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**European Commission – European Parliament**  
**Conference on the right to disconnect and telework:**  
**A perspective from the EU institutions, Member States and social partners**  
**(15 March 2022)**

**Session 2: The role of social partners' agreements and social dialogue**  
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Thank you for inviting me to this timely and topical conference.

I will discuss the reasons for the ongoing debate on the right to disconnect; the importance of the involvement of the social partners and social dialogue in shaping the debate and workplace practices; and a few lessons moving forward.

### **Why a right to disconnect?**

The principle of the right to disconnect – or a workers' right to disengage from work and refrain from engaging on work-related electronic communications<sup>1</sup> during non-work hours – is not new. But the large-scale rise in mandatory telework in response to the COVID-19 pandemic has increased its visibility.

It has fuelled changes in legislation and policy debates to adapt the regulation of telework in a post-COVID-19 scenario. In particular, the right to disconnect, alongside the statutory definition of telework, including the distinction between regular and occasional telework, and OSH provisions on telework have garnered increased policy attention.

The use of ICT devices during mandatory, full-time teleworking in a pandemic is not comparable with their use in the context of a hybrid model of telework. The latter is a scenario which many organizations seem to be moving towards with workers' support. But the use of telework during the pandemic has also exposed the risk of not drawing an effective boundary between hours of work and non-work – for workers' physical and mental health, safety and work-life balance, as well as for gender equality. It has also pointed to the challenges faced by companies concerning innovation and productivity.

Different factors contribute to the blurring of hours of work and non-work, beginning with inadequate equipment and training for workers; use of online presenteeism by management, rather than managing by results; and teleworkers' self-imposed work intensity. But expectations regarding constant availability, coupled with the lack of clarity regarding "normal" hours of work, availability and rest, and the way in which working time is recorded, make switching off more challenging when teleworking.

The issue today is to determine the most effective way to prevent the blurring of hours of work and hours of non-work, whether through law – national or international, collective bargaining, company-level policies, non-binding practical guidance or a combination of these. The aim is to make telework decent and productive for both workers and employers. The ILO together with our constituents have

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<sup>1</sup> Emails, texting or other means.

been working to develop and implement policy and legal measures to address telework and the right to disconnect in collective agreements or in the workplace.

Regardless of the answer, success in implementation would depend to a large extent on the social partners and social dialogue, including collective bargaining.

### Why is social dialogue crucial in dealing with the right to disconnect and telework?

The right to disconnect and telework are so intertwined in the way in which workplaces operate and work is organized that workers and employers are uniquely positioned to identify ways to meet the needs and demands of both parties. And consider the circumstances of different sectors, occupations and companies.

It is not surprising therefore that, when the European Parliament asked the EU Commission to present a legislative proposal on the right to disconnect and fair telework, it also stressed the role of the social partners in devising and implementing measures that meet the needs of both workers and organizations. Likewise, the six EU countries that have legislated on the right to disconnect converge in highlighting the role of social partners in shaping workplace processes in the interests of both workers and companies.

Law and social dialogue, including collective bargaining, are intertwined: a law on telework or the right to disconnect is a point of departure, not of arrival. It needs implementation and buy-in from employers and workers. At the same time, commitment by the social partners is key to bringing about changes in the workplace; but its effectiveness will depend on the strength of industrial relations nationally and the existence of a clear regulatory framework.

The lessons gained through the implementation of the autonomous Framework Agreement on telework negotiated by the European cross-industry social partners in 2002 and the 2020 framework agreement on digitalisation provides food for thought in view of a possible new EU Directive on the right to disconnect and fair telework and the role of the social partners in its implementation. It is encouraging that European social partners this morning confirmed their full commitment to work towards an agreement that would be put forward in the form of a Directive. "Social partners are indeed part of the solution" as was clearly said this morning.<sup>2</sup>

### Some lessons

Regarding overall results. The European telework agreement has helped place the issue of telework on the agenda of the social partners at lower levels. The social partners have jointly chosen a variety of implementation measures, which reflects the diversity of traditions and industrial relations structures in the EU Member States. Collective agreements, mainly at national or cross-sectoral level, and national legislation enacted by public authorities, upon request of or in consultation with the social partners, have been the most widespread means of implementation. Non-binding measures such as codes or joint guidelines were used to a lesser extent.

Implementation through collective bargaining ensures focus, and a higher likelihood that employers and workers would **comply** with the standards if they had a role in shaping them. Collective bargaining has also permitted incubation of new approaches on the organization of work and working hours in respect of the right to disconnect, such as core hours or the responsibilities on the employer or workers to disconnect.

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<sup>2</sup> Quote from Maxime Cerruti, Business Europe.

On the other side, implementation through law means greater uniformity across sectors and may stimulate a broader use of telework, especially where collective bargaining coverage is limited. But a law may carry the risk of a partial or different transposition of the provisions of the EU agreement by governments and reduces social partners' autonomy. What is clear is that the diversity of implementation measures has resulted in an uneven coverage of the workforce and specific aspects of telework across EU countries. Is this problematic? It may be, considering the expected continued reliance on telework in the post-COVID-19 era.

Regarding implementation of the principle of the right to disconnect. The European Framework Agreement recognizes the general applicability of working time regulations to telework, while also offering teleworkers greater flexibility in arranging their working schedules. Implementation measures tend to stipulate teleworkers are to be covered by provisions concerning maximum working time on par with on-site workers, but there are countries with specific rules and exemptions regarding certain aspects of working time, such as bonuses for work at night on weekends or public holidays. More recently six EU countries, including countries with mature industrial relations systems, have adopted legislation articulating the right to disconnect, which does not seem to have inhibited sectoral or enterprise collective bargaining on this issue, on the contrary. But collective bargaining has permitted to tailor the modalities of connection and disconnection in ways that are better suited to the specific circumstances of companies and sectors.

Regarding overall implementation. The EU Agreement on telework inaugurated a new way of engaging in social dialogue. It required members of the signatory parties at national level to agree on the instruments and procedures for implementation, which was the occasion of sometimes difficult discussions, especially in countries with poorly defined practices and procedures. Tensions also arose regarding what a joint approach to telework meant or reaching consensus on contentious aspects. In several countries, the social partners specified the procedure to follow in case of questions or disagreement regarding the interpretation of the EU text.

It is clear that the effective implementation of this and other European agreements relies on the capacity of national social partners to engage in meaningful social dialogue, which brings me to my last point:

The role of EU social partners in supporting their national members. European social partners seem to have become quite aware of their responsibility and that it requires proper reporting and monitoring activities on their part, as well as assistance to national social partners.

In moving forward, the European social partners may wish to look more closely into the three following issues:

- How to improve current imbalances in the coverage of the EU telework agreement across countries;
- How to reinforce the impact of implementation measures in countries, also through an adequate coordination between what is agreed at higher levels and agreed or implemented at lower levels; and
- How to improve understanding of content-related aspects, especially the reasons for a right to disconnect, new approaches on the organization of work and working hours in respect of this right and the OSH dimensions of telework.

Thank you very much for your attention.

## Sources

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