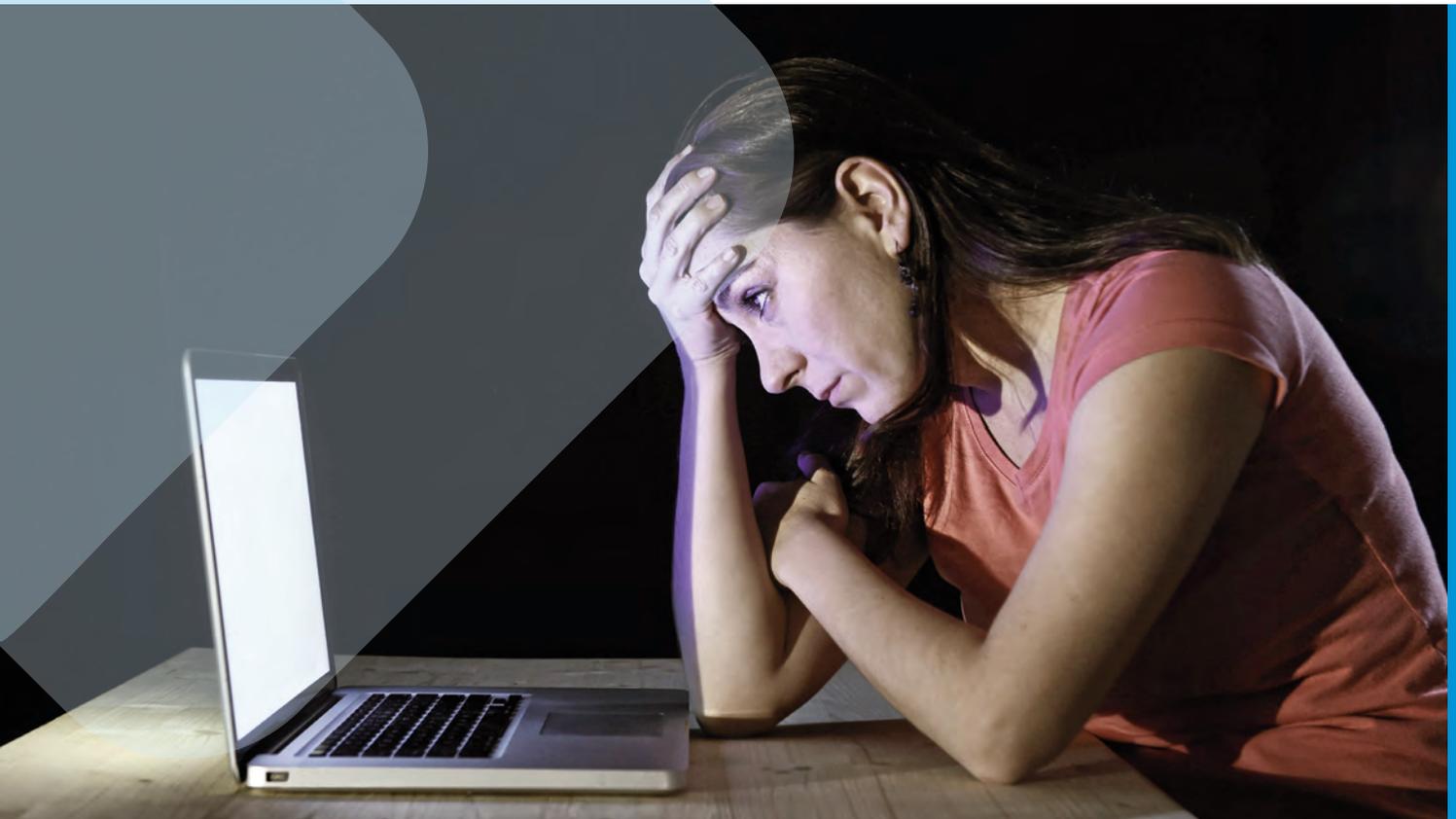


Working conditions

Right to disconnect: Exploring company practices



Right to disconnect: Exploring company practices



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Executive summary

Introduction

Digital technologies have made it possible for many workers to carry out their work at any time and anywhere, with consequent advantages and disadvantages. Potential advantages include greater autonomy, better work–life balance, improved productivity and environmental benefits. However, the constant connection enabled by information and communications technology (ICT)-based mobile devices can pose risks to health and well-being, as well as causing work–life balance conflict linked to longer working hours and the blurring of boundaries between work and private life.

To address this issue, there have been calls for a ‘right to disconnect’, not least in the context of the substantial increase in teleworking during the COVID-19 pandemic. Eurofound defines this as the right for workers ‘to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours’ (European Industrial Relations Dictionary). Based on case studies of sectoral- and company-level texts incorporating the right to disconnect, this study assesses the implementation of the right to disconnect and the evidence around its impact on workers’ health, well-being and work–life balance.

Policy context

At present, there is no EU legislation specifically addressing the right to disconnect, although a number of legal texts touch on related issues, for example the Working Time Directive, the Framework Directive on Safety and Health at Work, the Work–Life Balance Directive and the Directive on Transparent and Predictable Working Conditions. In addition, the European cross-industry social partners have concluded autonomous framework agreements on telework (2002) and digitalisation (2020), which contain relevant provisions to be implemented in accordance with the ‘procedures and practices’ specific to each Member State.

In January 2021, the European Parliament adopted a resolution calling on the European Commission to propose legislation on the right to disconnect.

This would allow workers to disconnect from work and refrain from engaging in work-related electronic communication, such as emailing or other forms of messaging, outside working hours without facing adverse consequences.

At Member State level, as of August 2021, just six countries have a right to disconnect on the statute books: Belgium, France, Greece, Italy, Slovakia and Spain.* Legislative initiatives are in place and policy debates are taking place in a number of other countries. Both national legislation and EU-level initiatives emphasise the important role of social partners in shaping processes, hence ensuring that workers are able to disconnect outside agreed working hours while taking into account the practical realities of different sectors, occupations and companies.

Key findings

- Despite a number of court cases in which workers have challenged demands from employers to remain connected and perform work outside agreed hours, the increasing use of ICT-based mobile devices for work purposes has led to increases in connection, availability and working hours, with associated negative implications for workers’ physical and mental health and well-being. This gives rise to the question as to whether existing legislation remains fit for purpose.
- The experiences of countries that have introduced the right to disconnect show that the number of collective agreements covering this issue at sectoral and company levels has increased both during the discussion and preparation phase of legislation and following its adoption. A legislative approach requiring social partner action could therefore boost collective bargaining activity on this issue without interfering with the ability of employer and worker representatives to shape the operationalisation of the right to disconnect.
- A ‘soft’ approach to implementation is generally favoured over a ‘hard’ approach. Hard approaches rely on stopping work-related communication during certain periods and therefore take the decision on whether or not to disconnect out of workers’ hands. Soft approaches are based on workers and managers taking responsibility for ensuring that the ability to work remotely does not

* Changes to the Greek and Slovakian labour codes were adopted while this report was being finalised, so this legislation is not covered here in detail.

lead to overconnection and an associated extension of working hours. Key implementation measures include awareness raising of the risks of constant connection, training and the management of out-of-hours communication (such as through regular reminders that messages do not require an answer outside of working hours).

- Only a few of the texts incorporating the right to disconnect explicitly address the potential causes of overconnection, such as workload, lack of training, and unsuitable management and workplace practices.
- The assessment by social partners that have implemented the right to disconnect at company level shows that both employer and worker representatives consider that the operationalisation of the right to disconnect has contributed to changes in company culture. It has made it possible to extend ICT-enabled flexible working while contributing to a recognition that this should not go hand in hand with an expectation of constant connection.
- Shortcomings in provisions on monitoring and evaluation mean that direct, objective evidence of the impact of the right to disconnect on employee health and well-being, work-life balance, gender equality and company performance is lacking.

Policy pointers

- Evidence relating to the impact of teleworking on working hours, work-life balance and health and well-being suggests that improvements in enforcement are required in relation to existing legislation. The impact of EU regulations that are still in the process of transposition and implementation, including on work-life balance and transparent and predictable working conditions, and of the European social partner framework agreement on digitalisation will also need to be assessed to establish whether or not the EU legislative *acquis* is fit for purpose in the context of the changing world of work.

- An approach based solely on implementation by the social partners is contingent on the strength of industrial relations traditions and social partner capacity – and this is not guaranteed in all countries. Such an approach should therefore be coupled with further capacity building. In countries with weaker industrial relations traditions and in situations where no agreement can be reached between social partners, legislation could provide a ‘fall-back’ option, ensuring that minimum standards are met.
- High-level buy-in and regular reinforcement of the message on the importance of the right to disconnect are crucial and could be combined with the development of key performance indicators linked to its observance at management and company levels.
- The treatment of additional working hours beyond those stipulated in legislation, collective agreements and individual contracts as a result of ‘out-of-hours connection’ should be dealt with in line with relevant provisions in legislation and collective agreements.
- It is beneficial for agreements and other texts addressing the right to disconnect to pay attention to assessments of factors that may contribute to the ‘perceived’ need for constant connection. This should include workload, lack of training and work processes that may contribute to overconnection.
- Texts dealing with the right to disconnect should stipulate indicators for the monitoring and evaluation of the implementation of the right to disconnect and ensure bipartite follow-up and reviews of its impact and the potential need for revisions.
- More quantitative and qualitative research – including large-scale surveys of employees and employers – is required to assess the impact of the right to disconnect on employee well-being, health and work-life balance, as well as productivity and gender equality.

Introduction

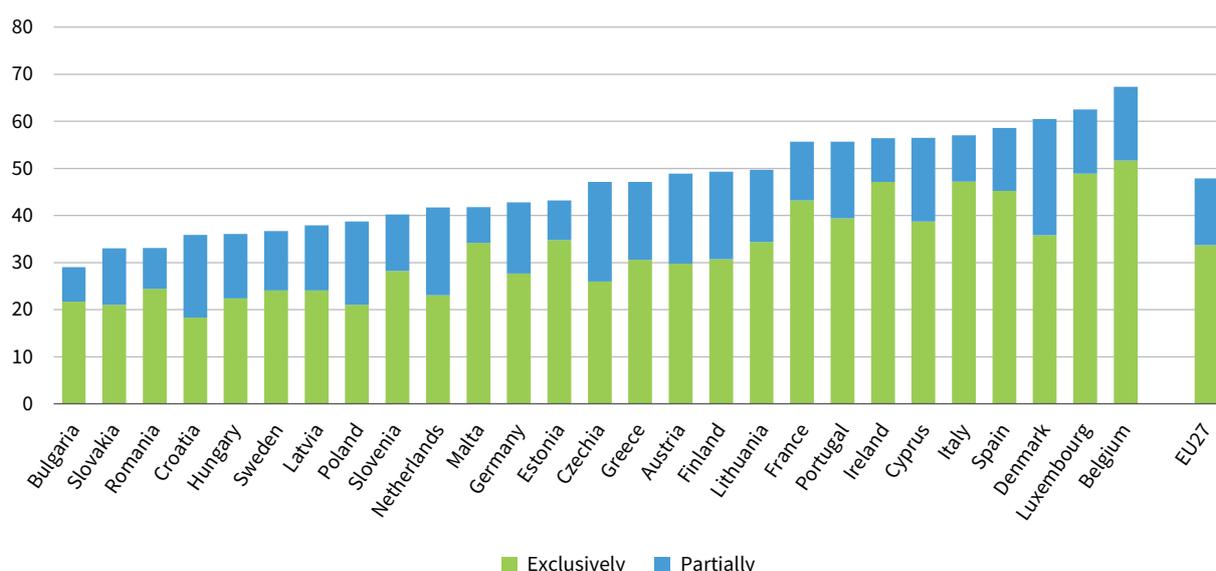
Over the last few decades, workplace digitalisation has made it increasingly possible for workers in many sectors and occupations to carry out their work at any time and anywhere (Eurofound and ILO, 2017). Together with trends towards a more globalised, knowledge-based and service economy, and the increased participation of workers with caring responsibilities (primarily women) in the labour market (Eurofound, 2020a), the greater use of information and communications technology (ICT)-based mobile tools has contributed to a shift towards more flexible working time patterns. Among the new forms of employment identified by Eurofound in 2015 (employee sharing, job sharing, voucher-based work, interim management, casual work, ICT-based mobile work, platform work and portfolio work), the two forms of employment that have increased most substantially in terms of their scale and scope in recent years are platform work and ICT-based mobile work – both digitally enabled – according to a Eurofound (2020b) report on the subject.

Eurofound research has demonstrated the variety of existing ICT-based flexible working patterns, ranging from working only occasionally from a place different from the employer’s premises to working with a relatively high level of mobility from different places (‘highly mobile work’) and performing regular

home-based telework (Eurofound, 2020c). Prior to the onset of the COVID-19 pandemic, only 5% of the EU workforce regularly teleworked and just 14% did so either regularly or occasionally. During the height of the pandemic, in July 2020, close to 50% of the EU workforce teleworked exclusively or partially, with 34% of the workforce teleworking in response to public health restrictions. As shown in Figure 1, the share of exclusively and partially home-based teleworkers varied from country to country and tended to be higher in those Member States that already had a higher share of workers on such arrangements prior to the COVID-19 crisis. Women were more likely to work from home than men (46.4% compared with 43.1% in July 2020; Eurofound, 2020d).¹

Greater spatial and working time flexibility has brought about advantages and disadvantages, for both workers and employers (Table 1). Advantages include greater autonomy and flexibility in relation to when and how work is performed, increased productivity and the potential for improved work–life balance. The COVID-19 pandemic has also demonstrated the pivotal role of remote work in ensuring business continuity in the context of public health restrictions (Eurofound, 2021a). Cost savings for employers are also possible due to the reduced need for office space, and the reduction in commuting can lead to environmental benefits.

Figure 1: Teleworking during the pandemic, July 2020 (%)



Source: Eurofound (2020b)

¹ At around 12%, data from Eurostat record a lower share of exclusive telework in 2020 than Eurofound’s *Living, working and COVID-19* e-survey. This is due to different methodologies and timescales of information collection, with Eurostat’s EU Labour Force Survey data reporting an average, which includes the early months of 2020 when the share of teleworking remained low.

Table 1: Main opportunities and risks of ICT-based mobile work for work and employment

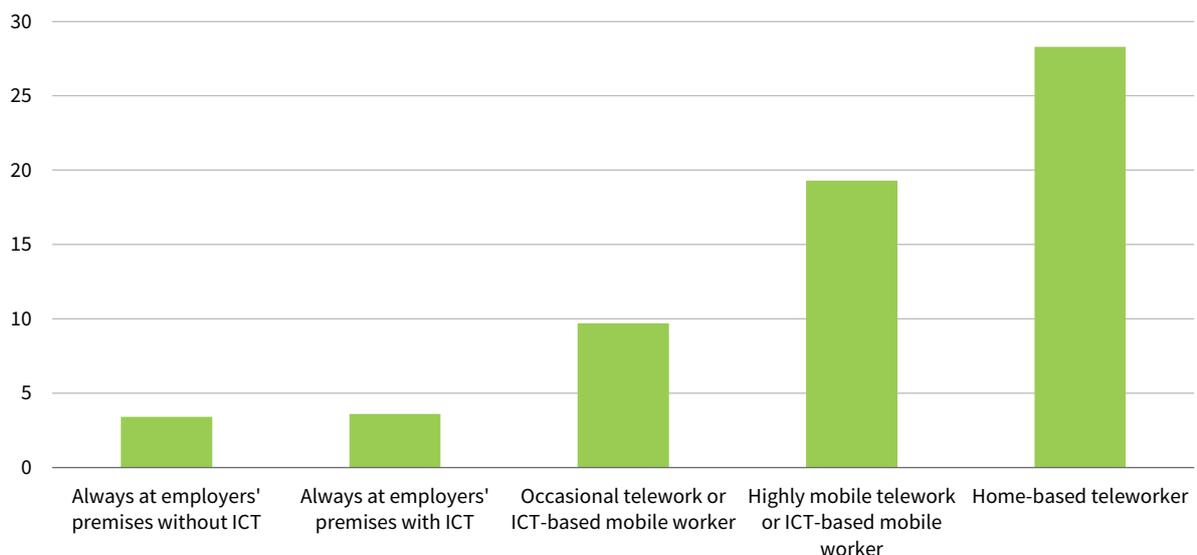
Opportunities	Risks
Potential transformation of work organisation	
Contribution to inclusive labour markets Addressing (regional) labour shortages Job creation and retention	Potential exclusion of certain groups from the labour market (for example, low-skilled workers, older people, place-bound occupations)
Flexibility and autonomy	Advanced monitoring and control Increased work intensity and stress
Improved work–life balance	‘Limitless work’ Potential expectation of 24/7 availability Long working hours, limited rest time Blurring the spheres of work and private life
Productivity, costs, results-based remuneration	
Improved communication and collaboration	Information overload Conflicts due to a lack of coordination
Skills development (technical applications)	Social and professional isolation High demands for self-management and self-organisation
	Outsourcing of employer responsibilities (equipment, health and safety, data protection)

Source: Eurofound (2020b)

However, ICT-based flexible work also poses a number of challenges. These are related to the increased blurring of the boundaries between private and professional life and between work and non-work time resulting from the constant connection facilitated by mobile digital communication devices. Data show that

this can contribute to working longer hours beyond contractual working time and insufficient rest periods. As demonstrated in Figure 2, home-based teleworkers are more likely to declare working in their free time (28%) than workers based on their employer’s premises (approximately 4%).

Figure 2: Share of employees in different ICT-based flexible arrangements working in their free time daily or weekly, 2015 (%)



Source: European Working Conditions Survey 2015

Data from the European Working Conditions Survey 2015 (EWCS 2015) also show that people who regularly work from home are more than twice as likely to surpass the maximum of 48 working hours per week than those working on their employer's premises and are less likely to have access to the legally mandated minimum daily rest of 11 hours. Individuals in such work arrangements are also far more likely to report work intensification and declare that work impacts negatively on their private life (Eurofound, 2020c). The risk of overconnection resulting in an extension of working hours is particularly prevalent in workplace cultures that are accepting of or that promote such practices (Eurofound, 2020e). When these working patterns become a regular occurrence, they pose risks to health and well-being and preclude the achievement of a desired and appropriate work–life balance.

The COVID-19 pandemic has revealed and exacerbated gender differences in this area. In the second (July) round of Eurofound's *Living, working and COVID-19* e-survey (Eurofound, 2020d), 29% of women with young children – compared with 11% of men with young children – declared that they had experienced difficulties concentrating on their job because of family responsibilities. Furthermore, 26% of women – compared with 11% of men – reported that family responsibilities had prevented them from giving time to their job. The closure of schools and other care facilities in some countries in certain phases of the pandemic clearly aggravated this situation, with more women than men shouldering the burden of caring responsibilities and home schooling. Survey data also reveal the greater toll of the pandemic on women's mental health: women with young children were more likely to report feeling lonely and depressed (Eurofound, 2020f).

Based on data from Germany, Lott (2017) also found that work autonomy and teleworking can have negative impacts on work–life balance, largely because they tend to be correlated with longer working hours. These findings echo Eurofound research on the impact of telework and ICT-based mobile work (Eurofound and ILO, 2017; Eurofound, 2019, 2020f). Similarly, in a review of 23 international studies, Pangert et al (2014) found a strong correlation between a greater blurring of the boundaries between work and private life and increased

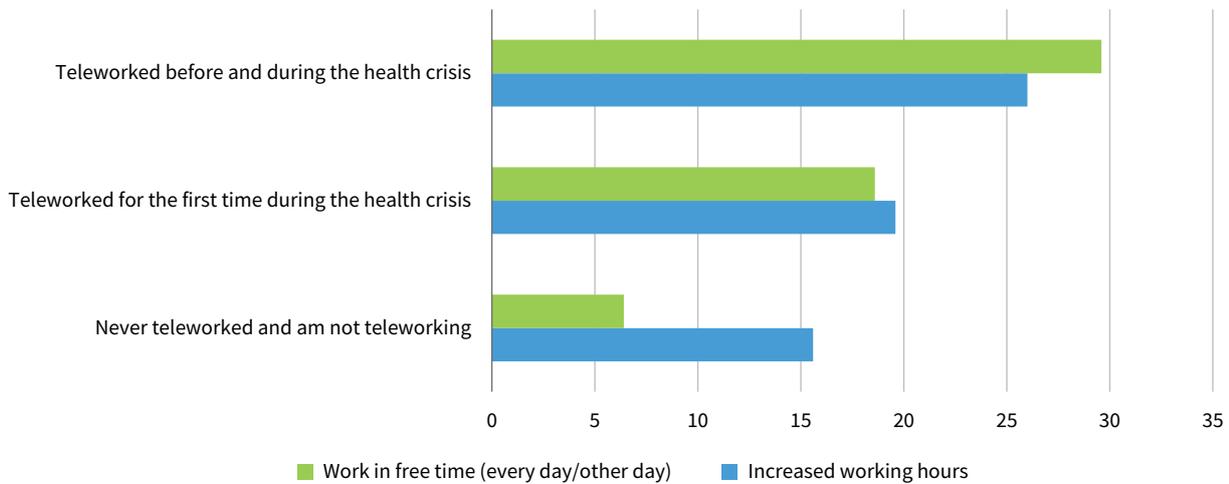
work–life balance conflict. Research has also shown that the mere expectation of being contacted and having to be available increases the strain on workers and their families, even if workers do not engage in actual work during non-work time (Becker et al, 2018). It has also been demonstrated that, the greater the impact of work on private and family time, the greater the negative consequences that arise (Pangert et al, 2014). The emotional exhaustion of workers can contribute to depression, anxiety and alcohol abuse (Allen et al, 2000; Pangert and Schüpbach, 2013). Such negative effects on the private sphere in turn have been linked to deteriorations in work performance (Alpert and Culbertson, 1987; Burke, 1988; Frone et al, 1996), with negative implications for productivity and competitiveness (Golden, 2012). Being available out of hours, or being expected to be available, makes it more difficult to switch off and impedes the body's recovery mechanisms, contributing to negative physical and psychological health impacts (for example, Mellner, 2013; Gallagher, 2020). Eurofound research (2020c, 2020f) has found associations with a higher incidence of physical ailments, including headaches and eye strain, as well as psychosocial risks such as stress and burnout.

The findings on the impact of telework and ICT-based mobile work on working time and rest time from EWCS 2015 are echoed in more recent data from Eurofound's *Living, working and COVID-19* e-survey, which showed that workers who teleworked during the pandemic were more likely to declare that their working hours increased and that they worked during their free time. This was particularly striking among those who already had some experience of teleworking prior to the pandemic (Figure 3).

Depending on the legislation, sectoral- and company-level agreements and individual contracts in place, any additional hours worked may be unpaid.

The expansion of work into free time has an impact on work–life balance, and when it is 'expected' within the workplace culture this can negatively impact on gender equality. Data show that women are less likely to be able to perform work tasks outside working time as they are more likely to be engaged in essential caring tasks, making them less able to be 'constantly available' to respond to contacts. Box 1 explores this phenomenon of constant availability.

Figure 3: Experience of teleworking and working hours during the COVID-19 pandemic, July 2020 (%)



Source: Eurofound (2020d)

Box 1: The digitalised workplace and constant connection – Causes and effects

Data from the EWCS and other studies (see review by Pangert et al, 2014) demonstrate the links between ICT-based flexible working, longer working hours, reduced rest periods and working in one’s free time. Further analysis has explained some of the reasons behind this pattern (such as level of workload, level of support from managers and colleagues, level of mobility and likelihood of being called to work at short notice; Eurofound and ILO, 2017; Eurofound, 2019). However, there are other aspects that cannot be established from these data about the factors contributing to work intensification and longer working hours in ICT-based flexible working. In the context of the discussion on the need – or otherwise – for regulation of the right to disconnect, the following questions must be asked:

- How much of the additional work performed results from being contactable and actually being contacted outside working hours?
- What are managers’ expectations in terms of acting on such contacts that occur out of hours?
- How much of this activity is desired or ‘self-imposed’ by workers?
- How much time is spent on such contacts?
- How much and what kind of work is performed as a result?
- How much of this is attributable to work overload (being unable to perform all of the assigned work content within contractual working hours), a culture of connection in the company or other reasons?

In a survey of employees carried out in Germany, 58% of respondents indicated that it was ‘entirely likely’ or ‘more likely than not’ that they would be required to be available to their employer outside agreed working hours (ver.di, 2015). However, when the question was posed more precisely, that is, whether or not managers expect workers to be available outside their normal working hours, 21% of respondents said that this was the case (Hessenmöller et al, 2014; DGB-Index Gute Arbeit, 2020). While this figure was 15% for workers normally based on their employer’s premises, it increased to 39% for those teleworking from home (DGB-Index Gute Arbeit, 2020).

In a survey of managers, 17% responded that they indeed expect employees to be available at any time, with a further 28% stating that this would be necessary only in exceptional circumstances. Differences in workplace culture are perhaps evident in the fact that, in research carried out in the United States, Challenger, Gray and Christmas (2017) found that around 83% of supervisors would reach out to their employees after hours, with around 29% of these respondents expecting a response within a few hours.

The fact that such expectations are not reflected in the establishment of formal standby or on-call working arrangements (which, as indicated in Chapter 2, are subject to particular treatment according to the case law of the European Court of Justice (ECJ) with regard to being counted as working time) indicates that a ‘culture’ of constant connection has emerged in many workplaces, either across the board or for specific groups of employees.

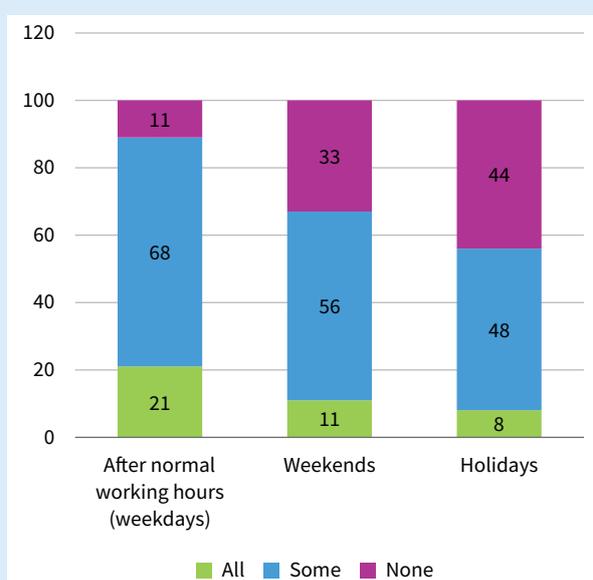
It has also been argued that the significant increase in the use of technological devices such as smartphones (in both the public and the private spheres) may have a quasi-addictive character (De-Sola Gutiérrez et al, 2016), posing difficulties for users in terms of switching off (Chóliz, 2010), particularly when combined with a workplace culture that encourages such behaviour or a personal drive to constantly remain on top of workplace requirements. Jackson et al (2003) found that 70% of employees opened applications to read messages within six seconds of receipt, and 85% opened them within two minutes of receipt.

In terms of out-of-hours contacts, another German study found that 24% of the workers involved were contacted by clients or colleagues out of hours, a further 24% by managers or colleagues and 22% by managers, colleagues and clients (Hassler et al, 2014). Figure 4 shows that a significant share of emails received out of hours were addressed immediately.

The majority of these emails related to the passing on of information or provision of advice and guidance, followed by the delegation of tasks, the performance of conceptual work/report writing and the carrying out of organisational or administrative tasks (Hassler et al, 2014). Fewer than 10% of respondents considered the work performed as a result of such contacts to be highly labour intensive. Nonetheless, each contact led to a task that took an average of 34 minutes to perform, with this working time generally not remunerated. Compared with members of a control group, who were not available to be contacted out of hours, workers in the ‘connected’ group also performed more (paid) overtime even before entering their connectivity phase. This may indicate an incompatibility between workload and available working hours and appears to echo the findings of other studies that have found a link between work ‘overload’ (the inability to complete work tasks during contractual working hours) and the likelihood of constant connection (Pangert et al, 2017; Thörel et al, 2020). In addition to workload, Thörel et al (2020) also found links between personal preference and accessing work-related messages out of hours and extended accessibility. Pangert et al (2017), on the other hand, made a link between a company culture of connectivity based on workers’ experiences of being contacted out of hours and colleagues responding to such messages and receiving positive feedback as a result.

In the study by Hassler et al (2014), almost 20% of those who were constantly accessible to their employer indicated that they gained financial advantages as a result, 36% considered this to be beneficial for their career progression and close to 50% declared that accessibility allowed them to carry out interesting tasks.

Figure 4: Share of emails received outside of regular working hours that were addressed immediately (%)



Source: Hassler et al (2014)

These challenges – combined with the likely increase in telework or hybrid work arrangements post pandemic (Box 2) and the ongoing megatrend towards workplace digitalisation – have given rise to a more prominent debate around the need for a ‘right to disconnect’. Eurofound defines this as the right for workers ‘to be

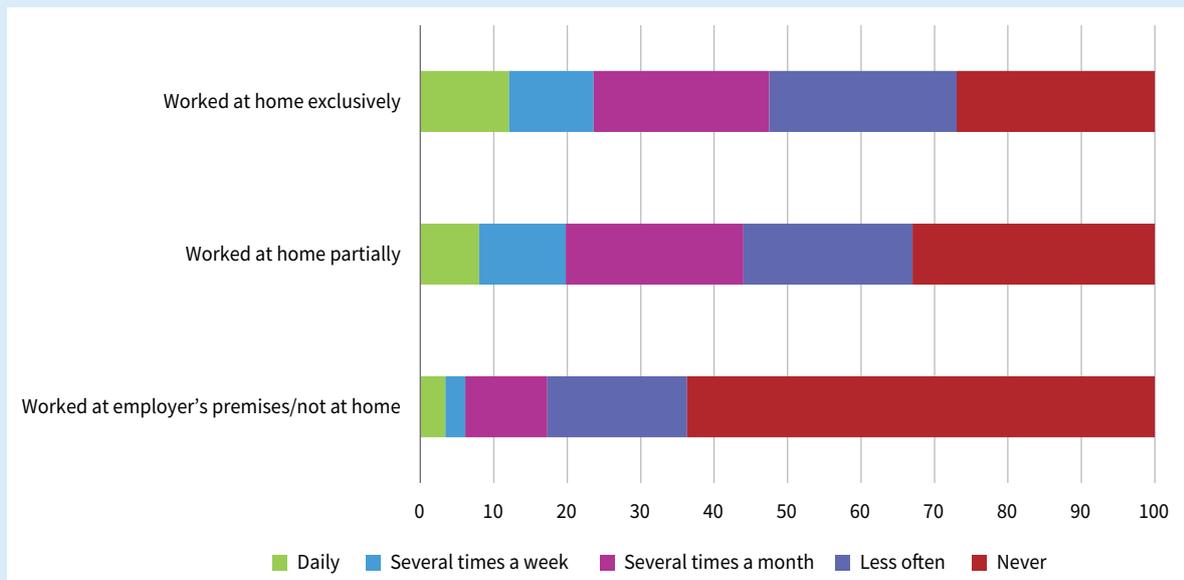
able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours’ (European Industrial Relations Dictionary). This should be possible without the risk of facing any adverse consequences.

Box 2: Post COVID-19 – Greater demand for hybrid work arrangements

In the July 2020 round of the *Living, working and COVID-19* e-survey, close to 65% of employees declared a desire to telework from home at least several times per month when businesses opened up again after the pandemic, with over 40% keen to do so daily or several times a week (Eurofound, 2020d; Figure 5).

When considering the evolution of working practices post pandemic, it is interesting to note that this EU average share of employees who would prefer to telework daily or several times a week is close to the estimated share of dependent employment that is currently seen to be ‘teleworkable’ (Sostero et al, 2020).

Figure 5: Preferences regarding telework post pandemic by teleworking status, July 2020 (%)



Source: Eurofound (2020d)

Research carried out by Eurofound and the Commission’s Joint Research Centre has demonstrated the potential distributional effect of a more permanent increase in home-based teleworking. The experience of the pandemic has shown that highly educated female workers in urban areas are significantly more likely to telework (Sostero et al, 2020). The potentially positive impact of the rise in remote working for the inclusion of disabled workers has also been highlighted (Eurofound, 2020g).

Given the link between overconnection to work-related digital tools and longer working hours, the monitoring of working time performed by ICT-based flexible workers has an important role to play in assessing the impact of the right to disconnect. Research by Eurofound has shown that nine countries have specific provisions in place to record the working hours of teleworkers and remote workers (Eurofound, 2020e). According to case law of the ECJ, all employers are required to set up a system for the measurement of daily working hours. Provisions made in this regard at Member State level or through collective agreements must apply to all workers. However, depending on the nature of such recording arrangements for remote workers, this could raise privacy concerns. The significant extension to the use of home-based

teleworking has given rise to a renewed debate on output-based rather than presence-based systems of performance management. However, some employers have responded to the need to find new ways to monitor the performance of remote workers by prioritising the introduction of new types of surveillance systems, hence reinforcing privacy concerns (Eurofound, 2020h). For home-based teleworkers, these new surveillance techniques can include keystroke logging, monitoring emails, telephone calls and internet usage, and movement tracking. The EU General Data Protection Regulation (Regulation (EU) 2016/679) requires prior employee consent regarding the use of such monitoring, but such provisions can be difficult to enforce (Eurofound, 2020i).

In light of the above, the question has been raised as to whether or not existing legislation remains fit for purpose to deal with the accelerating workplace developments.

In January 2021, the European Parliament adopted a resolution calling on the European Commission to bring forward legislation on the right to disconnect at EU level. Some months before this, in June 2020, the European cross-industry social partners adopted a new autonomous framework agreement on digitalisation, containing a chapter dedicated to the issue of connection and disconnection, which is now to be implemented at national level in line with respective procedures and practices. To date, four EU Member States have passed legislation containing provisions on the right to disconnect.

The heightened policy interest in this issue at EU and national levels means that it is important to have access to high-quality information about the relevant legislative context, the implementation of the right to disconnect at company level and the impact of the right to disconnect.

A Eurofound working paper from 2020 provides further details on the background to the discussion on the right to disconnect in relation to the challenges posed by developments in ICT-based flexible working practices, while also mapping existing legislation and debates at EU and Member State levels. The paper concludes that, although the four EU Member States that already have a right to disconnect on their statute books have seen an increase in collective agreements on the issue, no evidence of evaluations of the impact of the right to disconnect on worker well-being, work-life balance and company performance and working practices can be found (Eurofound, 2020e).

This report aims to begin to close this gap by looking in more detail at 12 case studies of companies and sectors that have introduced different ways of implementing a right to disconnect. Ten case studies were carried out involving interviews with employers and employees, one case study provided information from the employer's perspective only and one case study was carried out previously as part of the 2020 Eurofound research for the working paper on the right to disconnect. Given the limited number of case studies included, this report maps the experiences of the companies regarding the implementation of the right to disconnect rather than claiming to deliver any comparative quantitative findings.

The structure of the report is as follows:

- Chapter 1 provides an overview of relevant EU- and national-level legislation, collective agreements and current policy debates on the right to disconnect.
- Chapter 2 focuses on the implementation of the right to disconnect at sectoral and company levels, focusing on the context, motivations for negotiating the right to disconnect and negotiation process.
- Chapter 3 looks at the nature, scope and content of texts² containing the right to disconnect and the impact of the COVID-19 pandemic on company-level agreements.
- Chapter 4 examines existing processes of monitoring of the implementation of the right to disconnect and the scope for assessing the impact of disconnection on worker well-being and work-life balance.
- Chapter 5 provides some conclusions and policy pointers arising from the research.

² The term 'texts' rather than agreements is used because the documents containing the right to disconnect have not, in all cases, been negotiated and agreed between worker and employer representatives and do not take the form of collective or works agreement in all of the companies studied.

1 Legislation and collective agreements

Implementation of the right to disconnect at sectoral or company level hinges on the legislative context as well as the extent to which an active policy debate on the issue is present in each country. Similarly, the industrial relations framework and associated prevalence and coverage of collective agreements at national, regional, sectoral and company levels also have a role to play in shaping the implementation of the right to disconnect at company level. Drawing on the information gathered for the 2020 working paper on the right to disconnect (Eurofound, 2020e) published by Eurofound (updated with more recent policy developments), this chapter briefly describes the EU and national legislative context and policy debate. It also provides evidence relating to the prevalence of the right to disconnect in collective agreements.

EU-level legislation and other provisions

There is currently no EU legislation specifically addressing the right to disconnect. There are, however, a number of legal texts touching on related issues, including the following:

- Framework Directive on Safety and Health at Work (Council Directive 89/391/EEC)
- Directive concerning the minimum safety and health requirements for the workplace (Council Directive 89/654/EEC)
- Directive on Display Screen Equipment (Council Directive 90/270/EEC)
- Working Time Directive (Directive 2003/88/EC)
- Work–Life Balance Directive (Directive (EU) 2019/1158)
- Directive on Transparent and Predictable Working Conditions (Directive (EU) 2019/1152)

In addition, European autonomous framework agreements on telework (2002) and digitalisation (2020), concluded by the European-level cross-industry social partners (BusinessEurope, European Trade Union Confederation (ETUC), SGI Europe and SMEUnited), contain relevant provisions to be implemented in accordance with the ‘procedures and practices’ specific to each Member State.

Most significant among the above is the Working Time Directive and the associated case law of the ECJ. The directive aims to protect workers’ health and safety in relation to the duration of working hours, including the

observance of rest times and leave periods. Its provisions apply irrespective of whether work is performed on employers’ premises or remotely. In terms of working time and rest periods, the directive provides for:

- a weekly working time limit of 48 hours (this may be calculated as an average; the reference period should not exceed 4 months but may be extended to 6 months or even 12 months, for example where collective agreements provide relevant provisions to this effect)
- 11 hours of consecutive daily rest and an additional 24 hours of weekly rest

Derogations from these rules are possible and include the possibility of making use of the individual opt-out (in which case individual workers have to ‘consent’ to working more than 48 hours per week) and, for certain types of activities, having daily rest periods of fewer than 11 consecutive hours as long as compensatory rest is given immediately afterwards or collective agreements contain other relevant provisions.

Some of the case law of the ECJ linked to the implementation of the Working Time Directive is worth mentioning, as it is particularly pertinent to the discussion on the right to disconnect. In its judgment on case C-55/18 of 14 May 2019, the ECJ stated that employers are required to set up a system for the measurement of daily working hours – paragraph 60 (CJEU, 2019). Provisions made in this regard at Member State level or through collective agreements must apply to all workers. Furthermore, in the Matzak case (C-518/15), the ECJ ruled that standby time spent at home by a volunteer firefighter, during which he had a duty to respond to calls from his employer within a few minutes, very significantly restricting his opportunities to carry out other activities, must be regarded as working time under Directive 2003/88/EC – paragraph 66 (CJEU, 2018). While there is a difference between EU regulations and case law pertaining to the ‘constant availability’ required of workers in on-call arrangements (counted as working time in its entirety) and those pertaining to standby arrangements (counted as working time when workers are called on by employers to perform work and in specific circumstances, such as those set out in the Matzak ruling), the repeated requirement for the courts to interpret the provisions of the Working Time Directive has been considered by some observers as an indication that the binary view of working and rest time enshrined in the directive may no longer be fit for purpose, as boundaries between work

and private life become more blurred with the use of digital mobile devices and the ‘quality of rest’ is at stake (Mitrus, 2019). In the *Radiotelevizija Slovenija* case (C-344/19), the court emphasised the importance of employers’ obligations to protect workers against psychosocial risks. It stated that employers cannot establish periods of standby time that are so long or so frequent that they constitute a risk to the health and safety of workers, irrespective of these periods being classified as ‘rest periods’ within the meaning of Article 2(2) of Directive 2003/88/EC – paragraph 65 (CJEU, 2021).

While the case law of the ECJ provides a framework for the treatment of standby and on-call arrangements, the ‘constant availability’ made possible by ICT-based mobile devices is not specifically regulated and what is considered working time (and an associated break in the required rest period) depends on how national transposition of EU working time regulations and their implementation through collective or company-level agreements require such work to be monitored and treat its performance (for example, whether or not there is a threshold between what is and what is not considered to be the performance of work demanded by an employer).

The adjudication of cases of out-of-hours connection by the national courts is also pertinent here, with the two best-known cases relating to *Rentokil Initial* in France and *Kepak Convenience Foods Unlimited Company* in Ireland. In the case of *Rentokil Initial*, the company was ordered to pay a former employee €60,000 because it failed to respect his right to disconnect from his phone and computer outside office hours (Samuel, 2018). In its decision dated 12 July 2018, France’s Court of Cassation, its supreme court, found it unfair that the former south-west regional director of the company in France had to permanently leave his telephone on and respond to requests from his subordinates or customers in case of any problems while not at work. *Rentokil* did not consider the employee to be officially on standby and so did not compensate him for this work. However, the court ruled that he was indeed on standby because he was listed explicitly as someone to be contacted in an emergency and that he should be paid for his time.

In Ireland, a business executive employed at a subsidiary of meat producer *Kepak Convenience Foods Unlimited Company* was awarded €7,500 by the Labour Court in 2018 after she successfully argued that she was required to deal with out-of-hours work emails, including some after midnight, which led to her working in excess of the maximum 48 hours a week set out in the *Organisation of Working Time Act* (McCulloch, 2018). In support of her complaint, she submitted copies of emails that were exchanged with her employers both before normal start time and after normal finish time on numerous occasions over the course of her employment.

In their analysis of the legal position in Germany, Hassler et al (2014) state that performing a work task during a period of ICT-enabled availability outside contractual working hours should be considered working time and a break in the statutory rest period. However, at the same time, being ‘available’ in this way and providing limited ‘favours’ (such as in the form of a short exchange of information) is still considered rest time, thus demonstrating the relative complexity of the situation in a world of work characterised by constant connection.

Beyond the Working Time Directive, the European Framework Directive on Safety and Health at Work is equally applicable in employer-based and remote locations. Based on the prevention principle, the directive requires employers to carry out risk assessments to evaluate all physical and psychological risks to which workers can be exposed and to adopt appropriate preventative and protective measures. Directive 89/654/EEC concerning minimum safety and health requirements for the workplace uses a definition of the workplace that does not cover work outside employers’ premises. As of mid-2021, this directive is under revision. The 1990 Directive on Display Screen Equipment contains specific measures to prevent any harm arising from the prolonged use of such equipment (including regular rest breaks).

The 2019 Work–Life Balance Directive is relevant in the context of the right to disconnect, primarily because it extends the existing right to request flexible working arrangements to all working parents with children up to the age of eight and to all carers. This also includes remote working, as a means of better reconciling their work and caring responsibilities. The provisions of the directive focus on promoting the positive aspects of this form of flexible working on work–life balance, but do not explicitly address any potential negative effects on work–life balance associated with ICT-based flexible work.

Finally, the Directive on Transparent and Predictable Working Conditions states that the place of work and working patterns must be included in the information that employers provide to workers, with the objective of delivering greater clarity with regard to working conditions.

In addition to the above-mentioned legislative provisions at EU level, autonomous framework agreements on telework and digitalisation were negotiated by the European cross-industry social partners in 2002 and 2020, respectively.

The telework agreement establishes that teleworkers should benefit from the same general protections granted to workers based at employers' premises and includes additional elements to be taken into account, as follows.

- Teleworkers should manage the organisation of their own working time within applicable legislation, collective agreements and company practices.
- Teleworkers' occupational health and safety must be guaranteed by employers on the basis of applicable EU and national legislation and of collective agreements (if any are in place).
- Teleworkers' workload and performance standards must be specified and should be comparable with those of workers operating at employers' premises.
- Measures should be implemented to ensure teleworkers' psychological well-being, preventing their isolation from the rest of the workforce.

- Data protection measures should be taken by employers to ensure that information utilised and processed by teleworkers is subject to appropriate standards and that teleworkers' privacy is respected (Eurofound and ILO, 2017).

Since the adoption of this framework agreement, specific joint texts on telework have also been agreed in a number of sectors at EU level (electricity, insurance, telecommunications, banking and commerce).

In addition, the European cross-industry social partners and the sectoral social partners in the commerce, postal services, telecommunications, local and regional government, chemical industry, insurance, banking and metal sectors have reached agreements pertaining to the impact of digitalisation on working life and the role of the social partners in helping to shape such transformations (European Commission, 2018). Box 3 provides an example of a sectoral agreement on digitalisation.

Box 3: Example of a sectoral agreement on digitalisation – European insurance sector

In October 2016, the European sectoral social partners in the insurance sector (Insurance Europe, the Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE), the European Federation of Insurance Intermediaries (BIPAR) and UniEuropa) were among the first to adopt a joint declaration on the social effects of digitalisation. The declaration deals with a range of issues, including training, time and place of work and leadership in a digital age. It emphasises that, while digitalisation offers more room for – and requires more – flexibility linked to client demands, existing labour legislation and collective agreements must be respected. In section II(3), the agreement states the following:

In a digitalised world, the space between work and home life is becoming increasingly blurred. It is therefore important that companies pay attention to health protection issues, in particular in relation to the employees' availability. In the dialogue [between social partners] attention should be paid to preventing counter-productive forms of work-related stress due to digital availability. Work-life balance is already a matter of policy in most insurance companies. Work-life balance in the digital world may not be clearly defined any longer. Therefore, there should be awareness of the growing phenomenon of performing work/services outside of business hours in employees' private environment. This should be dealt with positively. As stated by the European social partners in the insurance sector in the 2015 joint declaration on telework, 'Attention should be paid to addressing the topics of availability, considering the importance of ensuring a good work-life balance, and of monitoring working hours. The conditions of working time have to comply with company rules, collective agreements, national and European law.'

In a follow-up to the joint declaration on digitalisation adopted in 2019, the European sectoral social partners in the insurance sector picked up the issue of availability and the potential risks of constant connection again, emphasising the following:

The aim must be for social partners to improve the work-life balance of employees. In today's digital age, it is absolutely imperative that the social partners monitor working time limits in a modern way and in line with applicable legislation and collective agreements. The social partners see a trend towards more employee autonomy in determining when and how long they work. This can have positive effects but attention should be paid to the well-being of employees (e.g. to the prevention of psychosocial risks, such as burnout). This new autonomy should take place within a clearly defined framework at company level, including discussions with employee representatives and in compliance with relevant legislation. Attention should also be paid by all the social partners to addressing the topic of availability. Digitalisation should not lead to a situation where employees are obliged to be connected at all times. The social partners should aim to create a culture where everybody accepts that setting boundaries has a positive effect on the work-life balance of employees and therefore, also a positive effect on the company.

A more recent joint declaration (2021) on artificial intelligence (AI) points to the importance of the responsible use of AI within existing legal frameworks, including the use of AI for personnel-related tasks, such as the coordination of holidays and working time.

Sources: <https://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5477>;
<https://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5601>;
<https://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5727>

The cross-industry social partner agreement adopted on 22 June 2020 covers a wide range of issues linked to the changing world of work (BusinessEurope, CEEP, ETUC and SMEUnited, 2020). Chapter 2 of the agreement focuses on the ‘modalities of connecting and disconnecting’. It refers to the advantages of ICT-based flexible working as well as the ‘risks and challenges around the delineation of work and personal time both during and beyond working time’. As in the agreement on telework, the autonomous framework agreement on digitalisation reiterates employers’ responsibility to ensure the safety and health of workers, with a focus on prevention. The agreement recommends that social partners at relevant levels institute training and awareness raising on the benefits and the potential challenges of work that involves intensive use of digital tools. It also emphasises the need to respect existing working time and telework rules and ensure compliance in this context. It calls on the social partners to provide guidance and information for employers and workers on how these rules should be respected when working remotely with digital tools, including information on the risks of ‘being overly connected’.

Other key elements highlighted in the text include:

- the importance of a management and company culture that avoids out-of-hours contact and the drafting of organisational objectives that allow for working time provisions in law and collective agreements to be respected
- the need to connect policies on disconnection with the management of work organisation and workload (including the number of staff)
- the need to consider appropriate compensation for any extra time worked
- the importance of a no-blame culture to find solutions and to guard against workers being disadvantaged due to their not being contactable
- the importance of regular contact between managers and workers about workload and work processes

Because the implementation of autonomous framework agreements reached by the European social partners is carried out in ‘accordance with the procedures and practices specific to management and labour in the Member States’ (Article 155(2) of the Treaty on the Functioning of the European Union, TFEU), this can take a variety of forms, ranging from legislation or sectoral or company agreements to guidance documents. This leads not only to significant diversity in implementation processes but also to different coverage of the provisions adopted. Evaluations of the implementation of previous autonomous framework agreements have shown that implementation can be a particular challenge in countries where social dialogue structures are not well developed (European Commission, 2016). It remains to be seen whether or not the implementation of the 2020 framework agreement on digitalisation follows a similar pattern.

The above discussion demonstrates that there are some EU legislative texts in place that deal with problematic aspects experienced by employees in ICT-based flexible work. However, despite this, the challenges linked to ICT-based flexible working highlighted above remain. This could point to difficulties regarding the enforcement of these provisions in ICT-based flexible work or to shortcomings in the current regulatory framework, which was devised before enhanced digitalisation made the growth of such working arrangements possible. The impact of the more recent directives on transparent and predictable working conditions and work–life balance is as yet unclear as the transposition deadlines have not yet passed. A further assessment of the extent to which regulation remains fit for purpose will therefore be required following transposition and implementation of these directives, as well as the implementation of the social partner framework agreement on digitalisation at national level.

In January 2021, the European Parliament passed a resolution on the right to disconnect, calling on the Commission to bring forward an EU-level directive on the issue (European Parliament, 2021). This resolution, while calling for an EU legislative proposal, recognises the autonomy and central role of social partners in the negotiation, application and enforcement of the right to disconnect. It notes that presenting an EU proposal before the end of the three-year implementation period for social partners' autonomous actions may breach their autonomy enshrined in the TFEU. However, in the context of the increasingly pressing nature of this issue because of the increase in telework, the rapporteur responsible for the initiative has repeatedly called on the Commission to bring forward a legislative proposal without delay.

The European Commission's European Pillar of Social Rights Action Plan states that 'the Commission is committed to responding to the European Parliament's resolution on the basis of Article 225 of the TFEU with a legislative act, in full respect of the proportionality, subsidiarity and better law-making principles'. It also notes that any legislative initiative in this area must be subject to consultation with the social partners (Article 154 of the TFEU) and calls on them 'to find commonly agreed solutions to address the challenges raised by telework, digitalisation and the right to disconnect' (European Commission, 2021, p. 20).

National-level legislation, policy debate and collective agreements

As of February 2021, four EU Member States – Belgium, France, Italy and Spain – had enacted legislation including the right to disconnect.³ Since then, two other Member States have adopted amendments to their labour codes including the right to disconnect: Slovakia in March 2021 and Greece in June 2021. Since these legislative initiatives were adopted during the time this

report was being finalised, they are not covered in detail here. In the Netherlands and Portugal, legislative proposals on the issue have been tabled but have so far not been adopted. In the context of a legislative initiative aimed at giving workers in Ireland the right to request remote working, a code of practice on the right to disconnect came into force in Ireland on 1 April 2021. Albeit not legally binding, the code of practice can be used in evidence in legal proceedings. It includes:

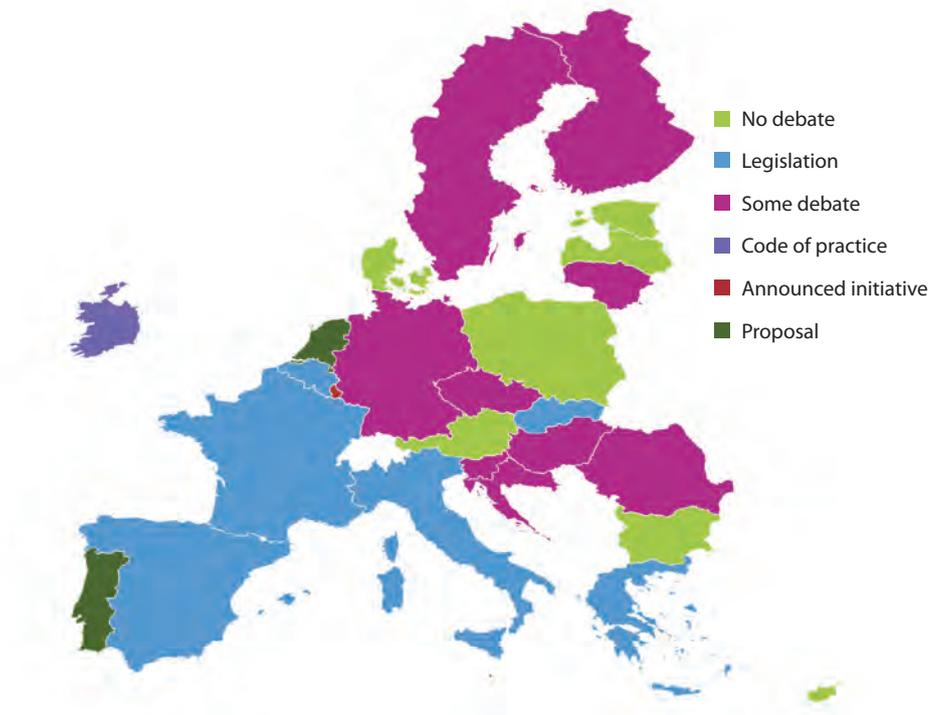
- the right of an employee to not have to routinely perform work outside their normal working hours
- the right not to be penalised for refusing to attend to work matters outside normal working hours
- the duty to respect another person's right to disconnect

It is interesting to note that some commentators have argued that there is a risk that the code of practice will undermine existing rights, which state that an employer can contact an employee to work out of hours only in the case of an accident or a threatened accident, or with 24 hours' notice. The new code states that company policies 'should allow for occasional legitimate situations' when it is necessary to contact staff outside normal working hours. The situations specified are not considered to be strictly limited to emergencies (*The Irish Times*, 2021).

Luxembourg and Malta have initiated discussions on potential measures regarding the right to disconnect. Information gathered by Eurofound in April 2020 shows that, in a further five countries (Finland, Germany, Lithuania, Slovenia and Sweden), more or less intensive debates are taking place on the need for a right to disconnect. In the remaining 13 EU Member States, no significant debate between stakeholders was taking place in mid-2020. However, following the increase in teleworking as a result of the pandemic, the subject has been raised by trade unions in countries such as Croatia, Czechia and Hungary.

³ In spring 2020, with the assistance of its Network of Eurofound Correspondents, Eurofound gathered information on legislation, collective agreements and the policy debate concerning the right to disconnect at Member State level, based on an ad hoc request from the European Commission. The resulting working paper discusses in more detail the rationale for the presence and absence of policy debate and legislation on the issue (Eurofound, 2020e). Since then, the COVID-19 pandemic situation has led to more extensive discussions on the legislation, policy and collective agreements governing telework – and in some cases the right to disconnect – at national level. In spring 2021, Eurofound initiated a new project to update information on legislation, collective agreements and the policy debate on telework and the right to disconnect, which will be part of a wider project on telework.

Figure 6: Right to disconnect and status of legislation and debate in EU Member States, mid-2021



Source: Eurofound (2020e), updated for this report

Countries without a significant policy debate on the right to disconnect

Eurofound (2020d) showed that, prior to the pandemic, in countries where the right to disconnect was not yet subject to stakeholder debate, different reasons are put forward for this (Table 2). It is interesting that, in at least four countries (Bulgaria, Czechia, Greece and Slovakia), this was attributed to the low prevalence of ICT-based

flexible work, which was indeed the case in these countries (but also in Hungary, Latvia, Lithuania, Poland and Romania) prior to the pandemic. The question as to whether the increase in home-based telework during the pandemic has led to policy debates not only on the regulation of remote work but also on the right to disconnect is being investigated in ongoing Eurofound research (position at the time of writing, April 2021).

Table 2: Reasons for an absence of debate on the right to disconnect, mid-2020

Reasons for an absence of debate	Countries
Existing legislation considered to be sufficient	Austria, Croatia, Czechia, Estonia, Latvia, Romania, Slovakia
Issue already addressed through collective bargaining	Denmark
Low prevalence of ICT-based flexible work	Bulgaria, Czechia, Greece, Slovakia
Other issues considered to be more pressing	Bulgaria, Hungary, Poland (trade unions)
Emphasis needs to be placed on enforcement rather than additional legislation	Austria, Romania, Slovakia

Source: Adapted from Eurofound (2020d)

In Hungary and Poland, among the issues considered by trade unions to be more pressing are concerns about the high share of unpaid work delivered outside working hours. Rácz (2019) argues that digital devices play a role in such additional unpaid work in Hungary. In Poland, the high share of employees on civil law contracts poses an issue, as individuals on such contracts have no statutory guarantees linked to working hours legislation and the right to rest.

In countries where existing legislation is considered to be sufficient to address the issue, working time and health and safety legislation are considered to serve this purpose, although the need for more effective enforcement and awareness raising was acknowledged by social partners in Austria and Romania.

In Denmark, in particular, in line with their industrial relations tradition, collective bargaining is considered to be the most appropriate way to address the issue (although no specific sectoral agreements on the right to disconnect were identified in the research carried out by Eurofound in 2020).

Countries with a policy debate on the right to disconnect

In the five countries where the question of a requirement for a separate right to disconnect has been raised, this has primarily been done by trade unions, sometimes supported by specific political parties.

The main reasons for such debates relate to the following:

- an increase in stress-related absences in the workplace (Germany)
- a high share of unpaid overtime and lack of clarity around working time regulations (Lithuania)
- an increased blurring of the lines between work and private life as a result of the use of digital devices (Slovenia, Sweden)
- inspired by the introduction of legislation in France (Finland)

Among the countries having policy debates, discussions are most advanced in Germany, but these have focused on mobile working without specific reference to the right to disconnect. A draft legislative initiative on mobile working was put forward in October 2020 by the Social Democrat-led Ministry of Labour and Social Affairs, which aimed to provide the right to a minimum number of mobile working days per annum. This proposal was immediately rejected by the Chancellery and an alternative proposal was put forward by the Christian Democrat coalition partner, which envisaged only the encouragement of such working arrangements through tax breaks. In January 2021, the Ministry of Labour and Social Affairs issued a new proposal essentially setting out the right to request mobile

working, with a requirement that employees should receive a reasoned response within a set time frame. As of mid-2021, it does not appear likely that the right to disconnect will be included in any legislative proposal. However, the debate on this issue dates back to 2012, when a trade union proposal sought to address the broader issue of workplace-related stress, which also included the right to disconnect. This was motivated by a significant increase in stress-related absences. The proposal contributed to the amendment of German occupational safety and health legislation in 2013, to place a greater focus on psychosocial risk factors in the workplace. Subsequently, the right to disconnect was raised again in 2014 in the context of a broader debate on the future of work (Work 4.0), which looked into the impact of digitalisation on the workplace. However, as employer organisations remain opposed to enshrining a right to disconnect in legislation, the topic faded from the policy debate. Employer organisations, in particular, consider that such issues are best regulated at company level through collective bargaining. As discussed in more detail below, a number of large employers have enshrined a right to disconnect in works agreements (for example, Volkswagen, BMW, Daimler, Deutsche Telekom, Evonik).

In Slovenia, tripartite discussions on the right to disconnect took place in 2016, with trade unions supporting a legislative solution. However, this was opposed by employer organisations. The issue of perceived frequent unpaid overtime, including work delivered outside contractual hours using digital devices, has been raised by trade unions in Lithuania, but employers and the labour inspectorate consider that existing legislation ensures that workers can refuse to perform such work. In Finland and Sweden, the right to disconnect has been discussed but has not gained much traction. In Finland, a recent amendment to the Working Hours Act (2019/872) ensures that distance work and telework are explicitly included in its provisions, while in Sweden bipartite collaboration in some sectors has addressed the issue of constant connection (Eurofound, 2020d).

Countries with legislative proposals under consideration

In Malta, the desire by the current government to be among the first to introduce legislation on this issue in the wake of the initiative from the European Parliament has been criticised by Maltese employer organisations, which favour allowing social partners to address the issue at a decentralised level. In Greece, discussions on a new labour law reform bill which would include the right to disconnect were under way at the time of writing of this report (April 2021), with the bill passed by parliament in June 2021. Finally, discussions in Luxembourg are in the early stages of development.

In the Netherlands and Portugal, legislative proposals on the right to disconnect were motivated, first, by concerns around the increased blurring of the boundaries between work and private life resulting from the widespread use of digital tools and, second, by a perception on the part of trade unions and some (usually left of centre) political parties that existing legislation has proved insufficient to address the issue of work being performed outside contractual working hours using digital devices.

In the Netherlands, the Labour Party put forward a Bill on the ‘right to be inaccessible’ in 2019. It envisaged that implementation would take place through a strengthening of risk assessment, focusing on the risks associated with constant connection. It also stipulated that agreements would be reached between employees and employers in relation to the times when employees could not be contacted (Arbowetweter, 2020). A public consultation on the issue took place, which showed support for the initiative among the trade union movement. However, employer organisations stated their preference for voluntary, tailor-made solutions at company level. No further steps have been taken to date with regard to this legislative agenda, as significant disagreements on the issue remain between the social partners and political parties.

In Portugal, in 2017, five out of the seven parliamentary political parties brought forward draft legislation or resolutions on the right to disconnect for parliamentary debate. However, none of the proposals found favour at the time, with the position of the social partners also not favourable. More recently, the Portuguese government has again expressed an interest in revitalising the debate in the context of the initiative from the European Parliament (Green Paper on the future of work).

Countries with legislation in place

In the four EU Member States with legislation on the right to disconnect on the statute books by February 2021, this must in practice be implemented by social partners at sectoral and company levels, or indeed through individual agreements between employers and workers (Italy).

In Belgium, the Law on strengthening economic growth and social cohesion was adopted in 2018. Article 16 of the law requires employers to consult and negotiate with their workplace health and safety committee (*comité pour la prévention et la protection au travail*) about the use of digital communication tools and disconnection from work at regular intervals – the act does not specify how often – and whenever employee representatives request it. The law is applicable to all companies with more than 50 employees. Furthermore, a number of universally applicable sectoral collective agreements and company agreements addressing the right to disconnect are in place, extending the coverage

beyond the 47% of workers employed in companies with more than 50 employees. However, if a company’s health and safety committee and management team fail to reach agreement on the issue, the company is not obliged to issue a charter on the right to disconnect, as is the case in France.

French Law No. 2016–1088 of 8 August 2016 (known as the El Khomri law), effective from 31 December 2017, was the first in any EU Member State to introduce a right to disconnect (Article L2242–17). The law takes account of the positions of the social partners and their 2013 national collective agreement on the issue, as well as taking on board the jurisprudence of the highest French court (Court of Cassation), which has emphasised limits to the interference of work in private life since the early 2000s (Chiuffo, 2019). The right to disconnect must be implemented through agreements between employers and trade unions in all companies with at least 50 employees. According to National Institute of Statistics and Economic Studies estimates from 2017, the legislation in principle applies to fewer than 6.3% of employers and around 81.3% of the workforce (Insee, 2020). However, these legal provisions are further supplemented by universally applicable sectoral collective agreements, as well as by company-level agreements, which can increase the level of coverage. The law states that regular company collective negotiations on gender equality between women and men and quality of life at work must specify the procedures for the full exercise by employees of their right to disconnect and the implementation by companies of mechanisms to regulate the use of digital tools, in order to ensure compliance with policies governing rest and leave periods and personal and family life. If social partners fail to reach an agreement, employers are required to draw up a charter, after consulting with their social and economic committee. This charter should define the procedures for exercising the right to disconnect and should include provisions regarding training and awareness raising for employees, managers and executives. Company-level agreements or charters are non-binding and no sanctions are imposed for breaching them.

In Italy, Law No. 81/2017, which covers only ‘smart workers’ (that is, employees who can work remotely for some of their working hours following an individual written agreement with their employer – a distinct arrangement from teleworking, which is governed by different legislation and tends to involve more regular home-based working), stipulates that smart working should take place ‘within the limits of the maximum duration of daily and weekly working time, as established by law and collective bargaining’ (Article 18, paragraph 1). The individual agreement between the employee and the employer that provides for smart working ‘shall include the worker’s rest times as well as necessary technical and organisational measures to

ensure the worker's disconnection from technological work instruments' (Article 19, paragraph 1). As a result, the law does not recognise an 'explicit' right to disconnect, but instead provides a soft regulatory framework that confirms the general rules on working time, leaving it to individual agreements to define actual working times and the modalities for connection and disconnection. As the share of remote workers has increased dramatically since the start of the COVID-19 pandemic, the government has issued a decree establishing a simplified procedure for smart working that does not require individual agreements between employees and employers (Gazzetta Ufficiale, 2020). This approach, originally expected to last up until the end of January 2021, is valid until the end of the health emergency.

In Spain, the right to disconnect was first introduced in Article 88 of Organic Law 3/2018 of 3 December 2018 on personal data protection and guarantee of digital rights. Article 88 contains a generic reference to collective bargaining and states that it should be used to implement the right to disconnect. However, rather than imposing an obligation on social partners to negotiate on this issue, it calls on employers to design an internal policy defining the right to disconnect and the measures adopted to implement it. Unlike the legislation in Belgium, France and Italy, the right in Spain applies to all workers.

Also relevant in this context, and following the above-mentioned ECJ case C-55/18, Royal Decree-Law 8/2019 of 8 March 2019 includes an obligation on companies to record the working time of their employees, with the aim of avoiding unpaid overtime. The more recent Royal Decree-Law 28/2020 of 22 September 2020 on remote working completes the legislative approach of Spain to the right to disconnect. It defines distance work as work done remotely during at least 30% of working time. Article 18 refers to the right to disconnect specifically in the context of partial or exclusive remote or home-based teleworking using digital devices and mentions the use of collective agreements to define the conditions that guarantee the right to disconnect.

Collective agreements on the right to disconnect

Two issues make it challenging to assess the number of workers covered by specific terms regulating the right to disconnect beyond existing provisions on working hours and health and safety: first, the lack of comparative research addressing the prevalence of the right to disconnect in collective agreements at sectoral and company levels and, second, the difficulty in accessing data on collective agreements in many countries without central registers. However, Eurofound research identified a link in France and Spain between the passage of legislation on the right to disconnect and an increase in relevant provisions included in sectoral and

company agreements (2020e). In Italy, the number of collective and individual 'smart working' agreements has also increased.

In 2019, the annual assessment of collective bargaining by the Ministry of Labour, Employment and Economic Inclusion (*Bilan annuel de la négociation collective 2019*) provided some details about sectoral- and company-level agreements in France. According to the findings, 5% of company-level arrangements signed in 2019 focus on working conditions, 38% deal with the right to disconnect and a further 39% deal with telework issues. Close to 30% of agreements including the right to disconnect were negotiated in companies with fewer than 50 employees. The report found that, since 2017, there has been an 86% increase in the number of agreements including the right to disconnect (from 932 in 2017 to 1,737 in 2019). A survey carried out by OpinionWay in mid-October 2018 indicated that 23% of companies have published a charter on the good use of email, while 16% have introduced provisions to ensure the right to disconnect (OpinionWay, 2018). Finally, 41% of companies have not taken action to limit the use of ICT tools.

In Spain, six collective agreements already recognised the right to disconnect before the implementation of Organic Law 3/2018 on data protection. The Trade Union Confederation of Workers' Commissions (CCOO) monitors agreements, including the regulation of this right. When looking at the information gathered by CCOO, it should be noted that some companies have negotiated the right to disconnect not through general collective bargaining but in equality plans or in specific agreements. The union finds that around 12% of all new collective agreements set up during 2019 included clauses on the right to disconnect (367 out of 3,140 agreements). A restricted sample of 53 collective agreements with right to disconnect clauses had the following characteristics: the agreements were mostly set up at company level (74%) and they were more commonly found in the retail (20%), administrative and ancillary services (12%), information technology (IT) (12%), art, leisure and sporting activities (12%), industry (10%), manufacturing (10%) and health services (6%) sectors. Regarding their coverage, the sectoral agreements assessed in the sample covered 1,671,569 workers (around 10% of individual contracts) and 290,814 companies. The most important agreement is the national collective agreement of the industry, technology and services in the metal sector, covering 1,213,615 workers and 250,000 companies.

In Italy, legislation on this issue relates to smart working, which is agreed between individual employers and employees. Prior to the pandemic, there were an estimated 480,000 smart workers in Italy. However, in some cases, smart working is also regulated by collective agreements at sectoral and company levels.

Eurofound's 2020 working paper found that, in May 2017, when the legislation entered into force, the smart working regime was already regulated in six sectoral collective agreements and in 24 company agreements (Eurofound, 2020e). By July 2018, this had risen to at least 20 sectoral-level agreements and no fewer than 30 company-level agreements (Avogaro, 2018). Sectoral-level agreements in this area are mainly limited to restating the text of the legislation and requiring the regulation of the issue at company level. Examples of sectors with such provisions in place are the agri-food, energy and oil, gas and water and waste management sectors.

Company-level agreements include more detailed and operational provisions to be applied in individual smart working contracts. Such provisions tend to relate to the frequency of teleworking, core and flexible hours, the right to disconnect, and health and safety training. In this domain, significant examples are the arrangements adopted by Italy-based companies such as Eni (energy and oil), Poste Italiane (postal services), Italian State Railways (transport), Enel (energy), Barilla (agri-food) and Siemens (engineering).

Data collection at national level for Eurofound's 2020 working paper found relatively few collective agreements covering the right to disconnect in other EU countries, except for the Nordic countries and Germany, where some agreements are in place at sectoral and company levels.

CHAPTER 1 – SUMMARY

- Although there is no EU legislation specifically addressing the right to disconnect, a number of legal texts touch on related issues, including the Working Time Directive, health and safety legislation, the Work–Life Balance Directive and the Directive on Transparent and Predictable Working Conditions (with the transposition deadlines of the last two not yet reached as of mid-2021). In addition, the European cross-industry social partners have signed framework agreements on telework (2002) and digitalisation (2020) that address the issues of connection and disconnection. Social partner texts dealing with the impact of digitalisation and telework are also in place in a number of sectors at EU level.
- EU and national jurisprudence have addressed the issues of disconnection and the treatment of working time in the context of on-call and standby situations; however, the constant connection enabled through the use of ICT-based digital mobile devices is increasingly blurring the distinction between work and non-work (private) time, which is addressed in a binary way in existing legislation.
- Despite the advantages of home-based teleworking, the challenges linked to increased working hours and work intensity and the work–life balance conflict associated with ICT-based flexible working persist, even with the existence of relevant EU legislation and the implementation of social partner agreements. These issues have been exacerbated by the rise in telework during the pandemic.
- At national level, six Member States (Belgium, France, Greece, Italy, Spain and Slovakia) have adopted legislation addressing the right to disconnect. Ireland adopted a code of practice on this issue on 1 April 2021. In a further two countries (the Netherlands and Portugal) legislative initiatives have been tabled but, as of mid-2021, these had not progressed along the legislative agenda. In a further five countries, more or less active debates on the issue were noted as of mid-2020. The pandemic has brought the issue of telework and right to disconnect legislation more to the fore of policy discussions. This was also stimulated by a European Parliament resolution of January 2021 calling on the European Commission to put forward a directive on the right to disconnect, while acknowledging the key role played by the social partners, including in the implementation of the 2020 framework agreement on digitalisation.
- The experiences of EU Member States with regard to legislation on the right to disconnect show that these provisions can lead to the prioritisation of actions by the social partners at national, sectoral and company levels and have triggered an increase in the adoption of collective agreements and other texts on this issue.

Outlook

The information presented in this chapter demonstrates that regulation is in place at EU and national levels that can contribute to addressing the challenges raised by more digitalised workplaces. However, the directives and other provisions implemented to date have not been successful in preventing the expansion of working hours and associated health risks and work–life balance conflict described in the introduction to this report. Questions have therefore been raised as to whether existing legislation is fit for purpose, whether the directives and social partner agreements yet to be incorporated and implemented will help to address some of these issues, and how best to design a regulatory framework that allows social partners to take account of the need to tailor provisions to respective workplace situations and employer and employee requirements to maintain flexibility while at the same time ensuring the protection of workers' health and well-being. A number of legal commentators have focused on the juxtaposition between a regulatory approach (often using the example of France) and self-regulation (such as in Germany; Secunda, 2019; Wanigasinghe, 2019). Such analyses concur that the modalities of connection and disconnection and the actions taken in implementing the right to disconnect should be agreed by social partners at sectoral and company levels. However, views differ regarding the desirability or otherwise of legislation requiring social partners to take action, the nature of such action and any sanctions that should be imposed in cases of failure to act.

The European Commission's European Pillar of Social Rights Action Plan, the European Parliament's resolution on the right to disconnect, the European cross-industry social partners' autonomous framework

agreement on digitalisation and national legislation in force in four Member States covering the right to disconnect (in February 2021) all emphasise the importance of social dialogue and collective agreements in the implementation and operationalisation of the right to disconnect in a way that is adapted to the specific requirements of different sectors and workplaces. Evidence available from sectoral agreements containing provisions on the right to disconnect shows that they tend to set relatively general frameworks calling for action at company level to agree ways to operationalise this right in a way that suits workplace requirements and realities. In order to understand how the right to disconnect is implemented and operationalised, it is therefore crucial to assess practice at company level.

Drawing on evidence from 10 company case studies, the following chapters analyse in more detail the motivations behind these texts and the negotiating processes involved. They explore the nature, focus, scope and coverage of the texts, the modalities of connection and disconnection and the precise nature of the actions taken for their operationalisation. The frameworks provided by two sectoral agreements are also analysed. Finally, how the implementation of the texts is monitored and what the available information can tell us about the impact of the right to disconnect on worker well-being, work–life balance and aspects such as productivity, broader company culture and working practices in the case study companies are also assessed.

Before examining the motivations behind the right to disconnect texts, the negotiation processes and the content of relevant texts at company level, Chapter 2 provides a brief introduction to the selection and nature of the case study sectors and companies.

2 Profiles of the case studies and reasons for negotiating the right to disconnect

Introduction to the case studies

In selecting the case studies, it was clear from the outset that no ‘representative’ selection would be possible within the scope of this research. The decision was taken to focus on case studies in the four countries having legislation on the right to disconnect, as well as in Germany, as in previous research these emerged as the countries that – based on the available evidence – had the highest number of sectoral- and company-level texts covering the issue. While there was a desire to cover small and medium-sized enterprises and larger companies, as well as different sectors, it ultimately proved possible to carry out only one case study in a small or medium-sized enterprise. As Table 3 shows, the final sample consists of four texts from the banking and

insurance sector, two each from the automotive, chemicals and energy sectors, one from the telecommunications sector and one from a consultancy service company. All but one of the case study companies are active on a global scale.

As far as possible, efforts were made to select companies that had experience of having the right to disconnect in place over a number of years to enable an assessment of its operationalisation and impact over a period of time. However, on examining the available evidence on sectoral- and company-level agreements covering the issue, it was evident that many of the texts containing the right to disconnect are relatively recent. Among the case studies, the company-level agreements in Germany have been in place the longest.

Table 3: Case study companies and dates of texts containing the right to disconnect

Company name	Country of headquarters	Sector	Number of employees	Date of text
Company-level agreements				
Banco Santander	Spain	Banking	29,000 in Spain, 196,000 globally (2019)	2018
BMW	Germany	Automotive	133,778 globally (2019)	2014
Enel	Italy	Energy	29,698 in Italy, 66,725 globally (2020)	2017
Evonik	Germany	Chemicals	19,000 in Germany, 32,000 globally (2019)	2013
Groupe JLO	France	Consultancy	125 (operates only in France, 2020)	2015
Solvay	Belgium	Chemicals	1,000 in Belgium, 24,500 globally (2018)	2017
Telefónica	Spain	Telecommunications	29,000 in Spain, 114,000 globally (2019)	2018
Total	France	Energy	35,000 in France, 110,000 globally (2020)	2019
UniCredit	Italy	Banking	37,032 in Italy, 89,455 globally (2020)	2017 and 2020
Volkswagen	Germany	Automotive	307,342 in Germany, 641,838 globally (2019)	2011
Sectoral-level collective agreements				
Banking sector	Spain	Banking	195,000 (2020)	2020 and 2021
Insurance sector	Germany	Insurance	202,000 (2019)	2019

Source: Author, based on case study reports (Eurofound, 2021b)

Setting the context

When looking at the timing of the implementation of the right to disconnect in the case study sectors and companies, it is possible to draw some parallels with both the introduction of legislation on the issue and policy debate at national level at the time the texts were formulated.

As shown in Table 3, the most established company-level texts studied can be found in Germany, with Volkswagen being the first to regulate the use of smartphones in 2011. In 2013 and 2014, Evonik and BMW, respectively, followed suit, reaching company-level agreements (*Betriebsvereinbarungen*) on remote/mobile working. As indicated in Chapter 1, in Germany this period was characterised by an active debate on the future of work and the potential risks of constant connection linked to the increasing use of workplace digital mobile devices and flexible working arrangements. This led to a number of companies considering and reaching agreements on this issue. The sectoral agreement in the insurance sector adopted in 2019 followed on from sectoral-level texts on telework and digitalisation agreed at EU level in 2015, 2016 and 2019 and, according to employer representatives, drew inspiration from the many company-level agreements already in place in the sector in Germany.

The 2015 company policy at Groupe JLO preceded the adoption of the El Khomri law in France (2016; see Chapter 1 for more information), but the discussion on the impact of constant connection on psychosocial risks factors was already prominent in the policy debate. Company representatives were aware of research on the issue and cited this among the reasons behind the introduction of an internal policy on the right to disconnect. Another important motivation for Groupe JLO relates to the services it provides (consultancy on the integration of disabled workers in the workplace and the improvement of working conditions). It was therefore considered important for the organisation to lead by example and to be able to provide practice-inspired guidance on how to implement relevant measures in client organisations.

A high-profile agreement that pre-dates the adoption of the legislation containing the right to disconnect in France was also introduced at the telecommunications company Orange. Practices adopted at this company in its restructuring process (during the time when it was known as France Télécom) had contributed to a number of employee suicides.⁴ The company subsequently

adopted an agreement on work–life balance in 2010, which emphasised that workers had no obligation to answer messages outside of working hours and recommended using deferred sending functions. In 2016, Orange adopted a further agreement on digital transformation, which includes more detailed provisions regarding the right to disconnect.

Similarly, at Solvay, the right to disconnect was first discussed in 2016, two years prior to the adoption of the legislation containing provisions on the right to disconnect in Belgium. Other agreements in Belgium referenced in the media, such as at KBC, De Lijn and Lidl, were adopted in 2018.

In Italy, Enel introduced regulations on smart working (and therefore implicitly the right to disconnect) following a pilot exercise, launched in 2016, involving around 500 workers in different organisational areas. The purpose was to test the functioning of remote working prior to adopting company-level regulations. Following the pilot phase, an agreement on the issue was signed with the trade unions in April 2017, a few months before the entry into force of Law No. 81/2017.

Other texts in the case study companies and sectors were negotiated either ‘in the shadow of the law’ (that is, relatively briefly pre-dating national legislation, for example, Banco Santander and Telefónica) or following the adoption of legislation (for example, Total and UniCredit) and relevant sectoral collective agreements (for example, Banco Santander, in relation to the recording of working time).

In terms of the impact of the legislative context, it is notable that in Spain it was not the passing of Organic Law 3/2018 that prompted the adoption of a collective agreement containing the right to disconnect in the banking sector, but rather the royal decree-law on the recording of working time. A partial agreement on the recording of working time was signed in January 2020 in response to Royal Decree-Law 8/2019, which includes the right to disconnect.⁵ Another important contextual factor in the Spanish banking sector relates to the 2007–2008 financial crisis and the subsequent substantial restructuring of the sector, characterised by mergers and takeovers and an overall reduction of the workforce. Trade unions claim that it was common practice for meetings or compulsory training to be organised outside normal working time, and also for calls or messages to be sent asking for action after the end of the working day. The agreement signed in the banking sector on the recording of working time aims to

⁴ On 20 December 2019, the Paris criminal court found France Télécom and its former manager guilty of ‘institutional moral harassment’. This marked the first time a company was found guilty of institutional moral harassment.

⁵ There are three sectoral collective agreements in the Spanish banking sector, one for each employer organisation: the Spanish Banking Association (AEB), the Spanish Confederation of Savings Banks (CECA) and the National Union of Credit Cooperatives (Unacc). Only two of these agreements were analysed for this study (AEB and CECA).

promote a working culture based on the efficiency and results of employees, and to avoid presenteeism⁶ and presence at work beyond the established working time. Indeed, although diminishing, unpaid overtime is prevalent in the sector according to trade unions. The need to inform and empower workers on their right to disconnect, including staff with responsibilities over employees, was also a factor behind the inclusion of the right to disconnect in the agreements reached. A more recently signed (January 2021) banking sector collective agreement for 2019–2023 includes provisions on remote working/home-based teleworking.

In the Italian banking sector, the right to disconnect is included in the sectoral collective agreement of 2019 (Article 30), which also includes the possibility of carrying out 10 days of smart working each month (Article 11; see Chapter 1 for more information on the definition and regulation of smart working). Regarding the right to disconnect, the agreement stipulates, among other things, that workers using company equipment must be guaranteed the right to rest/holiday periods and leave entitlements. Outside agreed working hours and in cases of legitimate absence, workers are not required to access and connect to company information systems and may deactivate their own connection devices. Work communication must take place exclusively through company devices and channels, except in the case of temporary or exceptional needs. Albeit applicable to the case study in question, as will be discussed below, the company-level agreement for UniCredit in Italy extends the right to disconnect beyond smart workers.

Motivations for negotiating the right to disconnect at company level

While legislation, sectoral collective agreements and the policy debate provided a framework for the negotiation and adoption of the company-level texts incorporating the right to disconnect, the precise motivations around the content of these agreements were more focused on the perceived challenges to be tackled and the goals to be achieved in each organisation. Although there are clear overlaps between the stated issues that the texts studied sought to address, there are also some variations in emphasis. The key motivations identified can be summarised as:

- the desire to utilise the opportunities provided by mobile digital tools to work more flexibly while at the same time ensuring that this does not lead to an expectation of constant connection, with its associated negative implications for well-being and work–life balance

- the desire to demonstrate corporate social responsibility to customers and clients and ‘lead by example’
- the desire to be perceived as a ‘good employer’ and thus attract the best and broadest talent base

Balancing the opportunities and potential downsides of workplace digitalisation

The desire to make use of the opportunities offered by increasing digitalisation, including the potential for remote and flexible working and the associated benefits, while also addressing any challenges related to disconnection, was at the heart of the goals of the agreements negotiated at BMW, Evonik, UniCredit, Santander and Telefónica.

BMW had been championing the extension of mobile working since the early 1990s. In a country with a culture of work that is sometimes perceived as being rather traditional in terms of its presence-based management style, the company’s recognition that allowing flexible working can drive improved employee engagement, job satisfaction and productivity – and therefore ultimately efficiency and profitability – could be perceived as being ahead of its time. In the early 1990s, BMW was one of the first companies in Germany to emphasise the benefits of flexible and remote working, with both trade unions and employers favouring this approach, culminating in an agreement on telework. In 2013, it became evident to both sides that this agreement needed to be updated in the context of the evolution and increasing use of mobile digital devices. The use of smartphones, in particular, was perceived to pose issues related to availability and the ability to disconnect. These issues, as well as the need to ensure sufficient time for rest, were therefore taken into consideration as part of the company-level agreement. A pilot project was initially undertaken to test the feasibility of the approach to mobile working and, in 2014, a company collective agreement covering BMW’s workforce in Germany was negotiated. The purpose of the agreement was to provide greater flexibility on the place and time of work to enhance work–life balance while at the same time enabling international collaboration across borders and time zones.

From the perspective of management, the agreement was not driven by any company internal evidence that employees subject to teleworking and remote working arrangements worked longer hours. On the contrary, they observed that such workers recorded less overtime. During mobile work, employees recorded the total number of hours worked, being flexible in

⁶ Presenteeism is the phenomenon of workers being at work but, because of illness or other medical conditions, not able to function fully.

distributing this volume across the working day. The basic principle underpinning the agreement was to provide for individual and team-based solutions that would allow managers and employees to define their own individual periods of availability and non-availability, respecting the requirements of specific teams. The ambition was to achieve an agreement that would be applicable for the foreseeable future without the need for continual updating, as well as supporting honest behaviour in terms of recording of working hours, including any overtime. The right to disconnect and the need to provide for flexible hours to meet the wishes of employees to better reconcile work and private life were seen as critical areas for negotiation. This also built on the experiences of teleworking in the company to date.

Similarly, at Evonik, the company-level agreement was concluded in the context of promoting flexible working and home-based teleworking in the company. Both management and the works council saw the need to establish a framework regulating such work. This included availability requirements and employees' entitlement to disconnection in order to avoid more flexible arrangements in working hours going hand in hand with expectations around continuous availability, particularly in a company increasingly operating at a global level. Thus, both sides were motivated by company internal developments to introduce rules regulating availability after normal working hours and to address the negative effects of constant connection when using digital devices such as smartphones or laptops. This included the desire to reduce negative effects on the work-life balance and health of employees, and making employees and managers more conscious of how to handle new mobile devices at work.

Santander initiated a worldwide flexiworking policy in 2015 to allow the working day to be organised more flexibly and thus attract a more diverse workforce. Another goal was to move from a culture based on presenteeism to one emphasising results-oriented management. Concerns about any associated overconnection and its impact on workers' health and work-life balance further motivated the inclusion of a right to disconnect in a subsequent agreement on the alignment of labour conditions in the flexiworking policy, which followed Santander's takeover of two other banks in 2018 (Banco Popular and Banco Pastor). According to the trade unions, since the 2007–2008 financial crisis, and especially in recent times, high workload, stress and the performance of overtime have been common, in part because of the demanding objectives set for the whole bank and in part because of the reduced workforce following the merger with the two other banks and subsequent redundancies (there have been 5,000 redundancies since 2018 and a further 3,500 job cuts are expected to take place in 2021; *El País*, 2019; Banco de Santander, 2021).

At Total in France and UniCredit in Italy, the desire to combine the benefits of digitalisation with prevention of any potential associated risks was behind the negotiations on the issue. At Total, this was further triggered by the introduction of the El Khomri law. The need to implement national legislation also provided an important incentive for the introduction of the right to disconnect in sectoral collective agreements in the banking sector in Spain.

Corporate social responsibility and being perceived as a good employer

Like Santander, Telefónica started to promote remote working and teleworking in 2015 and, by 2019, 15% of staff were working on specific teleworking contracts. The decision to negotiate an agreement on the right to disconnect arose from concerns about overconnection, facilitated by digitalisation and globalisation, and its potential negative impacts on well-being and work-life balance. It was argued that the challenge was not the reduction of long working hours, which are not considered to be an issue in the company, but the blurring of the boundaries between work and private life. The right to disconnect is also considered to be part of corporate social responsibility.

An emphasis on corporate social responsibility was also important in the inclusion of the right to disconnect in company policies and agreements at Solvay and Groupe JLO.

Solvay's corporate social responsibility strategy puts sustainability at the core of the company's philosophy, which led to the encouragement of teleworking. Even prior to the pandemic, between 20% and 25% of Solvay's managerial staff in Belgium teleworked at least one or two days per week. The increasing use of telework and the greater potential for the blurring of boundaries between work and private life prompted a discussion on the right to disconnect in 2016, with employer and worker representatives at the company keen to express the importance of respect for agreed working hours and free time, both between each working day and during holidays.

At Groupe JLO, the rationale for introducing the right to disconnect went to the heart of the company's ethos as a consultancy firm advising clients on the integration of people with disabilities in the workplace and on ergonomics, training and quality of working life. The company's management therefore considered it important for the company to show that it does what it advises others to do in relation to responsible human resource management and improving 'quality of life at work'. Through leading by example, the goal was also to inform clients and legitimise the advice given, and demonstrate how the advice could be followed. It was therefore felt to be important to test an approach to implementing the right to disconnect internally before

advising clients on this issue (including in the context of discussions on future legislation on the issue, being debated at the time in France). The company's staff are mainly consultants who work with clients at their premises to provide advice and guidance. Prior to the introduction of the right to disconnect in 2015, it was common practice for consultants to check their emails on returning home after work. This often led to staff working longer hours in the evenings. While employees did not raise this as a specific issue because of their strong commitment to the work and ethos of the enterprise, management were keen to be proactive and felt that it was important to make staff, clients and suppliers aware of the need to disconnect, to remedy this situation. As improving the quality of working life is its core business, managers were aware of numerous studies showing that continuous connection contributes to a deterioration in physical and mental health and they were keen to avoid such negative effects. Remote working practices made it more challenging to measure how long consultants were working after returning from assignments and the company's approach to the right to disconnect therefore also aimed to address this 'grey area'.

Demonstrating credentials as a good-quality employer and respecting agreed working hours and employees' work-life balance were important factors leading to negotiation of the agreement at Enel.

Negotiating the right to disconnect

A closer look at negotiating processes surrounding the texts incorporating the right to disconnect at sectoral and company levels provides an insight into the issues prioritised by management and employees during such discussions, the extent to which there was agreement or disagreement on the approach to be adopted and any compromises made.

For 8 out of the 12 agreements studied, employer and employee representatives considered that negotiations had proceeded smoothly, with a high level of agreement between the two parties. In four cases, negotiations were more difficult, with points of contention revolving around trade union requests for:

- a separate, specific agreement on the right to disconnect and stricter measures regarding the operationalisation of the right (Total)
- an obligation (rather than simply a right) to disconnect (banking sector, Spain)
- stricter provisions to guarantee the right to disconnect and ensure the monitoring of working time (Santander)

The company policy at Groupe JLO is the only text studied that is not based on a social partner agreement. However, the approach was discussed with the company works council prior to its adoption. During the negotiations at BMW, Enel, Evonik and Volkswagen and in the German insurance sector, both sides were generally in agreement on the approach to be taken and the general goals, content and operationalisation and monitoring of the text adopted.

Employer and employee representatives at Solvay agreed to implement a charter on guiding principles on employee work-life balance, rather than negotiating a specific agreement on the right to disconnect. While employee representatives consider that issues of stress and burnout remain significant, they support the approach taken in the charter and accompanying measures and acknowledge that the company is seeking to address these issues. At UniCredit, the process of defining the European works council (EWC) joint declarations has historically always taken place in a constructive atmosphere. Implementation and operation at national level are now taking place on the basis of local regulations, with specific emphasis placed by trade unions on the need for appropriate monitoring arrangements.⁷

In the case of the Spanish banking sector agreement and the agreement at Santander, trade unions were initially keen for the right to disconnect to be an obligation for all. Negotiations on the banking sector collective agreements for the banking and savings banks subsectors in Spain proved challenging, not specifically because of the right to disconnect but because of the deteriorating environment in the sector since the 2007–2008 financial crisis, which led to significant restructuring and job losses. In the negotiation process, trade unions expressed a desire for the right to disconnect to be an obligation rather than a right. Frictions emerged particularly on the issue of the obligation to record working time, as regulated in Royal Decree-Law 8/2019. Trade unions were keen for the recording of working hours to be automatic while employees are logged in, rather than employees having to actively register start and finish times. This latter option, which was eventually adopted, was considered to place pressure on employees, as overtime work must be authorised by a superior. According to the trade unions, this could mean that employees might work longer hours without authorisation to reach objectives and not be compensated for these additional hours. In the context of restructuring and job losses, trade unions believed that situations in which the objectives set resulted in workloads that were difficult to achieve within the agreed working time would become

7 In particular, concerns relate to the joint declaration on remote work, signed in 2020.

increasingly common, making it more challenging for workers to disconnect. Another contentious element related to the recording of working hours while travelling on business, with such hours usually not recorded because of an emphasis on reducing overtime hours. Disagreements on the recording of working time led to one of the sectoral trade unions (General Confederation of Labour – Confederación General del Trabajo) refusing to sign the sectoral collective agreement. The issue of the recording of working hours also proved challenging in the negotiations involving the right to disconnect at Santander.

Similarly, at Total, the French trade union CGT (General Confederation of Labour – Confédération Générale du Travail) did not sign the company-level agreement because of an issue regarding the monitoring of working hours. The use of specific applications for this purpose, which could be combined with monitoring of the right to disconnect, was rejected by management, as this was considered to amount to a form of employee surveillance, which they were keen to avoid. The tool was also considered to be unsuitable for workers in occupations not using digital devices such as laptops. Some trade unions agreed with management that using the switching on and off of computers as a way of measuring connection time would not be realistic and would reduce flexibility in terms of taking breaks during the working day (when equipment would not necessarily be turned off). A ‘softer’ approach to the right to disconnect and the use of employee surveys for monitoring purposes were therefore ultimately preferred. The signatory trade unions represent 75–80% of the employees who are eligible to be party to the agreement (the employees of Total’s core enterprises, the *socle social commun* or ‘common social base’). Other issues of contention also emerged in the negotiating process at Total. As set out in the French legislation, management initially wanted to include the

right to disconnect under the gender equality agreement. However, the trade unions favoured a specific agreement on the issue and after several months of negotiations succeeded in this demand. With regard to employees, while the company was keen for the agreement to set out the basic principles, the Autonomous Confederation of Labour (CAT), in particular, was keen to go further, proposing a number of measures which were not included in the final agreement. These measures are the following:

- Similar to warnings included on harmful tobacco products, each software product used would display a prominent statement such as, ‘The abuse of digital tools is harmful to health and efficiency. To be used in moderation.’
- When used outside conventional working hours, the software would remind users of conventional working hours and that they do not have to work outside these hours. The reminder could be displayed on the screen, requiring validation to be cleared.
- The messaging system would be configured so that emails sent outside conventional working hours would be sent at the start of the next working day. An immediate dispatch procedure would be possible in an emergency.

The above demonstrates that, in the majority of cases, either there was agreement from the outset on a ‘soft’ approach to the implementation of the right to disconnect or initial concerns around such an approach on the part of some trade unions and worker representatives were eventually overcome as a result of high-level commitments to operationalise the right to disconnect through a range of jointly agreed actions and monitoring processes. The implementation and operationalisation of the right to disconnect are discussed in the following chapter.

CHAPTER 2 – SUMMARY

The following evidence was obtained from the 12 case studies.

- The legislative and collective bargaining context has an important role to play in shaping the scale, scope and content of company-level texts incorporating the right to disconnect, with legislation and sectoral collective agreements stimulating social partner negotiations at company level.
- Motivations to address the right to disconnect at company level include the desire to utilise the positive opportunities provided by ICT-based mobile tools to work more flexibly while at the same time guarding against potential negative effects of overconnection; the desire to demonstrate corporate social responsibility; and the desire to present a ‘good employer’ profile.
- While in many cases there was agreement between employers and worker representatives and trade unions from the outset that the implementation of the right to disconnect should focus on awareness raising, training and the management of out-of-hours communication, in other cases trade unions initially favoured ‘harder’ approaches.

3 Content of sectoral- and company-level texts

This chapter looks at the content of texts incorporating the right to disconnect at sectoral and company levels, examining their nature, focus, scope, coverage and signatories, the modalities of connection and disconnection, and the specific actions adopted in operationalising the right.

Nature, focus, scope and signatories involved

In terms of the nature of the texts analysed, two are sectoral collective agreements,⁸ six take the form of company-level agreements negotiated between representative trade unions or works councils and management, one is a jointly adopted company policy (present in a company which also has an agreement), one is a joint statement, one is a jointly agreed company-level charter, two are declarations (applicable in the same company) and one is a unilateral company policy. As a result, the status of these agreements differs. For example, the joint declarations reached with the EWC at UniCredit have to be incorporated at national level in each country where the group is present in order to become fully operational.

The main focus of the texts also differs to some extent. Although the goals tend to be broader than the explicit focus, this can have an impact on the nature of the actions taken in operationalising the right to disconnect. Seven of the 12 texts studied primarily address the impact of digitalisation and the enhanced opportunities for flexible, mobile and remote working, while acknowledging the potential risks associated with greater digital connectedness. Three agreements are aimed specifically at ensuring the right to disconnect, one focuses on the monitoring of working time and two have a primary emphasis on maintaining a healthy work–life balance.

Another difference relates to the signatories to the texts. As mentioned above, one of the texts is a unilateral company policy, although this policy (at Groupe JLO) was discussed with employee representatives prior to being adopted by management. In the other cases, the

nature of the signatory parties is largely shaped by national industrial relations traditions, with works councils playing a key role in Germany and representative trade unions at company level making up the signatories to agreements in France, Italy and Spain. Exceptions are UniCredit and Solvay, where agreements were signed with the EWC and global works council, respectively, and therefore have a European-wide or global scope. As mentioned above, in these cases, such texts have to be implemented at national level through agreements between trade unions and management. All the other texts discussed have a purely national scope.⁹

Coverage

Partly because of the focus of many of the agreements, their coverage is often limited to workers with flexible/mobile/remote and/or teleworking arrangements working with (employer-issued) digital devices. In this context, it is important to bear in mind that the language and definitions of terms used can vary from country to country and between agreements, which can also reflect the national definitions in the respective regulatory frameworks. For example, the sectoral collective agreement in the German insurance sector specifically refers to ‘mobile working’ rather than teleworking or home-based working, to indicate that its provisions cover not just home-based teleworkers but also employees who share their working time between the office and other locations (including the home office). In Italy, as indicated above, the term ‘smart work’ refers to a specific type of arrangement that combines workplace working with home-based working. However, during the pandemic, when home-based teleworking increasingly became the norm for employees at Enel (whose agreement focuses on smart workers), its provisions were extended to apply to workers (temporarily) no longer working from the workplace. As mentioned above, unlike the Italian banking sector collective agreement, which includes the right to disconnect for smart workers, the Italian implementation of the UniCredit EWC declaration applies to all remote workers.

8 This does not take account of the fact that two separate collective agreements are in place for banking and the savings banks subsectors in Spain (see Table 4).

9 Although the agreement at BMW does not apply to workers outside Germany, the principle has been built into an international company policy on mobile working that applies at all BMW Group locations worldwide.

The changing nature of working arrangements, including considerations of hybrid working post pandemic, plays a role in some cases. Santander excludes a considerable number of branch-based workers from its flexiworking policy, which does not appear to be a significant issue in terms of connectedness at present as such workers do not tend to be issued with company digital devices and are not expected to be contactable outside branch working hours. However, this situation may change in the future, as more and more tasks are able to be performed remotely, meaning that such exclusions may need to be reconsidered.

Particularly in manufacturing companies, the application of the texts analysed (and therefore the right to disconnect) often remains limited to office-based workers (who tend to have tasks that can be performed remotely), thus restricting coverage to different shares of the workforce depending on the sector. Office

workers who are able to work remotely using digital devices are considered to make up no more than 10–15% of the national workforce at Solvay, around 30% at Evonik, 40% at Total and 70% at BMW outside direct production. However, some companies additionally exclude specific groups of workers who are, in principle, able to carry out their work remotely. The agreement at Volkswagen explicitly excludes managers and high-level technical experts (20% of the workforce). At Telefónica, the texts adopted exclude ‘essential’ workers (repair and maintenance staff); these workers have specific contracts that make provisions for on-call arrangements, which have different pay arrangements. Only Groupe JLO covers all workers in its agreements. This is largely because the vast majority of its consultants work remotely at clients’ premises and the remaining office-based workers are also able to carry out their tasks from home or on a remote base.

Table 4 provides a summary of the different aspects of the texts analysed.

Table 4: Dates, titles, nature, signatories, scope and coverage of the texts analysed

Company name	Date, title/nature of text	Signatories	Scope	Workers covered
Company-level agreements				
Banco Santander	2018: Agreement on alignment of working conditions with annexed ‘criteria for a rational organisation of working time’	Banco Santander management and the trade unions CCOO, Independent Federation of Credit Workers (FITC), Santander Workers’ Trade Union (STS), Workers’ Trade Union for the Popular Bank Group (SEGRUPO) and AMYC	National (with certain aspects having global coverage)	All workers
BMW	2014: Company-level agreement on mobile working	Management and works council	National (Germany), but the flexible working policy also applies globally	Workers whose tasks allow remote working using digital devices (estimated current usage: approx. 70% of the workforce outside direct production)
Enel	2017: Company agreement on smart working	Management and the trade unions Federation of Italian Electricity Company Workers (FLAEI), Italian Federation of Chemical, Textile, Energy and Manufacturing Workers (FILCTEM) and Italian Union of Textile, Energy and Chemical Workers (UILTEC)	National (Italy)	All ‘smart workers’ (during the pandemic, emergency smart working applied to around 17,000 workers)
Evonik	2013: Company-level agreement regulating remote work/telework/mobile work	Management and works council	National (Germany)	Remote workers using digital devices (around 30% of the company’s workforce)
Groupe JLO	2015: Company policy on right to disconnect	Unilateral management policy (discussed with the works council)	National (France)	All workers and managers
Solvay	2017: Charter on guiding principles on employee work–life balance (agreement on digitalisation)	Solvay Global Forum	Global	Only considered relevant for around 10–15% of employees; mainly working in the company’s headquarters and business support services

Company name	Date, title/nature of text	Signatories	Scope	Workers covered
Company-level agreements				
Telefónica	2018: Joint statement pertaining to the right to disconnect of employees 2019: Internal policy regulating the right to disconnect 2019: Guidelines for recording working time	Management and the trade unions CCOO and UGT	National (Spain). In 2019, the right to disconnect was also included as an annex to the international framework agreement negotiated by the company and its unions with UNI Global Union	All workers with the exception of those with special availability requirements because of the 'essential' nature of their work (for example, maintenance and repair workers, who have special on-call clauses in their contracts)
Total	2019: Company-level agreement regulating the nature and implementation of the right to disconnect	Management and CAT, the French Democratic Confederation of Labour (CFDT), the French Confederation of Management – General Confederation of Executives (CFC-CGC) and Union of Engineers, Managers, Technicians, Supervisors and Employees of the TOTAL Group (SICTAME-UNSA) (CGT did not sign the agreement)	National (France); only employees of the 'common social base' (<i>socle social commun</i>), made up of 17 companies forming the 'heart' of Total (15,000 out of a total of 35,000 employees)	15,000 out of 35,000 employees in France
UniCredit	2017: The UniCredit S.p.A and European works council declaration on work-life balance (2017, formally adopted in Italy in 2018) 2020: The UniCredit S.p.A and European works council declaration on remote work 2020	Management and EWC	Europe-wide but must be implemented at national level	All workers working remotely (not only smart workers)
Volkswagen	2011: Company-level agreement – 'regulation on the use of smart phones'	Management and works council	National (Germany)	All workers except managers and high-level technical specialists (80% of the workforce)
Sectoral-level collective agreements				
Banking sector (Spain)	2019: Banking sector partial sectoral collective agreement on the recording of working time	Spanish Bank Association (AEB) and the trade unions CCOO, UGT and FINE (Strength, Independence and Employment Federation)	National (Spain)	All workers
	2019: Savings banks sector partial sectoral collective agreement on the recording of working time	CECA and the trade unions CCOO, UGT and FINE		
Insurance sector (Germany)	2019: Sectoral collective agreement on mobile working	AGV-Vers and trade union ver.di	National (Germany)	All workers able to work remotely using digital devices

Note: The 2019 documents from Telefónica were included as annexes to Telefónica's II Collective Agreement for 2019–2021. This agreement also includes an annex containing the Agreement on Telework and Flexiwork.

Source: Author, based on case study reports (Eurofound, 2021b)

The above description makes it clear that sectoral- and company-level texts containing the right to disconnect vary in terms of (legal) status and therefore enforceability and applicable sanctions. Similarly, there are differences in coverage. While the exclusion of workers with tasks that cannot be performed remotely using digital tools appears self-evident, the tasks that can be performed in this way may change in the future

and this may require amendments to existing policies. Specific attention also needs to be paid to the precise definitions of remote workers, teleworkers and smart workers to ascertain whether existing arrangements exclude office-based workers, who may well be reachable and perform tasks in their free time using digital devices, and/or they cover workers subject to partial telework/remote work arrangements only on the

days they are working remotely or from home. Furthermore, questions may be raised as to the impact of the exclusion of managers or technical specialists from the right to disconnect, not only for the well-being and work–life balance of such workers themselves, but also for the broader company culture.

Modalities of connection and disconnection

Two basic approaches are available to govern modalities of connection and disconnection and therefore the operationalisation of the right to disconnect: ‘hard’ and ‘soft’ approaches. Figure 7 summarises the key elements of both approaches. This provides a stylised description of the main actions used and does not mean that aspects such as awareness raising and training are not also part of the approach in companies implementing ‘hard’ disconnection approaches.

The main difference between the two approaches is that a hard disconnection takes the decision on whether or not to reply to a message out of the hands of employees. This addresses the concern that, because of unequal power in the employment relationship, a worker may feel the need to respond to communications despite a right to disconnect being in place, either because the company or managerial culture rewards overconnection or because of the worker’s own desire to perform work, including to demonstrate ‘commitment’.

A number of potential disadvantages can arise from the hard approach. In a globalised company or working environment, time-bound hard disconnection can make it more difficult to work across time zones. At Volkswagen, this has been addressed through a request system, whereby individuals permanently or temporarily working in global teams and requiring ‘out-of-hours’ connection can request to be exempt from the hard disconnection regime. Such requests must be approved by the works council. The approach also limits flexibility, as employers are not able to ask workers to be reachable and to perform tasks outside the stipulated connection corridor. Another disadvantage can arise for workers who wish to have the flexibility to organise their working time, for example taking time off during the day for other responsibilities and returning to work in the evening.

Table 5 outlines the key features and modalities of connection and disconnection in the case study companies and sectors – with sectoral agreements usually setting a framework for more detailed implementation at company level. In order to maintain a greater level of flexibility for both employers and employees, in all but two of the agreements studied a soft approach to disconnection was taken. Volkswagen is the only company that has maintained a general approach that relies on a hard disconnection between mail and message servers and employee smartphones; this has been the case since its agreement was first implemented in 2011.

Figure 7: Key elements of hard and soft approaches to disconnection

‘Hard’ approach Right to be disconnected	‘Soft’ approach Right to disconnect
<ul style="list-style-type: none"> • Obligation to disconnect • Connectivity shutdown between servers and digital mobile devices at predefined hours • Blocking of email delivery at specific times • Automatic deletion of emails received during holidays/at other predefined times • Exceptions for specific situations only 	<ul style="list-style-type: none"> • Disconnection remains the responsibility of employee • Policies include the right not to respond to messages outside agreed working hours without suffering negative consequences • Awareness raising of the importance of rest time/negative effects of constant connection on health and work–life balance • Training for employees and managers, including on the responsible use of email and organisation of work processes • Managers leading by example • Messages accompanied by reminders that communications need not be answered • Complaints procedure relating to breaches of the right to disconnect • Agreement of hours of availability/non-availability and specification of time of disconnection (e.g. public holidays, annual holiday) • Procedures for monitoring connection

Source: Author’s own illustration

Table 5: Modalities and key features of connection and disconnection

Company	Hard or soft approach	Key features
Company-level agreements		
Banco Santander	Soft	An emphasis is placed on the avoidance of overtime unless strictly necessary and justified. Working time should be organised rationally. Recommendations are provided on the responsible use of email. Employees have the right not to respond to messages outside their working hours.
BMW	Soft	All workers whose tasks allow flexible working using digital devices are entitled to do so. Working hours must be agreed with managers, with usual team working hours used as a reference point for availability. Precise arrangements for availability/non-availability must be discussed with managers. No employee needs to be available outside the agreed working time. Expected reaction times must be appropriate and proportionate.
Enel	Soft	The responsible use of email and compliance with working hours and daily, weekly and annual rest periods are encouraged. There is an emphasis on awareness raising.
Evonik	Soft	Employees can request flexible working by consulting with their line manager. Agreed working hours form the hours of availability/non-availability; account should be taken of the team's working hours and the company's 'working time corridor' (07:00–20:00).
Groupe JLO	Initially hard shutdown (2015–2019), subsequent move to softer approach	Between 2015 and 2019, the company implemented a server shutdown between 20:00 and 07:00, stopping email delivery; since 2019, the company has provided recommendations on disconnection and regular information and raised awareness of the importance of disconnection.
Solvay	Soft	Emphasis is placed on the responsible use of email and not expecting responses outside working hours and during holidays. The focus is on training and employees' own responsibility for disconnection.
Telefónica	Soft	The agreement includes a right not to reply to communications outside working hours and during holidays.
Total	Soft	The emphasis is on awareness raising, training and regular bipartite assessment of implementation.
UniCredit	Soft	The emphasis is on the responsible use of digital devices and respect for working hours and rest periods.
Volkswagen	Hard	Connection between the server and smartphones is disabled between 18:15 and 07:00. Workers can use the phone function but cannot receive emails, text messages or video calls. Exceptions can be made for specific projects, but this needs the prior agreement of the works council.
Sectoral-level collective agreements		
Banking sector (Spain)	Soft	There is a requirement for the compulsory registration of working time by employees. Each company has to decide how to treat registered overtime or undertime. Employees have the right not to respond to communications outside working hours.
Insurance sector (Germany)	Soft	Autonomous and flexible working is possible while respecting legislation and collectively agreed and company-level frameworks on working hours. The assigned workload must make this possible. Detailed guidance is available on how to implement modalities of connection and disconnection at company level.

Source: Author, based on case study reports (Eurofound, 2021b)

While Groupe JLO also initially implemented a hard disconnection, a softer approach has since been adopted, partly as a result of technical issues following a move to a new server provider and partly at the request of employees keen to have more flexibility in structuring their working hours.

In one of the companies interviewed, unions and management held different views on the role of (existing) IT shutdowns in relation to the right to disconnect. For the former, IT shutdowns were a tool that could be used to implement the right to disconnect, whereas for the latter they were not. This highlights that IT shutdowns may be a conflictual point of negotiation/discussion within the debate on the right to disconnect.

As indicated in Chapter 2 (see ‘Negotiating the right to disconnect’, p.27), a harder approach to disconnection, similar to an ‘obligation to disconnect’, was discussed by a few of the companies at the request of the trade unions but was ultimately rejected. In a 2019 newspaper interview, an employer representative at Solvay stated their opposition to any form of constraint in the establishment of a right to disconnect, whether from management or from government.

I don't believe in coercive measures, it's very simplistic. We are already working at the international level so with the time differences, it's complicated. But on top of that, it's very paternalistic. You are not able to manage on your own so we will do it for you. And thirdly, for a lot of people, especially in the younger generation, that's not necessarily what they want. They want a balanced distribution between work and private life, but not necessarily the same for everyone.

(Le Soir, 2019)

Instead, the Solvay Charter insists on the proper use of electronic messaging and places the emphasis on the individual responsibility of employees to not let themselves be overwhelmed by the impersonal nature of the messaging system, but instead to set themselves specific time slots to respond. It is argued that this will lead to not only greater efficiency at work, but also a healthier work–life balance. According to management representatives, ‘we consider our employees as adults, responsible for managing their own work’. Emphasis is placed on managers leading by example, ensuring the optimisation of meetings and good use of electronic communication. In terms of management behaviour, the charter states: ‘Do not expect people to respond in

their leisure time, on public holidays or during vacations. In the event of a crisis or emergency, use the telephone’.

Similarly, management at Total rejected an approach to disconnection using technical tools, which was particularly favoured by one of the company’s trade unions, preferring an approach that emphasises awareness raising, training and communication activities (Box 4).

Many of the planned communication activities were due to start in 2020. However, because of the COVID-19 crisis, other topics were prioritised in discussions between trade unions and management, delaying further progress in the implementation of communication and monitoring activities regarding the right to disconnect.

One of the main concerns raised in relation to soft approaches to disconnection relates to the fact that the decision on whether or not to disconnect essentially remains with employees. As mentioned above, this may still leave workers with the perception that they need to respond to communications, despite a right to disconnect being in place, particularly where managerial culture rewards constant availability or this is seen by employees as a way to demonstrate ‘commitment’.

The actions taken to operationalise a right to disconnect (rather than a right to be disconnected), the allocation of individual responsibilities and the ‘tone’ adopted by an agreement regarding the underlying reasons for overconnection can therefore play important roles in ensuring a ‘no blame culture’ and that workers feel enabled to disconnect without fear of suffering negative repercussions.

Box 4: Total’s approach to disconnection in its company-level agreement

The agreement, which was signed in October 2019, sets out a number of steps and actions towards implementation to be developed jointly by management and trade unions, including:

- development of a communication plan for awareness raising
- creation of a dedicated page on the right to disconnect on the company intranet
- awareness raising and training modules for managers and employees on the role of digital tools (risks of addiction, inappropriate use)
- creation of a process for raising complaints if the right to disconnect is not respected, through a line manager, a member of the human resources team (*développeur de talent*), a staff member responsible for psychosocial risks, an occupational therapist or an employee representative (member of the works council or trade union)
- establishment of personalised support from an occupational health physician for employees identified as suffering from addiction to digital tools
- preparation of an annual assessment report and the preparation of an anonymous employee survey
- preparation of a guide that includes good practices on the right to disconnect implemented in the company

Albeit accorded different levels of importance in sectoral- and company-level agreements, the following elements generally form part of the measures at the core of the operationalisation of a soft right to disconnect in practice:

- awareness raising and training
- agreement on hours of connection/disconnection (availability/non-availability)
- management of out-of-hours communications
- addressing other factors that impact on the ability to disconnect:
 - improvement of work processes during working hours
 - ensuring that the workload is commensurate with working hours

Another important element relates to the monitoring of implementation, which is discussed in Chapter 4.

Awareness raising and training

There was agreement among respondents in the case study companies that one of the main challenges in the implementation of the right to disconnect revolves

around generating awareness of the right and the negative effects of constant connection and securing buy-in from both managers and workers. This enables a company culture to be created in which employees can feel safe in the knowledge that disconnecting will not have any adverse effects on their performance assessment or career progression. As a result, awareness raising, training and regular reiteration of the right to disconnect, including from the very highest levels of management, are considered to be very important.

Most texts therefore emphasise the importance of awareness raising and training among both workers and managers, with some providing for separate and specific training for managers, including on the challenges of managing a remote workforce. While awareness raising tends to be aimed at everyone in the company, training is often limited to managers and workers using remote working arrangements (and therefore explicitly covered by the right to disconnect).

However, BMW has taken a different approach, as described in Box 5.

Box 5: BMW's 'mobile working driving licence' puts the accent on training

BMW has developed a 'mobile working driving licence' that involves all employees receiving training on the skills required for teleworking, how to set a framework for availability and non-availability in consultation with their team manager and how to apply this in practice. Workers are given guidance on how to use devices such as smartphones responsibly to ensure that constant connection does not become detrimental to their health and work-life balance. The training is focused on strengthening self-awareness and responsibility among employees and managers to ensure that the rules pertaining to mobile working are followed (including those linked to availability/non-availability). In addition, all managers receive special training on how leadership and management interact with mobile working. The training contains a module aimed at understanding and supporting the implementation of the right to disconnect for remote workers.

At Evonik, the main challenge in the implementation of the agreement when it was first adopted was to raise awareness and understanding of what the agreement meant in practice, for both managers and employees. A proactive approach was taken, starting with senior managers communicating information to their respective teams to ensure that they shared the same understanding of how to ensure availability and non-availability outside the main working hours.

External trainers with a focus on quality of life and work were used at Solvay to inform and remind managers about the importance of disconnection and the role played by the clear allocation of tasks and responsibilities in ensuring that overconnection does not become an issue. As part of the company's broader well-being at work programmes, Solvay has operated a 'burnout observatory' since 2016 (Box 6).

Box 6: Solvay's burnout observatory focuses on identifying risk factors

The observatory focuses on prevention and is based on the belief that it is today's hectic pace of life that contributes to burnout, rather than the workplace alone. The observatory operates through a 'vigilance network' of volunteers across the company (not just managers) who have been trained to recognise the signs of burnout. The observatory also operates a support hotline that includes support from a counsellor. A self-evaluation questionnaire is also available. Thresholds have been set for responses to the questionnaire, with a score above a certain threshold indicating that there may be a problem or risk of burnout. The well-being at work programme has seen 70 senior leaders (members of the executive committee and leadership council) and 898 managers trained in 2019 alone. Issues around mental health (including information gathered from the burnout observatory) are regularly reported to the executive committee. At local level, a well-being at work support network is in place. Employee representatives at Solvay emphasise that training managers is key to the implementation of the right to disconnect. As well as leading by example, they need to be able to identify when their employees are struggling.

In order to raise awareness of the right to disconnect, the agreement at Total provides for the creation of a dedicated space on the issue on the company intranet and the delivery of training for managers and employees on the use of digital tools and associated risks (risk of addiction, inappropriate use, and so on). As mentioned above, the onset of the COVID-19 pandemic has delayed the implementation of some of these measures.

In contrast, the pandemic, and the more wholesale move to remote working as a result, has led management to implement an accelerated awareness-raising campaign on the importance of responsible behaviour in the use of corporate digital tools and the need for compliance with daily, weekly and annual rest periods in order to ensure a good work-life balance. Short online courses have been made available that focus on good practice when working from home, including the importance of the responsible use of digital devices and switching off, but also on working in remote teams, trust-based working and suggestions for physical and recreational activities.

Awareness raising and training on the responsible use of digital tools, in particular among line managers, is also part of the internal policy on the right to disconnect at UniCredit. At Santander, in addition to the initial awareness-raising activities, frequent emails are sent to employees worldwide, stressing the link between flexible working and the need for digital disconnection, in order to restate the message on a regular basis.

Following the adoption of a softer approach to disconnection at Groupe JLO, having previously taken a harder approach that involved shutting down the server, since 2019 the right to disconnect has been implemented by providing continuous information and guidance to both clients and staff. It is perceived that, for long-standing members of staff and clients, the years of using the hard approach have created a culture where constant connection is no longer expected;

induction sessions are used to explain the approach to new employees. The experiences of the case study companies highlight the importance of awareness raising and training, not just at the outset but also on a regular basis, to embed disconnection practices in company culture over time, and particularly in the context of staff turnover among workers and managerial staff. Specific training for leaders in managing a remote workforce and recognising signs of overconnection and its negative impacts has also been emphasised. Training programmes also recognise that workers need to learn how to use workplace digital tools responsibly and how to recognise the risks of constant connection for themselves. As will be discussed in more detail below, protecting workers who exercise the right to disconnect and implementing a 'no blame culture', combined with work practices and work allocation that enable disconnection, are critical to ensure that the right to disconnect becomes a reality. In doing so, agreements on working hours (and work tasks) form a crucial element of workplace practices that seek to maximise the benefits of temporal and spatial flexibility for both employers and workers without contributing to a risk of constant connection.

Agreements on working hours and connection/availability and disconnection/non-availability

The greater flexibility offered by telework and ICT-based mobile work in terms of when and where work is performed provides many advantages for employers and workers. However, tensions can arise between the requirements of businesses and the aspirations of workers for greater flexibility. To achieve the best possible solution for both sides while avoiding overconnection, working (unpaid) overtime and the associated negative impacts on health and work-life balance, agreements on and monitoring of working

hours/hours of connection and non-working hours/hours of disconnection and agreements on the treatment and compensation of additional hours performed remotely arguably become even more important. As indicated above, the way in which these issues are addressed is highly dependent on national working time legislation, sectoral- and company-level agreements and individual contracts.

The tensions that arise in seeking to regulate ICT-based flexible working arrangements are evident not only in the policy discussion on the need (or otherwise) for a right to disconnect but also in the treatment of the issue of working time in texts incorporating the right to disconnect at sectoral and company levels. Some texts are keen to emphasise that existing regulations and agreements on working time continue to apply, that workers are therefore not required to respond to any communications outside working hours and that, when work is performed outside working hours, this is counted as working time and compensated in line with existing regulation and agreements. However, other texts more explicitly seek to use company-level provisions to highlight the need for more efficient work practices and aim to safeguard the right to disconnect by limiting access to overtime (by allowing overtime only as part of explicit agreements between individual workers and managers and stipulating specific situations in which such requests can be granted and limits on overtime). There is a clear link between how this is addressed and perceptions about the causes of overconnection, as discussed above.

The two German agreements in place at BMW and Evonik both place a particular emphasis on the responsibility of line or team managers and individual employees in setting the framework for ‘availability’ and ‘non-availability’ when agreeing on flexible and mobile/remote work arrangements. At BMW, when an individual worker discusses their working time pattern and hours of availability with their line manager, the

usual hours of work of the team serve as a reference point for availability. Deviations are possible at the request of the employee, unless the hours requested cannot be accommodated within the team’s working time model. No employee is required to be available outside the agreed hours of availability, unless required by the team’s working time model. Hours of non-availability usually cover evenings and early mornings, and Saturdays, Sundays and public holidays. The agreement clearly states that, whatever working pattern is agreed, the same overall working hours framework remains in place. This is also the case for workers who are based solely on the employer’s premises. Any additional work performed is counted as overtime and compensated in line with existing agreements.

Another aspect regulated in the BMW agreement, which appears to be rather unique, is the ‘appropriate reaction time’. Reaction time refers to the time when employees are available during remote working but can be asked to undertake a task that would affect their hours of non-availability (a hypothetical example being a manager calling a teleworker at 21:00 when they are still available according to their agreed working hours and asking them to undertake a task by the following morning). To prevent this, the agreement sets out that the reaction time expected from a remote worker should be ‘appropriate and proportionate’ to the work organisation. This topic is also covered in training and awareness-raising measures, which provide guidance and advice on how to implement this provision in practice.

A similar approach is used at Evonik, where specific working hours (and therefore hours of availability) are agreed between workers and managers. In addition to taking account of the working time patterns of the respective teams, the company’s ‘working time corridor’ is also considered (Box 7).

Box 7: ‘Email break’ at Evonik supports respect for agreed working hours

In addition to the right not to be available outside agreed working hours, all managers and employees are expected to respect the ‘email break’. This does not amount to a hard shutdown; rather, the company agreement stipulates that emails should not be processed outside the company’s working time corridor (generally between 07:00 and 20:00). In practice, this means that both a right not to be available outside agreed working hours and a requirement not to send or respond to messages outside the company’s working time corridor apply. Thus, although the working time framework can differ from employee to employee, the most frequent disconnection pattern includes the evenings, early mornings and weekends. Compliance monitoring also seeks to ensure that no significant variations appear between line managers, leading to unequal protection (see also Chapter 4).

An overview of company-level agreements in the German insurance sector (information provided by the sector's employer organisation, the Employers' Association of Insurance Companies in Germany (AGV)) shows that such agreements strongly emphasise that

remote working should not go hand in hand with an extension of working hours and that employees are not expected to be contactable outside agreed working hours (Box 8).

Box 8: German insurance sector curtails the 'availability' of mobile workers in company-level agreements

The following are among the elements most frequently found in company-level agreements pertaining to the availability (*Erreichbarkeit*) of mobile workers.

- Employers do not expect workers to be constantly available.
- Mobile working should not lead to an extension of working hours.
- The performance of work outside legislated and collectively agreed working hours (at sectoral and company levels) is not desirable. This also includes responding to electronic and other communications outside working hours and also covers home-based teleworkers.
- For workers who have been issued with a company mobile communication device, there is no expectation to be available outside working hours. Managers are required not to create a climate where such an expectation may arise.
- Employees should agree their hours of availability with their manager in line with business and private requirements and there should be no expectation to be contactable outside these hours.
- Use of company mobile devices is not permitted during holiday/leave periods and sickness.

In terms of practical implementation, a similar approach is taken at Enel in relation to smart workers, although the approach is significantly more regulated and based on written agreements between individuals and the company. The goal of its 2017 agreement was to make smart working possible in organisational units where remote working was deemed feasible. It set out the possibility of voluntary smart working, initially for one day a week. The agreement sought to ensure disconnection outside agreed working hours by stressing that the smart working day equates to the normal working day and highlighting that no overtime is required. Smart working days are scheduled in agreement with management, with advance notice required, consistent with the company's organisational needs – usually on the basis of a monthly schedule and taking account of the specific team's activity and schedules.

Monitoring of working hours and treatment of overtime in the Spanish banking sector

In Spain, the partial collective agreements in the banking and savings banks subsectors on the recording of working time also effectively create a direct link between working hours and the right to disconnect.

The agreements require a system to be set up for all workers to compulsorily register the start and end of every working day using a specific tool or application (higher-level managers are excluded from this obligation). Companies are asked to provide specific guidelines to help workers accurately record their working time. In parallel, measures must be established to guarantee the right to disconnect. The agreement allows individual companies to decide how to treat registered over- (or under)time and determine which cases of overtime should be paid or compensated with rest time.

At company level, the implementation of this aspect has proved to be the most contentious element of agreements on the monitoring of working time in the banking and savings banks subsectors. When overtime has been explicitly authorised, the employee and their manager must agree whether this overtime is paid¹⁰ or compensated with free time. When overtime is not authorised, it is usually registered as 'non-requested and non-authorised working time'. In the case of CaixaBank, for example, in the savings banks subsector, the human resources department checks whether overtime has occurred because of deficient time management or because of work overload. This may lead to discussions between human resources staff,

¹⁰ This occurs only in very exceptional cases and within a limit of 80 hours a year, as set out in Article 35.2 of the Workers' Charter.

employees and their managers to determine whether the registered overtime counts as working time and should be compensated or whether other (organisational) actions should be implemented. In the case of Banco Sabadell, in the banking subsector, occasional overtime (less than a complete working day) can be compensated with time off in lieu of payment: the time off must be taken within a few days of carrying out the overtime; compensation for authorised overtime must be agreed by employees and managers; and compensated rest time must be taken within a period of no more than four months. As mentioned above, discussions between human resources staff, workers and their superiors about overtime are heavily governed by the banks' objectives, which are fixed at the highest level, which puts pressure on the whole staff structure (employees and line and middle- and higher-level managers). These discussions may also be governed by the – at least theoretically – exceptional nature of overtime.

At Santander, the right to disconnect is included in the 'criteria for a rational organisation of working time' that are annexed to the agreement on the alignment of working conditions, which was negotiated following the takeover by Santander of two other banks. Among other things, the text guarantees that the agreed annual number of working hours will be respected and that longer working hours or overtime can be avoided unless strictly necessary and justified by the workload and deadlines that cannot be postponed. This is linked to the promotion of a 'a new culture based more on the achievement of goals, results, improvement of productivity and clients' satisfaction than on presenteeism, while complying with the agreed annual number of hours. This involves the promotion of autonomy, responsibility, flexibility and self-organisation as values that contribute to the achievement of the above goals.'

Occasional overtime (carried out in the workplace or at home) may be compensated with time off within one month, in agreement with the manager and subject to the bank's activity needs; authorised extra hours can be compensated with time off within four months. While paid overtime is limited to 80 hours per year, there is no limit to the number of overtime hours that can be compensated with time off. All employees, regardless of their workplace, are obliged to record the beginning and end of every working day. Thus, following Royal Decree-Law 8/2020 of 17 March 2020, a guide for managers on the recording of working time has been prepared to inform Spanish managers about the obligation on all employees to record their working

time. A corporate platform 'My working day' (*Mi jornada*) and an application have been developed to support this. When a large number of additional hours is recorded (that is, beyond contractual working hours), it is recommended that managers talk with the employees affected to reorganise their work and/or agree compensation of time off for the additional working time.

Management of out-of-hours communications

In companies where agreements on connection and disconnection essentially rely on agreements between workers and line managers regarding their hours of work, it tends to be stipulated that any communication received outside these agreed hours does not require a response until the following working day (apart from in specific emergency situations). As indicated above, at Evonik, this is combined with the 'email break', which calls for emails outside the company's core working hours to remain unanswered and unsent until the next working day.

The agreement at Enel describes the following organisational measures underpinning the right to disconnect.

- Work activities such as meetings, videoconferences and telephone calls should be organised during normal working hours.
- Lunch breaks need to be respected, with meetings avoided between 12:30 and 14:30.
- Emails should be sent during normal working hours, avoiding evenings, night-time, weekends and public holidays (the agreement explicitly invites the use of the 'delayed delivery' option).

In the absence of a strict framework on the right to disconnect, the Solvay Charter advises employees and managers on what it considers to be the good use of email. It recommends that workers do not allow themselves to be overwhelmed by the instantaneous and impersonal nature of the messaging system, but instead manage their priorities and set themselves time slots to respond. It also recommends that managers lead by example and do not expect workers to respond to communications during leisure time and public holidays.

The joint declaration on work-life balance at UniCredit includes a number of actions related to disconnection under the heading 'digitalisation'. These actions emphasise the responsible use of digital devices (Box 9).

Box 9: UniCredit and UniCredit EWC sign joint declarations on work–life balance and remote work

The provisions listed below are taken directly from the joint declaration.

Provisions on digitalisation in the joint declaration on work–life balance

Leave work at work

Proper use of corporate devices:

- in principle respecting official working hours, according to the different level of managerial responsibility and seniority
- preserving employees' daily, weekly and holiday rest times
- avoiding any misuse and abuse of digital channels (i.e. SMS, video-calls, WhatsApp, chat, calls)

Create your free-tech zone

- use of personal devices for business needs is allowed only in case of real urgency
- to be avoided: texting, calling and emailing to personal devices for business reasons

There is a work–life balance out of your inbox

Responsible use of e-mails:

- in principle respecting official working hours and preserving employees' daily, weekly and holiday rest times, according to the different level of managerial responsibility and seniority
- sending only to the strictly interested addressees (copying people exceptionally)
- assuring that content is synthetic, clear and always respectful
- avoiding an excessive use of emails, preferring verbal dialogue when possible

Provisions on working hours and the right to disconnect in the joint declaration on remote work

The Group is committed to develop a culture oriented to:

- respect the official working hours according to the different level of managerial responsibility and seniority
- preserve the rest times and sick leave, avoiding any inappropriate use and abuse of digital channels
- respect the privacy of colleagues, bearing in mind that the use of personal devices for business needs could be allowed only in case of real urgency
- avoid texting, calling and emailing to personal devices for business reasons
- reiterate the invitation to the responsible use of e-mails in principle respecting official working hours
- assign sustainable tasks for the employees in compliance with their personal and extraprofessional endeavours
- encourage collaboration to enhance the different contributions for a common purpose and promote excellence
- facilitate the involvement of employees [even when working remotely] and stimulate virtuous behaviour oriented towards work–life balance and personal well-being
- encourage people to take care of themselves physically and mentally, stimulating managers to act consistently as a 'model to be inspired by'
- listen to the opinions and feelings of people, stimulating a constant dialogue between managers and their people, by creating a positive environment

Sources: https://www.unicreditgroup.eu/content/dam/unicreditgroup-eu/documents/en/sustainability/EuropeanWorksCouncil/JD_workLifeBalance_EN.pdf and https://www.uni-europa.org/wp-content/uploads/2020/11/UEWC-JOINT_DECLARATION_RemoteWork_EN.pdf

In the Italian adoption of the joint declaration on work–life balance, the protection of disconnection time is recognised under Article 16. This article includes all the provisions mentioned in the joint declaration and adds a commitment to provide training and information on these issues. The joint declaration and the Italian adoption cover all workers, thereby expanding the national legal prerogative of Law No. 81/2017, which, as mentioned above, covers only smart workers.

The internal policy at Telefónica regulating the right to disconnect recognises employees' right not to reply to work-based communications outside normal working hours and stresses the responsibility of management staff to act as role models in this regard for the teams they coordinate. Employees cannot be subject to sanctions for not responding to such communications. Exceptions to this ability to disregard communications relate to serious situations that could cause evident damage to the company. The right to disconnect is also guaranteed during public holidays, at weekends and when taking sick leave or family leave.

At Santander, the annexes to an internal document on 'Flexiworking policy' – entitled 'Recommendations on flexiworking' and 'Guidelines for digital disconnection' – include some recommendations on the management of out-of-hours communication aimed at supporting workers' right to disconnect. These include the recommendations not to send emails or messages between 19:00 and 08:00 or when on holiday or at

weekends and not to make colleagues work outside their normal working time unless strictly necessary. Moreover, when an email is sent outside working hours, the messaging system automatically sends a warning to the sender with a recommendation to delay sending the email and a link to the policy on the right to disconnect. When a meeting is called outside the established normal working time or when the planned duration of a meeting is longer than 45 minutes, a recommendation pops up suggesting that the meeting is organised at a different time or the duration of the meeting is shortened. At the same time, a link to the internal policy on efficient meetings is provided.

The Spanish banking and savings banks subsector agreements give employees the right not to respond to messages sent through any digital device made available to them by their employer outside their working hours and at rest times, apart from in exceptional circumstances. These exceptional circumstances must be justified and relate to situations that can seriously harm their employer or other individuals and that require immediate action. It is expressly stated that availing oneself of the right to disconnect cannot lead to sanctions or have any adverse impact on the professional careers of employees.

Groupe JLO is unique among the case studies in that it is the only example of a company that moved from a hard approach to a softer approach to disconnection (Box 10).

Box 10: Groupe JLO moves from a 'hard' to a 'soft' approach to disconnection

At the initiative of the management and to address the issue of workers connecting to and answering work emails after returning from assignments on client sites in the evenings, between 2015 and 2019 Groupe JLO implemented a server shutdown from 20:00 to 07:00 on weekdays and at weekends, thus not allowing any emails to be sent or received during those times. An automatic message was sent out to reassure senders that their emails would be transferred the following morning/at the start of the following week. The only aspect of the service that remained active during this time was a psychosocial support helpline that the organisation operates for employees among its client enterprises. Workers who experience stress or other psychosocial challenges can call the helpline at any time, so it needs to be staffed during the evening and at weekends. Employees responsible for operating this helpline are paid for working these shifts.

Management representatives reported initial reticence from staff members before the policy was introduced. Employees did not want to lose flexibility and a process of sensitisation was considered necessary to explain how to set limits so that work does not bleed into personal time. The policy was eventually shifted to a softer approach at the request of consultants (who make up 100 of the organisation's 125 members of staff) in order to provide more flexibility. Employee representatives stated that another reason for the change in policy was because of technical issues resulting from migration to a new server, which made it more difficult to implement the server shutdowns. The new approach entails providing information and developing awareness, and a recommendation not to send or reply to emails during evenings and at weekends. The following statement is now included in the organisation's email signature:

In light of its quality of working life approach, the JLO Group promotes the right to disconnect during the following time slots: weekdays 20:00 to 07:00 and weekends from 20:00 on Friday to 07:00 on Monday.

Addressing other factors impacting on the ability to disconnect

A number of the texts agreed at company and sectoral levels take a broader view to address other factors that may also impact on workers' ability to disconnect.

Improving work processes

As previously mentioned, particularly when one of the goals is to increase efficiency and reduce overtime, emphasis is placed on improving work processes during working hours. Therefore, several texts stress the importance of more efficient, effective and productive work processes during working hours as a way of avoiding the need for constant connection outside working hours. This highlights, among other things, the need for good meeting and email management (for example, avoiding unnecessary meetings, organising short meetings, only copying directly concerned workers into emails). Clear priority setting and planning of work processes by managers is also emphasised. These aspects are particularly highlighted in the agreements and implementing actions at Enel, UniCredit and Santander.

Ensuring that workload is commensurate with working hours

The link between overconnection and workload is recognised in a number of texts. BMW and Evonik regularly review out-of-hours emails and working hours recorded; an important part of this review is to analyse the reasons for working additional hours. The joint declaration on remote working at UniCredit also makes a link between working hours, the right to disconnect and the 'sustainable' allocation of tasks and collaborative modes of working, thus recognising that the right to disconnect is not only a technical or behavioural matter but also depends on how work is distributed and organised. At Solvay, among the actions taken to implement the charter was awareness raising among managers about the link between overconnection and workload. Specific emphasis is therefore placed on the role of line managers in terms of being clear about setting priorities for the staff they are responsible for and having a continuous dialogue about workload and the tasks that can be carried out in a given time frame.

Ensuring that workers have the right skills

The European social partner framework agreement on digitalisation emphasises the importance of skills (both digital and otherwise) to enable employees to perform their work effectively and efficiently and thus prevent situations that can contribute to overtime and out-of-hours connection. This is acknowledged in the agreement at Enel, which emphasises the importance of digital and soft skills, implying that the successful implementation of remote working and the right to disconnect requires specific competencies of the workforce related to digital tools and time management, as well as soft skills and the ability to disconnect.

Evolution of agreements and the impact of COVID-19

Given the commonalities between national government responses to the COVID-19 public health emergency regarding the wholesale move to home-based telework wherever possible, as demonstrated by the evidence recorded in Eurofound's COVID-19 EU PolicyWatch database¹¹ and the *Living, Working and COVID-19* e-survey, it is perhaps not surprising that many similar experiences are reported by the case study companies. In all cases, teleworking increased significantly between March 2020 and early 2021. However, there were some differences in the scale of this development based on the nature of the sector and the occupational groups represented, as well as the associated 'teleworkability' of the tasks being performed, the economic impact and resulting share of furloughed workers, and the share of teleworking among the workforce prior to the pandemic.

For example, BMW reported that, while the number of hours worked remotely (from the home office base) increased significantly, the share of the workforce that was teleworking hardly changed. As mentioned above, the practice of regular teleworking for some days during the working week was already common prior to the pandemic, with the company having promoted remote and flexible working arrangements since the 1990s. At Santander, the share of teleworkers increased from 5% to 60%, whereas at Telefónica it rose from 15% to 95%. The lower share at Santander reflects the relatively significant part of the workforce based in branches, with many workers furloughed while branches remained closed because of lockdown restrictions. At Solvay, between 5% and 10% of headquarters staff remained on site to ensure continuity in what was classified as an essential sector.

¹¹ More information on the COVID-19 EU PolicyWatch database is available at <https://www.eurofound.europa.eu/data/covid-19-eu-policywatch>

Prior to the pandemic, 20–25% of staff had been teleworking one or two days per week. At UniCredit, at the Group level the share of teleworkers increased from 20% to 60%. At Enel, around 15,000 workers teleworked, with a relatively high share of workers having to remain active in production and in remote locations to maintain the energy supply. At Groupe JLO, the pandemic resulted in a shift from client site-based work to fully home-based work, with many consultants impacted by a reduction in demand for their services.

In all cases, the pandemic is considered to have accelerated moves towards more remote working, which are likely to persist – at least to some degree – into the post-pandemic ‘new normal’. While some companies reported demands among employees for a more flexible organisation of working hours during the pandemic (partly because of the temporary closures of school and care facilities), many reflected that there was an increasing call among workers with teleworkable tasks to be able to continue working in hybrid arrangements post pandemic, with one or two days of home working per week generally favoured.

The likelihood of such arrangements becoming embedded was considered to have been boosted by the awareness among managers during the pandemic that remote working is feasible and can contribute to raising productivity. A notable exception was reported by employee representatives at Total, where managers requested that staff return to work in June 2020, when lockdown restrictions were eased somewhat in France.

Reflecting on the evolution of work arrangements post pandemic, Evonik noted that the current rules also need to be seen against a background in which the company

is developing suitable ways of hybrid working. This could include further exploration of the optimal organisation of working time, the compatibility of telework and office-based work and the issues of availability and disconnection. At Solvay, although there is no perceived need to revise the Solvay Charter, it was argued that if it were to be revised, the emphasis would not be on work–life balance but on ‘work–life integration’, understood as flexibility for personal and family life throughout the working day, instead of working to strict timetables.

Another common reflection was that increased teleworking during the pandemic has made implementation of the right to disconnect more important, as regular home working (combined with lockdown restrictions) has made disconnection from workplace digital tools more difficult due to the blurring of boundaries between work and private life. While it was generally agreed that having relevant texts and actions in place assisted companies, workers and managers in adapting to the new situation, some reflected that it initially proved necessary to reinforce the importance of disconnection as workers and managers adjusted to the new situation. Having relevant awareness-raising and training tools in place assisted in this process.

In terms of ensuring that workers are able to disconnect, it is also worth noting that, while for some workers the pandemic resulted in a reduced workload as activity levels in the business reduced, for others the workload increased as some colleagues were furloughed and those who remained had to pick up additional tasks.

CHAPTER 3 – SUMMARY

The following evidence was obtained from the 12 case studies.

- Provisions on the right to disconnect at company level take different forms and can be included in company agreements or other joint (or indeed unilateral) texts, which can impact on their enforceability.
- Differences are also evident in terms of the focus, scope and signatories involved and coverage. This affects the content and operationalisation of the right to disconnect and can mean that the right applies only to certain parts of the workforce.
- The right to disconnect is implemented through either ‘hard’ or ‘soft’ approaches to disconnection, with soft approaches generally more common.
- The most significant emphasis in implementation of the right to disconnect tends to be on awareness raising, training and agreements over hours of availability and the management of out-of-hours communication. While awareness raising and training for workers focuses on the health and work–life balance risks of overconnection, for managers additional modules cover the specific skills needed to manage a more flexible and remote workforce.
- Discussions on availability and non-availability seek to strike a balance between the desires and requirements of the company, the specific team and the workers for flexibility. The treatment and monitoring of working hours and overtime emerges as an important issue that is addressed according to national legislation, collective agreements and company practice.

- While a number of texts emphasise the link between improved work processes during working hours and a reduction in the need for out-of-hours communication, fewer texts acknowledge the important interrelationship between workload (commensurate with working hours) and other factors that can contribute to an extension of working hours, facilitated by constant connection (such as skills mismatches, processes of collaboration with other parts of the business or subcontractors and client relationships).

4 Monitoring implementation and impact on workers and businesses

Among the main motivations for carrying out this case study research was the dearth of evaluation evidence in the literature relating to the impact of the implementation of a right to disconnect on worker well-being and work-life balance and productivity. This is partly because of the relatively recent nature of the legislation (and its implementation at sectoral and company levels) in countries where regulations are in place. However, it also stems from the complexity of factors that impact on perceptions of well-being in the workplace and work-life balance. Most recently, contextual factors linked to the COVID-19 pandemic are also likely to have influenced how employees view these issues, in ways that are challenging to disentangle.

No representative and comparable data from employee surveys at national level and from sectors and companies with and without the right to disconnect were available as of mid-2021. The case studies were therefore used to seek evidence at company level on whether impact is being formally monitored as part of any agreement or policy on the right to disconnect and, if so, whether this information can provide anecdotal insights into the impact of the introduction of a right to disconnect on worker well-being and work-life balance and other factors such as productivity and overall company culture and work processes. In doing so, it is important to distinguish between monitoring evidence linked to implementation of an agreement, including evidence of connection and disconnection (email flows, working hours, etc.), and the 'felt' and actual experiences of being able to disconnect and the impact on perceptions of well-being and work-life balance (for example, gathered through staff surveys) and direct evidence of improvements (for example, as gathered from data on stress-/burnout-based absences).

As indicated above, when investigating the impact of the right to disconnect, it is important to bear in mind that a 'gold standard' of impact assessment is unlikely to be available, as such provisions are not introduced in randomised controlled trial conditions. It is therefore not possible to link observed changes to the introduction of a right to disconnect, and other factors that might have a bearing on reported and measured impacts must also be considered. These can pertain to other aspects of the working environment but can also be related to an individual worker's personal situation.

The first finding from the 10 company and 2 sectoral case studies is that, at this level, clear (particularly quantitative) evidence of impact is unfortunately also often lacking. This relates both to monitoring data

regarding the actual implementation of the provisions set out in the different agreements and the reality of disconnection in practice, and even more so to any impacts of the felt and actual ability to disconnect on well-being and work-life balance. In particular, evidence of impact on 'objective' factors such as physical and psychological health issues and associated staff absences is entirely lacking.

As shown below, some limited quantitative evidence of impact on work-life balance is available for one of the case studies. Another company aims to gather information on mental health issues and burnout, but no data following the implementation of the right to disconnect are available to date. Qualitative assessments of the impact of the right to disconnect on worker well-being and work-life balance based on the interviews carried out for these case studies were available for most of the case studies.

This chapter first examines existing processes for monitoring the implementation of the right to disconnect before assessing what implementation information reveals about the perceived ability to disconnect and the impact of disconnection on worker well-being and work-life balance and other factors.

Monitoring implementation

In order to be able to assess the impact of the right to disconnect on worker well-being and work-life balance, it is crucial to monitor its implementation. Such monitoring essentially relates to two aspects: first, the extent to which all the provisions and associated activities set out in company policies/agreements have actually been carried out and, second, whether or not the implementation of such measures has led to a greater perceived and actual ability of workers to disconnect from work-related devices outside agreed working hours.

Monitoring is carried out in a variety of ways in the companies studied, including through:

- regular management or bipartite reviews of progress
- recording of training received
- monitoring of email traffic
- monitoring of complaints
- recording and monitoring of working hours
- regular dialogue between workers and their line managers
- staff surveys
- other approaches to monitoring

The main approaches to monitoring used by the case study companies are outlined in Table 6. It should be borne in mind that, if a specific monitoring approach is not mentioned, this does not mean that this type of activity is not implemented at company level; it simply indicates that it was not highlighted as one of the main approaches to monitoring of the provisions regarding the right to disconnect. For example, all companies are required (by law) to record working time, but this is not used as a key tool to monitor the implementation of agreements, including the right to disconnect, in all cases.

Regular management or bipartite reviews of progress

A number of company texts stipulate that a regular review of implementation, monitoring data and impact should take place. Under the agreement in place at Enel, the bilateral committee is tasked with monitoring the implementation of smart working. At Santander, following the banking sector partial agreement on recording working time, the bank is required to make information on the recording of working time available to the trade unions on a monthly basis. A parity monitoring commission is required to meet at least twice a year to discuss this information. However, as the register was implemented in June 2020 in the context of

the COVID-19 pandemic, the commission has not yet met. Data on working hours have been shared with trade unions but at the time of writing (March 2021) have yet to be analysed. According to management, working time recording for the period since June 2020 does not point to the excessive use of overtime. Parity working groups to monitor the implementation of the EWC declarations at UniCredit in Italy and, specifically, the right to disconnect at Telefónica have been established, but because of the pandemic they have yet to meet.

At BMW and Evonik, data on working hours (BMW) and email traffic (Evonik) are also regularly discussed in management meetings and shared with the works councils.

Recording of training received

As indicated previously, all company-level agreements attribute a high level of significance to awareness raising and training linked to the right to disconnect. As a result, a number of companies emphasised that they collect information on relevant training received by employees and managers. For example, UniCredit monitors the take-up of training linked to awareness raising and the practical implementation of the right to disconnect. At BMW, all employees are required to take the ‘mobile working driving licence’, which covers

Table 6: Main approaches to monitoring used by case study companies

Company	Main approaches to monitoring
Banco Santander	Staff surveys Monitoring of complaints by trade unions
BMW	Recording of relevant training received Regular dialogue between workers and line managers Monitoring of working time accounts by managers and the works council Monitoring of complaints registered with the works council or human resources department
Enel	Staff surveys Recording of reports/complaints by the trade union Analysis by the company’s bilateral committee
Evonik	Monitoring of email traffic
Groupe JLO	Staff surveys
Solvay	Staff surveys
Telefónica	Staff surveys Monitoring of working hours Monitoring of complaints
Total	Staff surveys and a monitoring commission
UniCredit	Recording of relevant training received Monitoring of complaints reported in the company’s systems or to trade unions Staff surveys
Volkswagen	Monitoring of requests for exemptions from the hard shutdown

Source: Author, based on case study reports (Eurofound, 2021b)

issues of availability and non-availability and how to apply this in practice. Records of the completion of this training are kept to ensure that all employees are aware of the relevant provisions and processes.

Monitoring of email traffic

The main focus of monitoring of out-of-hours communication is on email traffic (rather than, for example, calls or text messages). This can include measuring the numbers of emails received and sent and (explicitly) the out-of-hours communications responded to. At Evonik, the main method used to monitor compliance with the company agreement is an IT-based tool that tracks the email traffic of all employees, anonymised and aggregated by team.¹² Statistics are provided to managers and the works council on a half-yearly and annual basis on the flow of email traffic inside and outside the company's main working time corridor and at weekends. This enables team leaders to identify emerging patterns of email traffic outside the working time corridor. Where such patterns are evident, the reasons for this are discussed in team meetings together with any solutions. Team-level rather than individual-level monitoring is considered preferable, not only from a data protection perspective, but also

because it is seen to reflect the realities of working in a team. At company level, this also enables management to examine deviations from the agreed corridors and why these might be more likely to occur in some teams than others.

Data on email traffic from the monitoring tool also form part of the information feeding into a company-level key performance indicator that enables managers to compare how their team is faring compared with the average and other teams. Internally, this is viewed as creating a type of 'peer pressure' to reinforce observance of the availability rules. It also means managers cannot justify high volumes of email traffic outside the main working time corridor for extended periods of time.

Monitoring of complaints

Different approaches are in place in relation to the body responsible for receiving and monitoring complaints about perceived inadequacies of the implementation of the right to disconnect (Box 11). In most cases, no or only very few cases of complaints pertaining to the right to disconnect have been registered through such channels.

Box 11: Channels available to lodge complaints linked to the right to disconnect

At Groupe JLO, a monthly questionnaire (barometer) that includes one question relating to working conditions provides an opportunity to report any complaints relating to any of the company's policies or practices. The implementation of the right to disconnect has never been the subject of complaints using this process.

At BMW, an escalation process is available whereby employees can raise their concerns about the issue of availability and non-availability with the company works council or with the human resources department if they feel uncomfortable speaking to their line manager. If a concern is reported to the works council, this body can communicate the concern to human resources and ensure that any challenges are resolved. Very few complaints pertaining to availability and non-availability are received in any given year.

UniCredit has developed internal processes for recording complaints on the full range of workplace issues, including the right to disconnect, and also enables reports to be lodged directly with trade unions.

At Telefónica, a tool has been set up to allow employees to report breaches of company policy anonymously or confidentially. However, to date, no violations linked to the right to disconnect have been reported.

At Santander, an 'open channel' (*canal abierto*) has been set up to enable workers to report (anonymously or not, but always confidentially) violations of the bank's code of conduct, corporate behaviour and internal governance. In 2018, the types of cases that could be reported were amended to include practices incompatible with corporate behaviour, values and governance, which include failures to respect the right to disconnect. All cases are dealt with within a maximum period of two months. This channel is supported at the highest management level, with the president collaborating in a corporate video to promote its use worldwide. To date, no specific cases have been registered on the issue of the right to disconnect.

Sources: <https://www.santander.com/en/stories/introducing-canal-abierto-our-right-to-be-heard> and <https://secure.ethicspoint.eu/domain/media/en/gui/105329/index.html>

¹² Teams usually consist of around 50 people.

Regular dialogue between workers and their line managers

Procedurally, in a number of the case study companies, the implementation and observance of the right to disconnect are ensured through dialogue between individual employees and line managers. This is the framework within which flexible working patterns and hours of work (and therefore availability and non-availability) are agreed. Together with team-level discussions, this also tends to be the level at which workload, outputs and performance are discussed. Therefore, it is in these interactions that the intersection between working hours, availability and suitable workload tends to be discussed and monitored, including the reality of the associated ability to disconnect.

Recording and monitoring of working hours

A few companies specifically monitor working hours to assess the extent to which the right to disconnect is respected and to determine if action should be taken when there is considered to be a link between overconnection and workload. At Telefónica, an internal IT tool entitled 'SuccessFactors' is used to record and monitor working time, among other things, thus contributing to the detection of long working hours. While the tool contains workers' registered standard work schedules, it allows for flexibility and at the same time records additional hours, which can be compensated with time off in lieu. The tool does not monitor email traffic and so does not make a direct connection between long hours of availability and responding to emails and other contacts. Monitoring of working hours is also an important part of the approach at Santander and in the Spanish banking sector, following the adoption of the partial collective agreement on the monitoring of working time.

At BMW, managers are encouraged to review the volume of working time registered by workers and to identify individuals who regularly exceed agreed company-level working hours and who make themselves overtly available. The monitoring of working time accounts is considered to be a helpful instrument in identifying issues with workload that may contribute to overconnection. In addition to managers, works councils are also entitled (by law) to scrutinise working time accounts.

As well as ensuring the aggregation of data, a number of texts specifically refer to the issue of data protection. At Santander, the code of conduct specifically includes the need to comply with data protection and personal and family privacy; the two partial agreements on the recording of working time in the banking and savings banks subsectors include specific references to the need to respect legislation on data protection when recording working time (Organic Law 3/2018 on data

protection, including Article 88 on the right to disconnect). The Telefónica company agreement also refers to the data protection law – teleworkers have the same rights (including data protection) as other workers – and respects Organic Law 3/2018 when it comes to registering working time. Article 7 of the Solvay Charter, as completed by the global framework agreement on digital transformation (ewcdb, 2020), signed in April 2020, is entitled 'Ethical aspects of privacy and data protection'. It stipulates that any proposed new technology should as a minimum comply with the following principles:

- Employees should receive timely and clear advice on any monitoring or surveillance functions of the new technology;
- Any employee-related data gathered by digital transformation will be clearly stated and not be used for any other purpose.

Staff surveys

Staff surveys are used in six companies to assess the impact of the right to disconnect. In a number of cases, the questions asked do not directly address the right to disconnect but focus on working practices generally and work-life balance.

At Santander, frequent employee surveys (some focused on Spain and some addressed to the workforce worldwide) are the main tool used for monitoring the implementation of the right to disconnect (for the results, see 'Evidence of implementation and impact').

Solvay carries out an annual 'People Engagement Survey' that examines several elements that impact on well-being at work. However, the company has gone through a number of transformations in the past decade, including making important acquisitions, and the uncertainty caused by such processes is considered to make it more difficult to compare and interpret results from different years.

Employee satisfaction surveys at Evonik do not specifically assess the issue of availability and non-availability. However, the survey results show that the desire for more flexibility in arranging working hours, both within and outside the company's 07:00–20:00 working time corridor, remains an issue.

The 2019 agreement at Total envisages that an employee survey will be carried out one year after signing the agreement and once more before the end of the four-year term of validity of the agreement. The survey is intended to assess the evolution of the extent to which the right to disconnect is respected by employees themselves, by peers/colleagues and by managers (including by setting a good example). The first wave of the survey was due to take place in the autumn of 2020; however, this was delayed as the joint working groups that were due to develop the survey and agree on the communication campaign did not meet

during the lockdown imposed in response to the pandemic. This is likely to lead to a two-year delay in the implementation of the four-year agreement. It is anticipated that the next steps in the communication strategy will take place in the second half of 2021.

At Enel, staff surveys include questions relating to issues encountered in the implementation of new working conditions, including remote and flexible working. This is also the case at UniCredit, where findings to date point to the successful implementation of remote working arrangements and the right to disconnect. According to unions and the EWC, the design of clear monitoring structures and approaches at national level will be critical for the successful transposition of the joint declaration on remote working in all Member States where the company is represented.

Other approaches to monitoring

Although Solvay does not specifically monitor the impact of the provision on the right to disconnect contained in its charter, it regularly assesses and tracks employees' mental health, mainly through the burnout observatory mentioned earlier. Occupational health staff in each country where the company operates record reported cases of overload and burnout and provide these data to the medical coordinator at Solvay. While such data are valuable to help tackle any systemic issues, it is acknowledged that employees may be reluctant to report mental health issues; therefore, the full scale of stress and burnout at the company can be difficult to ascertain. The employee representative considered that, in the absence of regular reiteration of

the right to disconnect in management communications, the level of overload felt by employees would be more significant.

Volkswagen, which operates a hard shutdown policy, monitors the number of requests for exemption from the hard shutdown received by the works council. Such requests are mainly linked to employee collaboration on common projects or teams working across time zones.

Evidence of implementation and impact

Based on both available monitoring data and qualitative information gathered through interviews with employee and management representatives, Table 7 and the subsequent sections summarise the assessed impacts of company-level policies and agreements, including the right to disconnect, on:

- experiences of overconnection and the ability to disconnect
- work–life balance
- worker well-being
- company culture

Although these issues are discussed separately, it is important to bear in mind that they are significantly interlinked and some overlaps in the presentation of the qualitative and quantitative evidence available are therefore inevitable.

Table 7: Qualitative and quantitative evidence gathered on implementation and impact of the right to disconnect

Company	Quantitative or qualitative source	Evidence of implementation and impact
Banco Santander	Quantitative (employee survey) Qualitative (views of worker and management representatives)	<i>Implementation</i> April 2020: 57% of workers considered that the right to disconnect is respected; 23% considered that it is not respected. October 2020: 43% of workers considered that the right to disconnect is respected. There is a high level of awareness regarding the right to disconnect among both workers and managers. <i>Impact</i> April 2020: 61% of respondents stated that they have a reasonable work–life balance and 16% stated that they do not; the rest of the respondents were neutral. October 2020: 66% of respondents indicated that they are happy with their work–life balance.
BMW	Quantitative: indirect (use of flexible forms of work; employee satisfaction with additional social benefits) Quantitative: direct (complaints monitoring) Qualitative (views of worker and management representatives)	<i>Implementation</i> There has been an increase in take-up of (partial) teleworking positions requiring agreement on hours of availability/non-availability, from 53% of workers employed outside direct production to around 70%. 86–87% of workers are satisfied with the 'additional social benefits'. Only a couple of complaints are received annually about respect for the right to disconnect. <i>Impact</i> There has been a change in company culture towards acceptance of more flexible working coupled with control mechanisms against permanent availability. There is a recognition that this will improve worker health and productivity.

Company	Quantitative or qualitative source	Evidence of implementation and impact
Enel	There is no evidence to date as the agreement is relatively new	No evidence to date
Evonik	Quantitative: direct (monitoring of email traffic) Qualitative (views of worker and management representatives)	<i>Implementation</i> Email traffic outside the working time corridor and at weekends has been halved. <i>Impact</i> Expectations around availability outside core hours have changed. There has been a change in company culture towards greater acceptance of the benefits of flexible working and the importance of team-level monitoring of out-of-hours email traffic to ensure that this does not lead to overconnection. There is recognition of the importance of disconnection to ensure a better work-life balance.
Groupe JLO	Qualitative (views of worker and management representatives)	<i>Implementation</i> Fewer emails from clients and colleagues are reported outside working hours and at weekends. <i>Impact</i> Years of implementing a hard disconnect has created a culture of respect for employees' private life, with managers, colleagues and clients made aware that they should not expect responses to messages sent outside working hours. There is recognition of the importance of disconnection for worker well-being and work-life balance.
Solvay	Quantitative: indirect (monitoring of mental health of employees) Qualitative (view of worker representative)	<i>Impact</i> Mental health is being monitored through burnout observatory data but no trend data are available to date. Risk of burnout is greater among managers, who are more likely to work remotely. This is being addressed proactively by the company.
Telefónica	Qualitative (views of worker and management representatives)	<i>Implementation</i> A parity commission will monitor the impact of implementation, including on working hours data; however, the commission has not yet met to discuss the early evidence because of the COVID-19 pandemic. <i>Impact</i> There is increased recognition of the benefits of flexible working. Managers and colleagues recognise that they cannot expect replies to messages outside working hours.
Total	Qualitative (view of worker representative)	<i>Implementation</i> Negotiation of the agreement has already raised awareness of the issue of overconnection and the need to disconnect. Delay in implementation of the agreement because of the COVID-19 pandemic means that little information on impact is available to date.
UniCredit	Qualitative (view of worker representative)	<i>Implementation</i> There is increased awareness of the need to disconnect and the role of behaviour change by both workers and management.
Volkswagen	Quantitative (hard shutdown of email/message delivery systems)	<i>Implementation</i> Hard disconnection takes decisions on disconnection out of the hands of employees.

Note: Qualitative information relates to evidence from the interviews conducted as part of the case studies. The table indicates whether views are available from both management and worker representatives or from one side only.

Source: Author, based on case study reports (Eurofound, 2021b)

Impact on experiences of overconnection and the ability to disconnect

Relatively limited quantitative evidence is available from the case studies on the impact of the implementation of the right to disconnect on the perceived and actual experiences of individuals in relation to constant connection and the ability to disconnect. Relevant evidence in this area relates to the likelihood of receiving communications from managers, colleagues and clients outside agreed working hours. As well as the likelihood, volume and content of such communications, the impact of policies on workers' actual experiences and expectations of having to respond to and/or carry out additional work as a result of such communications outside contractual working hours is crucial.

The most direct, quantitative evidence on the implementation and impact of the right to disconnect was provided by Evonik and Santander.

At Evonik, monitoring data show that the implementation of the agreement has contributed to a reduced volume of internal email traffic outside the company's working time corridor and at weekends. The percentage of emails sent after 20:00 has decreased from 13% to 6% of all email traffic, and the percentage of emails sent over the weekend has decreased from 2% to 1% of all email traffic between 2013 and 2020, with many of these improvements achieved in the first year after the adoption of the agreement. Data show that, of the emails sent over the weekend and after 20:00, half were answered, which provides an indication that at least some employees receiving such messages do not feel empowered or are not willing to disconnect and delay answering until the next working day. Despite this, both employer and worker representatives at the company considered that the introduction of the email break had contributed to a culture in which flexible working was no longer perceived to be linked to 24/7 availability.

At Santander, a survey on remote working during the COVID-19 pandemic,¹³ carried out in April 2020, provides some indication of employees' felt experiences of the right to disconnect, albeit in the unusual circumstances surrounding, and with the associated challenges of, the pandemic. The survey showed that, although 85% of respondents were satisfied with remote working, only 57% considered that the right to disconnect was being respected, with 22.7% stating that it was not being respected (the rest were neutral). A more recent survey (October 2020) on the 'New normality after COVID-19' found that the share of those

considering that the right to disconnect was being respected had dropped to 43%.

The impact of the obligation to record working time at Santander is considered to be positive in the context of the flexiworking policy and the right to disconnect and vice versa. That is, the implementation of the right to disconnect through the use of, among other things, the above-mentioned IT tool and application that records working time may be helping to reorganise working time, reduce overtime and, when it does occur, compensate it with time off. In addition, the expectation that workers are contactable and will carry out work outside working hours may be changing among both employees and managers. Similarly, the right to disconnect is contributing to a change in the presenteeism culture, as the experience of remote working has revealed that it is feasible without affecting productivity (although the right to disconnect is not yet fully implemented, as the satisfaction surveys show).

Impact on work-life balance

No quantitative data are available on the impact of the operationalisation of the right to disconnect on perceptions of work-life balance among employees in the case study companies, as no staff surveys could be identified that measure satisfaction with work-life balance before and after introducing the right to disconnect. At Santander, the staff surveys carried out in April and October 2020 cover this issue but both post-date the implementation of the right to disconnect and the responses are impacted by the broader policy context linked to the COVID-19 pandemic. In the April 2020 survey, just over 60% of respondents indicated that they enjoyed a reasonable work-life balance (15.6% said they did not and the rest were neutral). In October 2020, the share of those stating that they were happy with their work-life balance increased to 66%¹⁴ (as indicated above, at the same time, the share of those responding that the right to disconnect was respected declined between June and October 2020).

Qualitatively, interview respondents at Evonik also specifically reported that the implementation of the company agreement has contributed to improvements in work-life balance. This was considered to be the result of higher awareness on the part of workers of how to manage more flexible working arrangements while at the same time being aware of the risks of constant connection and the need to disconnect to separate work and private life. This approach is seen to support the development of self-initiative and self-responsibility among employees to avoid circumventing working time rules and better reconcile work and private life. At the

¹³ The survey was conducted with 9,870 employees (out of 25,000) in April 2020. At that time, 80% of the employees surveyed were working from home.

¹⁴ A comparison of the data obtained in April 2020 (only shortly after the start of the pandemic, when employees had to urgently begin working remotely with only a few days' notice) and October 2020 (when a very different situation existed) should be undertaken with caution, as many factors may explain the differences observed.

same time, there is considered to be increasing awareness among managers of their responsibility to monitor email traffic at the team level and take corrective action when patterns of availability outside agreed working times emerge. Both management and the works council expressed satisfaction with the implementation of the company-level agreement. They argued that, by avoiding rigid requirements or hard technical shutdown solutions, a dialogue between employees and managers can be initiated, providing flexibility for both sides but also the opportunity to reflect on the individual needs of employees.

Impact on worker well-being

As for work-life balance, there are no quantitative data available on the impact of the right to disconnect on worker well-being, including on reported physical or psychological impairments and associated absences from work. Although Solvay operates a burnout observatory and gathers detailed information on mental health concerns, no data that might support an assessment of the impact of the implementation of the company charter are available.

In terms of qualitative assessments, management and employee representatives at Groupe JLO reported that the right to disconnect contributes to personal and professional development and to well-being at work, all of which support the company's objective to be more efficient and demonstrate corporate social responsibility. The system of hard disconnection in place between 2015 and 2019 is considered to have helped to establish a culture in which managers, workers and clients are aware of the need to respect workers' private lives. Prior to the introduction of the right to disconnect in 2015, clients often approached consultants with requests late on Friday afternoons or evenings; this is less likely to happen now as clients have been made aware of the importance of work-life balance and the well-being of staff members. A survey on the quality of working life was carried out in mid-2019. While this did not include a specific question on the right to disconnect, one question focused on the suitability of new work practices (co-working, open space, teleworking). Close to 75% of respondents felt that working practices were sufficiently (53%) or completely (21%) suitable. In a 2018 interview, the founder and president of the group, Jean-Luc Odeyer, gave some positive feedback on the impact of the right to disconnect measures:

We realised that our specific approach has turned into educational value for our clients. We are strengthening our positioning as a developer of quality of life at work. No customer has reported any dissatisfaction related to the inability to reach our consultants between 8pm and 7am, even though the cut-off system has been in place for over a year.

In the same article, Clarisse Pugno, occupational psychologist and employee of the Groupe JLO, added: 'The experience has enabled the notions of urgency and importance to be put back in their proper place, also having repercussions in the management of requests during the day' (Change the work, 2018).

There is agreement between employer and management representatives at Groupe JLO that the new approach, in place since 2019, works well: 'The lighter system works well now. It gives us flexibility. But I think that's only because we sent the message first with the stricter policy and changed the workplace culture – that was very important' (*The Guardian*, 2021). Staff members now receive very few emails outside working hours (from clients, managers or colleagues). The management team is confident that the approach is now sufficiently embedded to ensure that respect for the right to disconnect is clearly communicated to new staff and clients.

Impact on company culture and work practices

An important impact associated with implementation of the right to disconnect and awareness raising and training has been on working practices and company culture. There is greater acceptance and indeed promotion of flexible working practices and remote working in a way that meets the requirements of workers and employers while, at the same time, a recognition that greater flexibility should not lead to expectations of constant connection and availability beyond contractual working hours.

Management and employee representatives at Evonik reflected that the email break and the use of monitoring tools to inform discussions on connection and disconnection at the level of individual teams have become an integral part of the company culture and enjoy a high level of acceptance. The practice has helped to change the company mindset and culture away from a mindset and culture that are fully presence based. Over time, including through work with senior managers and awareness raising among the whole workforce, expectations have changed regarding the availability of workers outside core working hours. The agreement helped to signal that home-based telework and remote working are possible and should not be associated with the permanent availability of employees just because they are working from home. This has supported a company culture in which a mechanism of 'social control' against permanent availability has appeared, including among managers. This changing of the company culture is also seen as a positive part of employer branding and making the company more appealing to new employees.

At BMW, greater acceptance and use of flexible working combined with the requirement for workers to agree their hours of availability and non-availability with their line manager is reflected in the increased share of the workforce taking up such arrangements. Prior to the COVID-19 crisis, between 2015 and 2019, the number of workers teleworking for at least some of their working time increased from 25,000 to 36,000. This amounts to 70% of employees working outside the direct production areas. In practice, individuals on such working arrangements usually work remotely one or two days per week. The company's employee satisfaction survey is another source of information but it does not measure satisfaction with the right to disconnect directly. This has remained consistently high at 86–87%. By comparison, the overall employee satisfaction rating with the company decreased from 88% in 2015 to 82% in 2019. Finally, the number of complaints lodged with the works council about the right to disconnect or remote and mobile work also remains low. Since the introduction of the company-level agreement on mobile working in 2014, only two to three complaints have been received each year; these mainly relate to managers' decisions on the ability to telework, with only a few complaints linked to the ability to disconnect. It is generally agreed that the agreement on mobile working has provided greater flexibility for workers who wish to avail of it and increased acceptance among managers of such flexible forms of work. It has also sent a signal regarding the company culture, indicating that greater flexibility in terms of work organisation is possible and is not associated with permanent availability. As at Evonik, this has supported a company culture in which a mechanism of 'social control' against permanent availability has appeared, including among managers.

It places greater emphasis on managers acting as role models in the implementation of the right to disconnect in practice. Addressing issues of availability and the ability to disconnect is also seen as supporting the health and productivity of employees and preventing burnout and overworking, as employees are also made aware of the importance of rest and recuperation.

However, in some case study companies, the impact of the implementation of texts incorporating the right to disconnect is seen to go beyond the issue of disconnection outside agreed working hours. Particularly where emphasis is placed on enabling such disconnection through more effective and efficient working practices during working hours, there is considered to have been an impact on – among other things – the use of email (numbers of messages sent and colleagues copied in) and the timing, duration and focus of meetings. At UniCredit, the main impact of the EWC declaration to date has been on the organisation of work, with the duration, timing and organisation of meetings, in particular, now more sensitive to the disconnection needs of employees. However, for representatives of the trade unions and the EWC, the main future challenge lies in the effective incorporation of the declarations at national level. As part of this process, it is considered essential to define monitoring mechanisms and procedures to ensure that tasks and objectives are assigned in such a way that the right to disconnect becomes a reality in practice.

A similar impact on the organisation of meetings was noted as a result of the implementation of the banking sector agreement in Spain, drawing on evidence from different banks. In addition, a number of banks reported reductions in the numbers of emails and people copied on emails, as well as an increasing trend to postpone the sending of emails to the next working day rather than sending them outside working hours.

CHAPTER 4 – SUMMARY

The following evidence was obtained from the 12 case studies.

- Monitoring of the implementation of the right to disconnect is carried out in a variety of ways, including through recording of the training received, monitoring of email traffic, working hours and complaints, staff surveys and bipartite dialogue between workers and managers and company management and worker representatives.
- However, the monitoring processes implemented often provide little possibility for assessing the impact of the right to disconnect on worker health and well-being and work–life balance. As a result, little information is available to assess the impact of the right to disconnect on these factors or on productivity or gender equality.

5 Conclusions and policy pointers

Developments in ICT have revolutionised the way we work and brought many advantages linked to opportunities for greater spatial and temporal flexibility and flexibility in how work is performed. However, for many workers and employers, this greater flexibility has proved to have negative effects as well as positive effects. Evidence available from Eurofound survey data and other studies demonstrates the impact of working with mobile digital tools on work–life balance and overconnection. Particularly for regular teleworkers and highly mobile workers, there has been an expansion of working hours and a reduction in rest times, with associated detrimental impacts on work–life balance, overall physical and psychological health and well-being, and gender equality. The impacts of workplace stress, burnout and other health issues on workplace absences and the associated costs for employers, workers and the public purse are also well documented.

This situation persists despite the existence of a legislative framework aimed at protecting worker health and safety, in particular regarding working hours, rest periods and risk prevention.

With the exponential growth in teleworking as a result of the pandemic, which is predicted to reshape the world of work even after the public health restrictions are lifted, striking a better balance between the opportunities and the challenges brought about by telework and ICT-based flexible working has become more relevant than ever before. In light of this, the question has been raised as to whether existing legislation is fit for purpose to deal with the new and accelerating workplace developments.

Pros and cons of legislation

The evidence presented in this report indicates that, although some case law exists demonstrating that workers have successfully used existing national legislation on working time to enforce their right to disconnect, this relies on the initiative of individual workers and legal and financial support being available to them to bring such proceedings. Furthermore, the outcomes of the proceedings rely on the specific circumstances of each case. Some legal commentators have indicated that addressing the new realities of the digital workplace, including the more widespread use of remote and flexible working, may need to go beyond the difficulties of the enforcement of existing rules (Mitrus, 2019). At the same time, there is widespread agreement with the position expressed in the European Pillar of Social Rights Action Plan, the European Parliament’s resolution on the right to disconnect and the European social partner framework agreement on

digitalisation that the modalities of connection and disconnection and the actions taken in implementing the right to disconnect should be agreed by social partners. However, views differ regarding the desirability or otherwise of legislation requiring social partners to take action, the nature of such action and any sanctions that should be imposed in cases of failure to act.

Rise in collective agreements in countries with legislation

The experiences of countries that have introduced a right to disconnect show that the numbers of collective agreements at sectoral and company levels covering this issue increase substantially both ‘in the shadow of the law’ and following the adoption of legislation. This suggests that a legal approach requiring social partner action could be beneficial to boost social partner activity. An approach that relies on implementation by social partners in line with national processes and traditions could have the same outcome but relies more on the strength of such traditions and social partner capacity to negotiate, which is not guaranteed in all Member States, as illustrated by the transposition of previous autonomous social partner framework agreements. It must be acknowledged that a legal approach does not, by itself, address the issues of social partner capacity or coverage of collective agreements; therefore, whatever approach is taken would arguably need to go hand in hand with capacity-building efforts. Legislation can, however, provide an opportunity to stipulate a ‘fallback’ option in situations where social partners fail to reach agreement and/or where no negotiations and collective agreements are in place (such as in the case of a requirement for a company charter in France and Spain, or a minimum statement of provisions of how the right to disconnect will be guaranteed).

When comparing the impact of different types of legislation at national level, including the right to disconnect, the information available to date appears to suggest that relatively broad provisions, such as those included in the Belgian legislation, have had a more limited impact on the number of relevant collective agreements concluded. However, more research in this area is required, particularly because the absence of a database on collective agreements in Belgium makes information collection more challenging. The limited mapping of the provisions of the case study texts does not point to a clear difference in the content and ‘quality’ of company-level agreements based on different types of national legislation (or emphasis on self-regulation, as is the case in Germany). However,

national legislation does appear to impact on certain aspects of agreements, for example coverage (smart workers in Italy) and emphasis on monitoring tools (for working time in Spain, arising from the royal decree-law on the monitoring of working time), thus highlighting the importance of context.

Changes in company culture

The assessment carried out by social partners that have implemented the right to disconnect at company level shows that both employer and employee representatives consider that the operationalisation of the right to disconnect has contributed to changes in company culture. This has made it possible to extend ICT-enabled flexible working while contributing to a recognition that this should not go hand in hand with an expectation of constant connection and availability. This is largely attributed to the actions taken to operationalise the right to disconnect, in particular the introduction of awareness raising and training for both workers and managers on the risks of overconnection and how best to manage the use of remote working tools. In some cases, this has been accompanied by the introduction of complaints and monitoring processes, which can be used to register and assess if disconnection is enabled in practice.

Trend towards softer approaches

Overall, sectoral- and company-level texts tend to favour the implementation of the right to disconnect through soft rather than hard approaches to disconnection. While soft approaches ensure a greater level of flexibility in terms of organising working hours, and maintain the ability to work at a global level and address short-term emergencies, it is important to acknowledge that softer approaches sometimes constitute a compromise solution, with some trade unions preferring the implementation of a 'right to be disconnected' in initial negotiations. Furthermore, in one case study company, the positive outcomes regarding reductions in out-of-hours communications received from managers and clients were attributed to the culture change brought about by implementing a hard disconnection for five years prior to switching to a softer approach (at the request of employees, who wanted more working time flexibility). In another company, concerns around ensuring sufficient flexibility, including the flexibility to work in global teams, is addressed through the ability to request exemptions from hard disconnection through the works council.

Softer approaches must also take account of the fact that, in unequal power relationships in the workplace, it can be more difficult for workers to enforce their right to disconnect, making regular bipartite monitoring and review processes even more important. Here it is notable that, even in cases where complaints processes are in place, no sanctions as such for breaches of the

right to disconnect have been included as part of company or sectoral texts (although sanctions linked to breaches of working time legislation can of course be included in national legislation or collective agreements).

Recognition of the link between constant availability and work overload

Given that research has demonstrated a link between constant availability and work overload, the inclusion in company-level agreements of a recognition of this interaction and the development of processes to monitor whether evidence of overconnection may be linked to workloads being too high also appear to demonstrate an element of good practice. Giving attention to this issue is also particularly important as work overload can have a gendered impact, either by adding pressure to women, who are more likely to combine work with caring responsibilities, or by negatively impacting on women's ability to participate and progress in the labour market.

This could also be extended to cover other issues, for example ensuring that issues related to lack of skills, or the nature of collaborations with other colleagues and work processes, or collaborations with external partners or clients are not contributing factors to an inability to disconnect. In this context, it is worth noting that, rather than acknowledging that such factors can potentially contribute to regular hours of connection outside agreed working time, the 'tone' and content of some company-level texts appear to place the blame for an inability to disconnect on workers.

Managers leading by example

The case study examples also demonstrate the importance of high-level commitment to the right to disconnect and of managers leading by example. An option in one of the agreements that is worth considering to ensure continued and high-level buy-in is the inclusion of indicators measuring the implementation of the right to disconnect as part of managers' key performance indicators.

Indicators should be meaningful and accessible

Among the most important findings is the fact that direct objective evidence of the impact of the implementation of the right to disconnect on worker work-life balance, health and well-being is missing at company level in all the cases studied. This points to the need for agreements to include more detailed provisions on indicators for monitoring the operationalisation of the right to disconnect and its impact, including on gender equality. Such indicators and monitoring procedures should be agreed and followed up in a bipartite fashion, with worker representatives given access to monitoring data on a

regular basis, as envisaged in a number of the texts studied. It may also be worth considering the inclusion of review clauses in relevant agreements. This could ensure that impact is evaluated using meaningful and accessible indicators, with the possibility of making amendments to existing provisions should evidence demonstrate that high levels of out-of-hours connection and its associated detrimental effects remain an issue.

Joint approach to monitoring best

In terms of indicators to be monitored, it appears that an aggregated approach (for example, at team level) to monitoring out-of-hours communications provides an opportunity to identify where overconnection remains a problem, to consider what might be the reasons for this and to address these issues. Monitoring should be carried out in a way that avoids concerns around data protection. As mentioned above, the monitoring of working hours is equally important, while innovative approaches to occupational health (for example, monitoring the incidence of stress and burnout) not

only identify issues to be addressed and enable support to be provided to workers, but also provide evidence of the impact of the implementation of the right to disconnect. Staff surveys should also be used to follow up and monitor the impact of the right to disconnect on worker well-being and work-life balance.

More quantitative data needed

In conclusion, although company case studies are critical for understanding the implementation and operationalisation and the monitoring and impact of the right to disconnect, and they provide some important lessons on useful approaches to dealing with this issue (particularly where agreements have been in place for a number of years), more quantitative information gathering, including large-scale employee and employer surveys, is required to assess the impact of implementation of the right to disconnect on employee well-being, health, work-life balance, productivity, competitiveness and gender equality.

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Digital technologies have made it possible for many workers to carry out their work at any time and anywhere, with consequent advantages and disadvantages. Eurofound data show that teleworkers are twice as likely to exceed the 48-hour working time limit, take insufficient rest and work in their free time, with knock-on effects on their physical and mental health. To address this issue, there have been calls for the ‘right to disconnect’. This report is based on case studies that chart the implementation and impact of the right to disconnect at workplace level. It builds on previous Eurofound research that shows an increase in collective agreements providing for a right to disconnect in countries that have enshrined this right in their legislation. With the exponential growth in teleworking brought about by the COVID-19 pandemic, the importance of striking a better balance between the opportunities and the challenges associated with teleworking and ICT-based flexible working has become more relevant than ever before.

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