited.

agreement on telework in the form of a directive. In November 2023, the negotiations failed, as two of the employers' organisations (BusinessEurope and SME United) refused to put forward any text. On 30 April 2024, the European Commission launched a first consultation of social partners on 'possible EU action in the area of telework and workers' right to disconnect' pursuant to Article 154(2) TFEU. <sup>(73)</sup> The second-stage consultation on this initiative, launched in July 2025, is held at the time of writing. <sup>(74)</sup> The consultation document charts some paths for regulatory intervention in this ambit. Even though the details of a potential EU-level instrument on the right to disconnect and fair telework are far from clear, and it is even uncertain whether the Commission will eventually submit a legislative proposal in this regard, a few general observations can be made already at this stage.

The problem of an increasing 'extended availability', understood as 'receiving and acting on work-related requests during rest time,' <sup>(75)</sup> lies at the heart of the Commission's initiative. The establishment of the right to disconnect, coupled with protection against the negative consequences of exercising this right by workers, is at the core of the legislative solution to this challenge. The consultation documents emphasise that due consideration should be given to the interpretation by the CJEU of existing working time rules and should regulate some ambiguous notions such as 'on-call' work and 'standby'. This suggests that a future legislative initiative on telework and the right to disconnect is unlikely to redefine the existing regulatory framework on working time but will rather reaffirm and clarify the current state of the art.

The personal scope of the right to disconnect, namely whether it should apply to all workers, only to teleworkers (i.e., those performing work at a location other than the employer's premises using mainly ICT tools), or only to workers in 'teleworkable professions', is still an open question. A narrow personal scope limited to teleworkers or workers in teleworkable professions would be based on an empirically-grounded premise that teleworkers are particularly vulnerable to being exposed to extended availability and overtime. <sup>(76)</sup> It is clear, however, that this problem is not restricted to that group but is also increasingly prevalent in 'standard' working arrangements. The limitation of the right to disconnect would therefore constitute a fragmented and inadequate remedy. The provision of the right to disconnect to all workers would be a preferred option, better corresponding to the reality of the modern working arrangements. <sup>(77)</sup> It would, however,

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<sup>(73)</sup> Brussels, 30.4.2024. C(2024) 2990 final, at <https://s3.tamtam.pro/production/storage/media/PDF/41774/5674e8f898d86b578597c104fdd598b4e8e49252.pdf> (last visited 4 February 2025).

<sup>(74)</sup> Brussels, 25.7.2025 C(2025) 7020 final, at [https://employment-social-affairs.ec.europa.eu/document/cca467bb-f77e-4dac-b3aa-60b205be7ecc\\_en](https://employment-social-affairs.ec.europa.eu/document/cca467bb-f77e-4dac-b3aa-60b205be7ecc_en)

<sup>(75)</sup> n 52 above, 3.

<sup>(76)</sup> As referred to in the consultation document (n 46 above), according to the European Working Conditions Survey (2021), overtime work concerns 44% of teleworkers, which is 14% higher than that of on-site workers.

<sup>(77)</sup> Luca Ratti and Karine Lempen, 'Guiding Principles on Implementing Workers' Right to Disconnect' (2023) European Law Institute: Vienna, 7-8.

mean that the planned initiative would have a dual personal scope, with some rights applying only to teleworkers and some (i.e., the right to disconnect), applying regardless of whether work is performed at the employer's premises or from home. This would mark a rather peculiar regulatory technique that brings two very different issues, namely the right to disconnect and other teleworkers' rights under the umbrella of one instrument. <sup>(78)</sup>

As for the set of rights that are underway for teleworkers, the consultation documents point at the introduction of the equality principle with regard to employment and working conditions. One of the main protective mechanisms would be, in essence, to ensure the equal treatment of teleworkers with their counterparts working at the employer's premises. The mechanism is based on a paradigm that a worker at the employer's premises is a 'standard' worker with a full set of rights, and that these rights should also be granted to teleworkers. This reveals a binary divide between tele- and non-teleworkers, and the attempts to overcome it by extending (some) rights to teleworkers through a regulatory intervention. As will be argued in the next section, such an approach fails to fully capture the changing spatiality of work arrangements and the increasingly dissolved notion of a traditional, paradigmatic workplace. On the other hand, the consultation documents refer to a broad list of aspects that could be addressed, from the improvement of transparency in access to and organisation of fair and quality telework, teleworkers' access to the necessary equipment, to their data protection aspects and monitoring, and clarification of OSH legislation in their regard. This approach is to be welcomed as a comprehensive one, in contrast to the right to disconnect.

*A critique of the right to disconnect as panacea: towards a more comprehensive approach to well-being at work?*

Introducing the right to disconnect as a means of combating the risk of permanent availability is certainly an important dimension of ensuring the overall promotion of well-being at work. It contributes to reducing work-related stress and increasing work-life balance. Yet, the right to disconnect should not be taken as a proxy for the well-being of (tele)workers, as it tackles only one of the several issues that impact well-being. Unless seen in the context of specific work characteristics and accompanied by other measures, such an initiative represents an overly fragmented, haphazard approach towards the regulation of well-being at work. Yet, as will become apparent from the following overview of the policy initiatives, little concrete action has been proposed to overcome the underlying challenges.

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<sup>(78)</sup> Note that such a technique was considered at the consultation stages, but ultimately not followed, with regard to the regulation of 'algorithmic rights' under the Platform Work Directive. While not only platform workers, but also workers in 'traditional' sectors, can be subject to automated monitoring and decision-making tools, the EU legislator granted a set of protections against algorithmic management only to platform workers, justifying it by the subject matter of the Directive that was tailored exclusively to people performing platform work.

What consistently follows from EU policy documents addressing well-being at work is the need to intensify efforts towards ensuring mental health at work, and (in)directly well-being, and to adjust the current legislative framework to the challenges related to digitalisation and new forms of work organisation. However, besides these rather vague declaratory statements, little attention has been dedicated to address the gaps in the existing legal acquis.

The European Trade Union Confederation (ETUC), the European Parliament, the Eurocadres federation and other trade union and health-related organisations advocate for an EU directive on psychosocial risks in the workplace. <sup>(79)</sup> As expressed by the ETUC, a directive aimed at ending stress at work should be a priority for the next European Commission. <sup>(80)</sup> The great disparities between the Member States on the approaches to mental health at work <sup>(81)</sup> are one of the main arguments in favour of the adoption of an EU directive on psychosocial risks at work. <sup>(82)</sup> Another one is the fact that the existing, non-binding instruments, such as the social partners' Framework Agreement on Work-Related Stress (2004), have had a very limited impact on workers' protection in this regard. Even though there is abundant empirical evidence on potential interventions, <sup>(83)</sup> at the time of writing no details are known on what a prospective EU-level initiative on psychosocial risks would entail.

The above-analysed initiative on the right to disconnect and telework seems to remain the only instrument targeting workers' well-being on the horizon. The next section posits that one of the key reasons why this particular initiative or, more broadly, existing

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<sup>(79)</sup> Claes-Mikael Ståhl 'Stress at work: countering Europe's new pandemic' *Social Europe* 3 April 2023 at <https://www.socialeurope.eu/stress-at-work-countering-europes-new-pandemic> (last visited 22 July 2014)

<sup>(80)</sup> <https://www.etuc.org/en/pressrelease/end-stress-directive-needed-improve-mental-health> (last visited 22 July 2014).

<sup>(81)</sup> 'Minimum health and safety requirements for the protection of mental health in the workplace.' (Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, 2023 at [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740078/IPOL\\_STU\(2023\)740078\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740078/IPOL_STU(2023)740078_EN.pdf).

<sup>(82)</sup> See e.g., Kateryna Yarmolyuk-Kröck, 'A Case For an EU Directive Addressing Work-related Psychological Risks: An Eastern European Perspective' (2022) ETUI Research Paper - Policy Brief 2022.05 at <https://www.etui.org/sites/default/files/2022-03/A%20case%20for%20an%20EU%20directive%20addressing%20work-related%20psychological%20risks-an%20eastern%20European%20perspective-2022.pdf> (last visited 4 February 2025); Aude Cefaliello, 'Psychosocial Risks in Europe: National Examples as Inspiration for a Future Directive' (2022). ETUI Research Paper - Policy Briefs 2021.06 at [https://www.etui.org/sites/default/files/2021-12/Psychosocial%20risks%20in%20Europe\\_2021\\_1.pdf](https://www.etui.org/sites/default/files/2021-12/Psychosocial%20risks%20in%20Europe_2021_1.pdf) (last visited 4 February 2025). See also Bethany Staunton, 'Interview with Nayla Glaise and Aude Cefaliello. The fight for a directive on psychosocial risks' (2022) 26 HesaMag, Special report, at [https://www.etui.org/sites/default/files/2023-01/HM26\\_The%20fight%20for%20a%20directive%20on%20psychosocial%20risks\\_2023.pdf](https://www.etui.org/sites/default/files/2023-01/HM26_The%20fight%20for%20a%20directive%20on%20psychosocial%20risks_2023.pdf) (last visited 4 February 2025).

<sup>(83)</sup> Anthony D LaMontagne and others, 'Workplace mental health: developing an integrated intervention approach' (2014) 14 *BMC Psychiatry* 131.

EU legal instruments addressing some aspects of well-being at work, are not fit for purpose, is that they are anchored in a traditional concept of a workplace. As will be argued below, the here proposed concept of a 'worksphere' would allow us to overcome the intrinsic limits of current policy responses.

#### 4. The dissolved spatio-temporal boundaries of the workplace

Most labour law instruments have been tailored for a paradigmatic, institutional workplace, coinciding with the employers' premises. For decades, there has been a clear demarcation between physical workplaces and home as a 'non-workplace',<sup>(84)</sup> this latter falling outside the scope of labour law protections. Although the once-clear distinction between the workplace and the home has become obsolete, the dichotomy framing the workplace as a public space and the home as a private space remains deeply embedded in the existing legislative framework.

Given its fundamental role, it is striking that the concept of a workplace does not have a universal legal definition. At the international level, most ILO Conventions leave this term undefined. It is only in the ILO Occupational Safety and Health Convention, 1981 (No. 155) that a definition of workplace can be found. It refers, for the purposes of that Convention, to 'all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer' (Art. 3(c)).

The EU instruments in the social field, including the OSH Framework Directive, typically refer to the term workplace without providing any explicit definition.<sup>(85)</sup> One exception is the Minimum Workplace Requirements Directive (Directive 1989/654/EEC), which describes the workplace as 'a workstation housed on the premises of the undertaking and/or establishment, and any other place within the area of the undertaking to which the worker has access in the course of his/her employment' (Art. 2).<sup>(86)</sup> This definition is illustrative of a paradigmatic conceptualisation of the workplace as a physical area of work at the employer's premises.

Further insights into the interpretation of a workplace can be found in the case law of the CJEU concerning working time. In essence, workers are considered to be working when they are present at the place determined by the employer.<sup>(87)</sup> A connection with the physical, 'traditional' workplace of the employer played an important role in establishing

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<sup>(84)</sup> Yiran Zhang, 'Home as Non-Workplace' (2025), 105 *Boston University Law Review* 911.

<sup>(85)</sup> Similarly, the Working Time Directive, the Transparent and Predictable Working Conditions Directive, the Work-Life Balance Directive, and the Directive establishing a general framework for equal treatment in employment and occupation, do not expressly define a workplace.

<sup>(86)</sup> Under its Art 1 (2), that Directive does not apply to mobile workplaces in means of transport used outside the premises of the company and workplaces situated inside means of transport (e.g. drivers, machine operators and ticket inspectors); temporary workplaces; or workplaces on mobile work sites.

<sup>(87)</sup> See Case C-303/98 *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* ECLI:EU:C:2000:528 and Case C-151/02 *Landeshauptstadt Kiel v Norbert Jaeger* ECLI:EU:C:2003:437.

whether a stand-by time shall qualify as free time or working time. This 'space-bound' requirement, <sup>(88)</sup> namely the obligation to be able to reach the employer's premises within minutes, is one of the factors taken into account in the judicial assessment, along with the (primary) question of the quality of standby time and the degree of limitation of workers' freedom during that time. <sup>(89)</sup> In the case of mobile workers who do not have any fixed or habitual place of work, the CJEU held that 'the place of work of such workers cannot be reduced to the physical areas of their work on the premises of their employer's customers', considering that traveling is an integral part of performing this kind of work. <sup>(90)</sup>

Notwithstanding the CJEU's relatively flexible interpretation of the concept of a workplace, we argue that the current understanding fails to serve as an adequate reference point for the diverse range of work arrangements emerging within the context of an increasingly fragmented workplace. Hybrid work arrangements, whereby workers perform their tasks partly from home, partly from the office, and possibly also from other locations, are the 'new normal.' <sup>(91)</sup> Digital technologies facilitated the emergence of an intermediate spatio-temporal dimension between home and office, by combining the private and the professional spheres. <sup>(92)</sup> This hybrid dimension reproduces the problems existing in the workplace in the home context. <sup>(93)</sup>

There is more to the 'geographic flexibility' of work than the (partial) shift from the office to home. The 'work from anywhere' model has been gaining traction in recent years, enabling workers to live in other geographic locations than the employers' premises. <sup>(94)</sup> This form of work is fully location-independent, presupposing a 'virtual operation that

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<sup>(88)</sup> Frank Hendrickx, 'Negotiating telework: thinking outside the comfort zone' (2023) *Diritti Lavori Mercati International* 2, 5.

<sup>(89)</sup> Leszek Mitrus, 'Potential implications of the Matzak judgment (quality of rest time, right to disconnect)' (2019) 10 *European Labour Law Journal* 4.

<sup>(90)</sup> Case C-266/14, *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v. Tyco Integrated Security SL en Tyco Integrated Fire & Security Corporation Servicios SA*, ECLI:EU:C:2015:578. For the analysis of this judgment, see Sarah De Groof, 'Travelling Time is Working Time according to the CJEU - At Least for Mobile Workers' (2015) 6 *European Labour Law Journal* 4.

<sup>(91)</sup> 'Hybrid work in Europe: Concept and practice' (Eurofound, 2023) at <https://www.eurofound.europa.eu/en/publications/2023/hybrid-work-europe-concept-and-practice> (last visited 4 February 2025); Luca Ratti, Antonio García-Munoz, 'The Regulation of Remote Work. Seeking Balance Through the Articulation of Labour Law Sources: A Comparative Appraisal', *International Journal of Comparative Labour Law and Industrial Relations* 40, no. 3 (2024): 303.

<sup>(92)</sup> Tammy Katsabian 'The Telework Virus: How the COVID-19 Pandemic Has Affected Telework and Exposed Its Implications for Privacy' (2022) 44 *Berkeley Journal of Employment and Labor Law*, 141.

<sup>(93)</sup> *Ibid.*, 12.

<sup>(94)</sup> Choudhury P(R), Foroughi C, Larson B. , 'Work-from-anywhere: The productivity effects of geographic flexibility' (2021) *Strategic Management Journal*, 42: 655-683. <https://doi.org/10.1002/smj.3251>; [https://doi.org/10.1007/978-3-658-45150-9\\_11](https://www.emerald.com/insight/content/doi/10.1108/pr-11-2022-913/full/pdf?casa_token=qhqU6kJuQ10AAAAA%3ABjGf8G5NWs2tf2WK1ZIKeSXRv2-FY2RLwE_OxMYsxjMiRQlBqdRl6rhlGXzGwmPMZ6qaKfks9cGb1QwM5T2W0u3hHefYSDvzwDeM7HsS-R2mYyzG96o; Knappertsbusch, I., Stute, H. (2024). 'Work from Anywhere—The Free Choice of Workplace'. In: Knappertsbusch, I., Wisskirchen, G. (eds) <i>The Future of Work</i>. Springer, Wiesbaden. <a href=).

consists of individuals working towards a common goal, but without centralised buildings, physical plant, or other characteristics of traditional organizations'.<sup>(95)</sup> Nomadic work, and in particular digital nomadism, is an increasingly popular, and arguably 'extreme' modality of 'work from anywhere'. Still, even in the case of multi-location work intertwined with traveling, the space is not fully irrelevant to the work performance. Despite being 'location independent', digital nomads rely on spaces that ensure their productivity'.<sup>(96)</sup> In this scenario, the burden of having to find adequate spaces to work is shifted from employers to workers.

Going further, another stark example of a dissolved workplace is platform work. As aptly put by Richardson, work mediated through digital labour platforms characterises a 'shift from the workplace as site to the workplace as infrastructure'<sup>(97)</sup>. The workplace is not a (physical) site but a 'compositor of work'. Digital labour platforms shape the occurrence of working activity, dictating the parameters of the workplace and governing the socio-spatial relations between the actors. In the case of location-based platforms (e.g., in the delivery or transport sectors), the use of automated decision-making enables the deployment of 'just in place' workforce,<sup>(98)</sup> ensuring work performance that meets the client's needs. In the case of web-based platforms (e.g., microworkers tagging images, or high-skilled freelancers), workers have more autonomy to determine the physical site of their work performance, even if platforms exercise a coordination function.

Telework, hybrid work, work from anywhere, and platform work, are different instantiations of the dissolution of the workplace. In all cases, it becomes clear that a fixed workplace predetermined by an employer has lost its salience and 'structuring capacity.'<sup>(99)</sup> In fact, any external spatial structure can become internal to work processes. The workplace is no longer a basic unit that shapes the spatial boundaries of labour and, consequently the boundaries of employers' liabilities. Still, through the use of advanced technologies, the employer coordinates the work performance.

Against this background, a more sophisticated (re-)conceptualisation of the regulatory approach towards the workplace-liability nexus is needed. Thinking about legislative responses to telework, platform work, and other forms of work performed in a dissolved workplace truly 'requires to be open for a mental shift.'<sup>(100)</sup> Useful insights in the direction of that mental shift to find regulatory responses may come from conceiving the

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<sup>(95)</sup> Staples, D.S., Hulland, J.S. and Higgins, C.A. (1999), "A self-efficacy theory explanation for the management of remote workers in virtual organizations", 10(6) *Organization Science*, 758.

<sup>(96)</sup> Nash, C., Jarrahi, M.H. and Sutherland, W., 2021. Nomadic work and location independence: The role of space in shaping the work of digital nomads. *Human Behavior and Emerging Technologies*, 3(2), 271-282.

<sup>(97)</sup> Richardson, Lizzie. 'How is the platform a workplace? Moving from sites to infrastructure.' *Transactions of the Institute of British Geographers* 49.1 (2024): e12625.

<sup>(98)</sup> Wells, K. J., Attoh, K., & Cullen, D. '«Just-in-Place» labor: Driver organizing in the Uber workplace' (2021) *Environment and Planning A: Economy and Space*, 53(2), 315-331. <https://doi.org/10.1177/0308518X20949266>.

<sup>(99)</sup> Richardson n 97 above.

<sup>(100)</sup> n 75 above, 5.

workplace in a more multi-dimensional fashion, one which takes into adequate consideration that the mono-dimensional character of the workplace – i.e., the fact that work-related activities are carried out in a (working) space and during (working) times determined by an employer – is not there anymore to represent reality. In what follows, we propose the notion of a worksphere as a conceptual tool capable of responding to this challenge.

## 5. From a dissolved workplace to the modern worksphere

The philosopher Luciano Floridi once referred to an ‘infosphere’ to describe how, during the current digital revolution, individuals are so ‘seamlessly connected to each other and surrounded by smart, responsive objects’ that they become all ‘integrated into an ‘infosphere’.<sup>(101)</sup> In *The Fourth Revolution*, he describes the infosphere as an all-encompassing informational environment that is increasingly merging with reality due to the pervasive nature of digital technologies. As a result, our lives are deeply embedded in a digital ecosystem where online and offline experiences are no longer separate but form a continuous, hybrid reality.<sup>(102)</sup> He highlights that we can no longer separate the digital world (online) from the physical world (offline). Instead, we live in an “onlife” experience, where digital interactions influence real-world decisions and vice versa.<sup>(103)</sup> Humans are therefore to be seen as both creators of, and affected by, such an infosphere, in that they realise an interconnected ecosystem, which requires re-ontologising reality and extending ethical concerns to every aspect of perpetration of the infosphere.<sup>(104)</sup>

Borrowing this concept and applying it to the work context, we introduce the term ‘worksphere’ to denote a comprehensive and fluid continuum of circumstances related to the execution of work-related tasks, irrespective of their physical location. Workers are integrated into the worksphere, which is coordinated and structured by the employer through digital means, regardless of the whereabouts of their work performance. While the phenomenon as such is not new,<sup>(105)</sup> the concept of ‘worksphere’ underscores the diminishing significance of a fixed workplace, recognising that professional duties may be carried out within the employer’s premises—the traditional workplace—or in alternative settings, such as remote offices, co-working spaces, domestic environments, or cyber spaces. The ‘worksphere’ reflects the evolving nature of modern labour dynamics, where technological advancements, flexible work arrangements, and employer expectations

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<sup>(101)</sup> Luciano Floridi, *The Fourth Revolution: How the Infosphere is Reshaping Human Reality* (Oxford: Oxford University Press, 2014).

<sup>(102)</sup> *Ibid.*, 6-40.

<sup>(103)</sup> *Ibid.*, 58.

<sup>(104)</sup> *Ibid.*, 94.

<sup>(105)</sup> Back in 2001, the MoMA in New York featured an exhibition titled ‘Workspheres’, which precisely examined how designers could imagine ever-changing work paradigms. Cf. Paola Antonelli (ed), *Workspheres: design and contemporary work styles, MoMA* (New York, 2001).

increasingly blur the distinction between formal workplace boundaries and off-site work engagements. By emphasising the interconnectedness of all locations where work is performed, this framework accommodates both legal and practical considerations surrounding labour rights, employer obligations, occupational health and safety, and well-being. Ultimately, the 'worksphere' challenges traditional legal categorisations of the workplace, necessitating a reconsideration of regulatory approaches to employment conditions, liability, and worker protections.

Re-conceptualising the workplace as 'worksphere' can bring appreciable added value in both interpretative and normative terms, especially when envisaging comprehensive protection of workers' well-being.

First, the adoption of a 'worksphere' perspective serves as a conceptual tool to overcome the persisting divide between work relations that continue to be centred on physical workplaces and other relations that are more fluid and open to dematerialisation. The use of the term 'worksphere' allows us to normatively encompass work-related activities to a broader dimension outside traditional workplaces. It consequently enables to re-articulate the employer-employee exchange relation of mutual obligations and rights into something able to accommodate such a changed reality. Specifically, providing that the employer must ensure workers' well-being in the 'worksphere', the law would allow for accommodating all possible scenarios without jeopardising traditional workplace-related protections.

At the interpretative level, assuming the 'worksphere' as the norm would mean that the legal provisions referring to the place of work should not be narrowly understood as tied to the employers' premises. If workplace and working time must be understood as being flexible enough to accommodate the parties' reciprocal interests, the relevant provisions of existing regulatory instruments cannot be interpreted in a way contrary to workers' well-being. Take, for instance, the Transparent and Predictable Working Conditions Directive, which requires the employer to inform workers about "the place of work; where there is no fixed or main place of work, the principle is that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer" (Article 4 (2) (b)). Assuming the unitary notion of a 'worksphere' would simplify accommodating all these scenarios.

Another example is the Working Time Directive, which provides for some exceptions in working time for such activities 'where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another' (Article 17). Those exceptional scenarios may become more and more ubiquitous, particularly in the context of cross-border telework. Following the proposed concept of a 'worksphere' would prevent the increased number of such exceptions, which would risk becoming the norm.

From the above derives that the notion of a 'workshpere' cannot be artificially separated from the consideration of workers as individuals, given the clear influence of the workplace on workers' well-being.

Even more far-reaching seem to be the normative implications of reconceptualising the workplace in terms of 'worksphere'. It obliges to rethink inter alia the employers' duty of care of workers' safety and health, the measures to be deployed to fulfil such duty, and eventually the boundaries of employers' liability to protect workers' well-being. At the normative level, introducing the 'worksphere' as a legal concept would require removing any obstacles to the recognition of a boundaryless workplace. This would require an update of existing legal provisions that link workers' protection to a given workplace, which is prevalent in the vast body of 'traditional' labour law regulation.

Some regulatory initiatives, including in the OSH field, are already going in that direction. The prospective amendment of the Workplace and Display Screen Equipment Directives, <sup>(106)</sup> which is currently under review, is a good illustration. One of the key amendments would be to expand the definition of the workplace, so that it covers not only employers' premises but also homeworking and off-employer's premises workplaces. <sup>(107)</sup>

Moreover, the ever-expanding conceptualisation of a workplace, surpassing the boundaries of the traditional labour and social instruments, has emerged in the field of digital regulation. The Artificial Intelligence Act (AIA) – an omnibus regulation including important provisions for the use of AI systems in the employment context – is a case in point. The expansive interpretation of the term 'workplace' used in this regulation has been clarified in the Commission Guidelines on Prohibited Artificial Intelligence Practices. <sup>(108)</sup> According to this interpretative document, workplace relates to 'any specific physical or virtual space where natural persons engage in tasks and responsibilities assigned by their employer or by the organisation they are affiliated to, for example in case of self-employment.' <sup>(109)</sup> They further exemplify that this notion 'includes any setting where the work is performed and can vary widely based on the nature of the job, spanning from indoor office spaces, factories and warehouses to publicly accessible spaces like shops, stadiums or museums, to open-air sites or cars, as well as temporary or mobile work sites.' The personal scope of persons falling within a workplace is also broad, covering employees, contractors, trainees, volunteers, and job candidates. Such a broad conceptualisation of a workplace – resonant with our concept of 'worksphere' – bears far-reaching effects for

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<sup>(106)</sup> Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment.

<sup>(107)</sup> See the Opinion of the tripartite Advisory Committee on Safety and Health at Work (ACSH) adopted in its plenary meeting on the 27 November 2024 on the review of the Directive, available at [https://circabc.europa.eu/ui/group/cb9293be-4563-4f19-89cf-4c4588bd6541/library/43f88715-98b6-4441-acaf-89f734977f10?p=1&n=10&sort=modified\\_DESC](https://circabc.europa.eu/ui/group/cb9293be-4563-4f19-89cf-4c4588bd6541/library/43f88715-98b6-4441-acaf-89f734977f10?p=1&n=10&sort=modified_DESC)

<sup>(108)</sup> Communication from the Commission, Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act)

<sup>(109)</sup> Ibid, point 254.

both providers and employers-deployers' liability for ensuring workers' fundamental rights and health and safety, including well-being. <sup>(110)</sup>

## 6. Conclusion

The protection of well-being at work is a fundamental challenge in contemporary societies. Currently, it is difficult to identify how the law should consider and protect workers' well-being, due to the lack of consistent definitions at both psychological and legal levels. The few elements deriving from international and EU law are displaced by an increasing trend to move from traditional workplaces to more hybrid working environments. Well-being at work is also unlikely to be successfully brought in courts as a self-standing ground to recognise workers' entitlements, as the case of Ms. PJ mentioned at the start of this paper clearly shows.

The above analysis has clearly shown that practices of increasing dispersion of work activities along space and time require a new matrix to measure the enjoyment of well-being – and specifically of well-being at work. The 'worksphere' serves as an umbrella concept, capable of trespassing the rigid frontiers of the workplace and at the same time useful to explain 'where and when' employees' activities are carried out. The broad interpretation of the workplace under AIA can serve as a useful blueprint for shaping future regulations in the social and digital ambit.

Any interpretative and normative change necessary to achieve the goal of ensuring workers' well-being – including in the realm of telework regulation – would need to consider the 'worksphere' perspective as necessary conceptual tool capable to fully capture today's reality. Differentiating the level of workers' protection based on the place of their work performance would only lead to further regulatory fragmentation and to potential protection gaps for the growing range of 'intermediate' scenarios triggered by new, digitally-enabled forms of work. Assigning workers' rights that are only tied to a specific workplace or modality of work (e.g., right to disconnect only for teleworkers but not for 'standard' workers) would jeopardise the effectiveness and consistency of labour regulation. While there are signs that the EU legislation is evolving in the direction of a broader conceptualisation, much more should be done to bridge the divide between the 'traditional' vs 'other' workplaces.

Only assuming work relations as happening in the 'worksphere' would, on the one hand, address the multidimensional and highly individual character of well-being – which makes it hard to envisage the corresponding employers' obligations comprehensively. On the other hand, the consideration of ongoing changes in the spatio-temporal boundaries of work environments – openly contradicting the binary divide between work and home, working time and private life – would certainly benefit from the concept of 'worksphere' to rethink entire pieces of the law governing work relations.

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<sup>(110)</sup> Ibid.

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