

ETUC Position on the Right to Disconnect

Adopted at the Executive Committee of 22-23 March 2021

ETUC key demands:

ETUC calls on the Commission to launch without further delay a legislative initiative in the form of a European Directive on the application and enforcement of the right to disconnect. The EU Directive should ensure amongst others the following key elements by:

- laying down minimum requirements and provide for effective measures for workers and their trade union/workers' representative for applying and enforcing the right to disconnect;
- ensuring its application to all workers, irrespective of their employment status, their activities and the sector, both public and private, they are employed in, a particular attention is to be paid to the most vulnerable workers and those with caring responsibilities;
- effectively preventing employers from requiring or promoting workers to be directly or indirectly available or reachable outside their agreed working time, also co-workers should refrain from contacting or communicating with workers outside collectively agreed working hours for work purposes;
- recalling that time during which a worker is available or reachable for the employer is working time, and ensuring that the right to disconnect is not only linked to working time but also to the workload and workload assessment;
- ensuring that workers (including cross-border workers) are fully informed about their working conditions in general and in particular on all elements relevant for the purpose of applying and enforcing the right to disconnect;
- entrusting a role of social partners as well as data protection supervisory authorities to ensure that any surveillance/ monitoring tools are only used where necessary and in a proportionate manner in order to ensure the right to privacy and data protection of workers;
- providing that all (digital) professional learning and training activities must be counted as work activity and take place during agreed working hours;
- guaranteeing that workers, including those who are trade union/workers' representatives, using the measures / instruments to apply and enforce their right to disconnect should not face the risk of adverse consequences, such as dismissal or other retaliatory measures;
- guaranteeing that workers and their trade union/workers' representatives have adequate and rapid access to judicial and administrative proceedings against any adverse treatment resulting from their (seeking to) exercising or enforcing all the rights provided for under this Directive;
- guaranteeing that Member States ensure a proper enforcement on the one hand by social partners and on the other hand through the national labour or other inspection authorities;
- providing a strong non-regression and more favourable provisions clause which also clarifies that nothing in the Directive shall be interpreted as restricting or adversely affecting rights as enshrined in international and European human rights standards.

Political and legal Context

For several decades, the world of work both globally and in Europe has witnessed and been characterised by increased digitalisation and use of digital tools. This has certainly brought economic and societal benefits and advantages to employers and workers (e.g. increased flexibility and autonomy, more possibilities to ensure work-life balance, reduced commuting times, etc.). However, it has also led to a perverse culture of work organisation whereby employers create the unlawful and wrong perception for their workers that they should be always available and connected for work purpose related requests outside of the agreed working hours. Digital technologies indeed have led to seismic changes at work, making it technically possible for workers to be reachable and in many cases to perform most of their work anywhere and at any time. In particular, it has led to blur the work-life boundary in an unprecedented way.

These changes had and have detrimental effects on workers' fundamental rights and fair working conditions, including fair remuneration, including unremunerated overtime, the non-respect of working time, in particular rest, leisure and holiday periods, an increase in workload, and work-life balance arrangements. As consequences workers suffer from severe physical and mental health and safety problems both at work as for the general well-being of workers such as musculoskeletal disorders, carcinogenic radiation, techno-addiction/stress, isolation, emotional/physical exhaustion, and burnouts.¹

An additional harmful effect is linked to the monitoring of employees' mobile or other devices that makes it technically possible for employers to obtain GPS tracking information allowing their location or daily routines to be determined, but also pure private information including relating to the health conditions of workers.

The current Covid-19 pandemic has been transformational in this regard. It has aggravated the situation and related problems with many Member States having highly recommended or even installed mandatory remote/telework to try to combat the virus. For instance a recent Eurofound study² found that 27 % of respondents working from home reported that they had worked in their free time to meet work demands. And it is expected that remote working and telework remain higher and even increase further than before the COVID-19 crisis.

From a human rights and legal point of view, none of the relevant international and European human rights instruments explicitly and/or specifically provide for or refer for a right to disconnect. They provide however a sound basis to ensure and enforce workers' rights to fair working conditions, limitations of working time, to guarantee leisure/rest/holiday periods, work-life balance arrangements and occupational health and safety in general. Particular reference can be made amongst others to:

- Article 24 UN [Universal Declaration of Human Rights](#) (everyone has the right to rest and leisure, including the limitation of working time and periodic holidays with pay),
- Article 7 UN [International Covenant on Economic, Social and Cultural Rights](#) (everyone has right to fair wages, safe and healthy working conditions and to right to rest and leisure, including the limitation of working time and periodic holidays with pay),
- ILO Conventions and related Recommendations on
 - Working time: the 1919 Hours of Work (Industry) Convention (No. 1), the 1930 Hours of Work (Commerce and Offices) Convention (No. 30),

¹ See e.g. Eurofound (2020) COVID-19 unleashed the potential for telework – How are workers coping?, June 2020.

² Idem fn. 1.

- Work-life balance: 1981 Convention on Workers with Family Responsibilities (No. 156)
- Collective Bargaining: Conventions No. 87, 98, 151 and 154

In the ILO contexts there is also the [2019 ILO Centenary Declaration on the Future of Work](#),

- [Council of Europe's Revised European Social Charter](#) (Article 2 - the right to just working conditions, including to reasonable working hours and to rest periods), Article 3 - the right to safe and healthy working conditions, Article 6 - the right to collective bargaining and Article 27 - the protection of workers with family responsibilities)

Also at the EU level, there is currently no existing EU legislation that directly addresses the right to disconnect and the scope or timing of work-related electronic communication between employers and workers.³ However there are several primary and secondary EU legislative instruments which indirectly relate to this different aspects of the right to disconnect and which are thus particularly relevant in the context of applying and enforcing a right to disconnect such as:

- Articles 20, 21, 23, 30 and 31 of the [Charter of Fundamental Rights of the European Union](#) which respectively deal with equality before law and prohibition of discrimination, equality between men and women in all areas (including employment, work and pay), protection in the event of unjustified dismissal and the right to working conditions which respect every workers' health, safety and dignity, as well as the right to limitation of maximum working time, to daily and weekly rest periods and to an annual period of paid leave,
- [Council Directive 89/391/EEC of 12 June 1989](#) on the introduction of measures to encourage improvements in the safety and health of workers at work⁴,
- [Council Directive 91/383/EEC of 25 June 1991](#) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship⁵,
- [Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003](#) concerning certain aspects of the organisation of working time⁶,
- [Directive \(EU\) 2019/1152 of the European Parliament and of the Council of 20 June 2019](#) on transparent and predictable working conditions in the European Union⁷,
- [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019](#) on work-life balance for parents and carers and repealing Council Directive 2010/18/EU⁸.

Also certain principles of the [European Pillar of Social Rights under](#) Chapter III on Fair Working Conditions, are of relevance in this debate, notably principles Nos 5 (fair and equal treatment

³ See also the European Parliament Research Service (EPRS) [Briefing on the 'Right to disconnect'](#), July 2020.

⁴ OJ L 183, 29.6.89, p. 1; next to the Directive 91/383/EEC, the Directive 89/391/EEC is complement with manifold so-called individual Directives which are also relevant in this regard, such as Directive 90/270/EEC on display screen equipment.

⁵ OJ L 206, 29.7.91, p. 19.

⁶ OJ L 299, 18.11.2003, p. 9.

⁷ OJ L 186, 11.7.2019, p. 105.

⁸ OJ L 188, 12.7.2019, p. 79.

regarding working conditions regardless of type of employment relationship), 7 (information about employment conditions and protection in case of dismissals), 8 (Social dialogue, collective bargaining and involvement of workers), 9 (Work-life balance) and 10 (Healthy, safe and well-adapted work environment and data protection).

Also the European cross-industry and sectoral level social partners have placed, within their European social dialogue, a particular importance on the impact and challenges of digitalisation and telework to the world of work and labour markets. For the cross-industry social dialogue reference can be made to the 2002 [Framework Agreement on Telework](#) (dealing with, amongst other issues, the voluntary character of telework, working conditions and work organisation (including working time), health and safety, training, equipment, data protection and collective rights) and the [2020 Framework Agreement on Digitalisation](#), which, next to digital skills and securing employment, artificial intelligence and guaranteeing the human in control principle, respect for human dignity and prohibiting undue surveillance, also provides for a specific chapter on the modalities (and thus not the right) of connecting and disconnecting. Also within the framework of the European sectoral social dialogue very relevant instruments were adopted and implemented across different sectors (for a non-exhaustive list, see Annex)

From an EU institutional level, on 21 January the European Parliament adopted its [own legislative initiative report on the Right to Disconnect](#). The EP calls on the Commission to propose a European directive on the right to disconnect. The report puts forward its own legislative proposal describing the minimum requirements for using digital tools for professional purposes outside working time. It provides for all workers in the EU the right to disconnect, switch off and refrain from engaging in work-related tasks, activities or communication outside of working time. It also includes safeguards to workers against any victimisation or negative repercussion if they use this right. The report also recognises the social partners' role in implementation on the national, regional, sectoral and company level.⁹

However, under the pressure of in particular the European employers' organisations, an amendment was introduced (and adopted) in the report calling upon the Commission not to launch a legislative initiative on the right to disconnect during the implementation period of the European framework agreement on Digitalisation. This was heavily contested by the ETUC and its affiliates as nothing in the TFEU (in particular Articles 154-155) provides for such a possibility to prevent the Commission from taking up its right of legislative initiative. Furthermore, such a recommendation does not lie within the competences of the EP and interferes with the institutional balance of competences of the EU institutions. It is also to be noted that the Commission in its Communication of 2004 "Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue" (COM(2004) 557 final) provided that "the Commission may also exercise its right of initiative at any point, including during the implementation period, should it conclude that either management or labour are delaying the pursuit of Community objectives."

Also the European Economic and Social Committee (EESC), upon the request of the Portuguese EU Presidency, adopted on 23 March an opinion on "Challenges of Teleworking: organization of working time, work life balance and the right to disconnect".¹⁰

⁹ See also the European Added Value Assessment study of the European Added Value Unit of the European Parliament Research Service (EPRS) entitled 'The right to disconnect', PE 642.847, July 2020; [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI\(2020\)642847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf)

¹⁰ EESC SOC(660), Rapporteur Carlos Manuel TRINDADE, "[Challenges of Teleworking: organization of working time, work life balance and the right to disconnect](#)"; also on 23 March the EESC adopted another relevant Opinion on "[Teleworking and gender equality - conditions so that teleworking does not exacerbate the unequal distribution of unpaid care](#)"

From a national perspective the regulation of the right to disconnect via legislation and/or collective agreements (on national, sectoral and undertaking level) varies widely across Member States.¹¹

ETUC main demands in relation to an EU Directive on the Right to Disconnect with a focus on its enforcement.

For ETUC it is crystal clear that the impact of digitalisation on the world of work should be guided by the respect of human rights and the fundamental rights and values of the EU. The existing legal framework as outlined above is fully applicable for digital working arrangements, however it is too often disregarded in practice.

Thus, there is an urgent need to ensure that the fundamental right to disconnect and its enforcement is effectively provided to all workers as not protecting them by not enforcing the right to disconnect would have severe human and social implications.

Given the current lack of international and European instruments specifically dealing with enforcing the right to disconnect, and in line with the ETUC Action Programme 2019-2023 adopted at its Vienna Congress to '*promote the right to disconnect, including through legislative means*' (§188), the ETUC therefore calls on the Commission to launch, in line with the provisions of the Social Policy Chapter of the EU Treaties, without further delay a legislative initiative in the form of a European Directive, based on in particular Article 153(1)(a), (b) and (i) TFEU, on the application and enforcement of the right to disconnect.

From a general perspective, this Directive should take a human rights approach in line with the international and European human rights instruments (and their related case law) mentioned above. Also, the Directive should not only fully respect but also ensure a better enforcement of the minimum requirements laid down in above mentioned Directives, in particular the requirements in those directives that relate to maximum working hours and minimum rest periods, flexible working arrangements, and information obligations.

Furthermore, this EU Directive should ensure amongst other elements the following key elements related to the application and enforcement of the right to disconnect:

- **Description of the right to disconnect:** workers have the right to switch off their digital devices and should not be expected to engage in any work-related digital activities and use of electronic communication, like checking/responding to emails outside their legally and/or collectively agreed working time. Workers should also not suffer from any adverse treatment from their employer for being offline;
- The measures for the application and enforcement of the right to disconnect should **apply to all workers, irrespective of their employment status, their activities and the sector, both public and private**, they are employed in, a particular attention is to be paid to the most vulnerable workers and those with caring responsibilities; the Directive should also particularly ensure the inclusion of and application to professional and managerial staff to avoid risking a derogation from their protection from the Directive;

[and domestic work between women and men and for it to be an engine for promoting gender equality](#)' (EESC SOC(662), rapporteurs: Milena Angelova/Erika Koller) .

¹¹ See amongst others Eurofound Report of 31 July 2019 entitled 'The right to switch off' and Eurofound Working Paper entitled '[The right to disconnect in the 27 EU Member States](#)' (July 2020).

- Taking into account the employers' responsibility for protecting the health & safety in general, the **purpose of the Directive** should be to protect the health and safety and to improve working conditions for all workers by **laying down minimum requirements for applying and enforcing the right to disconnect**;
- **Workers should have effective measures to enforce and apply the right** to switch off work-related tools and not to respond to employers' requests outside collectively agreed working time nor to engage in work-related tasks, activities or communications outside working time, by means of digital tools, such as phone calls, emails or other messages;
- **Employers should be effectively prevented from** requiring or promoting workers to be directly or indirectly available or reachable outside their agreed working time, also **co-workers should refrain** from contacting or communicating with workers outside collectively agreed working hours for work purposes; furthermore, in particular in international undertakings working in different time zones, partners of the undertaking and/or subsidiaries should be informed and sensitised to the right to disconnect (for example by signing a Charter with the employer), EWCs could serve an important forum to facilitate such information exchange, sensibilisation and dialogue between those parties.
- The Directive should also **recall that time during which a worker is available or reachable for the employer is working time**, given the inherent link between the right to disconnect and working time, effective recording of working time can contribute to respecting contractual working time and the Directive should ensure employers set up an objective, reliable and transparent system enabling the duration of time worked to be recorded/measured, in accordance with the case-law of the CJEU, in particular its judgment of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO) (C-55/18);
- Beyond the working time minimum requirements, the Directive should **link the right to disconnect not only to working time but also to the workload and workload assessment**.¹² Even if the right to disconnect is respected, its full effectiveness thus also relies on a reasonable regulation of the workload;
- **Workers should also be fully informed** about their working conditions in general and in particular for the purpose of applying and enforcing the right to disconnect, which should occur in a timely manner and in written or digital form to which workers have easy access; employers must provide workers with sufficient written information, on the practical arrangements for switching off digital tools for work purposes, on any work-related monitoring or surveillance tools, on the manner in which working time is recorded, on the applicable health and safety assessment, and on the measures for protecting workers against adverse treatment and for implementing workers' right of redress; in relation to this right of information it should also be ensured that **cross-border workers** are properly informed of measures to enforce and apply their right to disconnect;
- The use of digital tools at the workplace also raises serious concerns regarding **privacy, increased surveillance and monitoring of workers and their performance and disproportionate and even illegal collection of personal data**; such tools should only be used where necessary and proportionate and employees' right to privacy should be ensured in line with international and European human rights standards¹³; employers should provide workers with adequate information on the

¹² See also in that regard Chapter 2 of the 2020 European Framework Agreement on Digitalisation which refers under measures to be considered to "work organisation and workload, including the number of staff, are key aspects which need to be identified and evaluated jointly" and "Regular exchanges between managers and workers and/or their representatives on the workload and work processes".

¹³ Article 8 of the European Convention of Human Rights (ECHR) and Regulation (EU) 2016/679 of the European Parliament and

scope and nature of the monitoring and surveillance and that employers are required to justify the measures and minimise their impact by deploying the least intrusive methods; the Directive should **entrust a role of social partners as well as data protection supervisory authorities to ensure that any surveillance/ monitoring tools are only used where necessary and in a proportionate manner in order to ensure the right to privacy and data protection of workers**;

- The Directive should provide that all (digital) **professional learning and training activities** must be counted as work activity and take place during agreed working hours, it should also promote supporting individual training sessions aiming at improving IT skills for all workers (and their managers) in order to ensure good and efficient performance of their work;
- **Workers, including those who are trade union/workers' representatives, using the measures / instruments to apply and enforce their right to disconnect should not face the risk of adverse consequences, such as dismissal or other retaliatory measures** (including in relation to promotion), workers and their trade union/workers' representatives reporting situations of non-compliance with the measures to apply and enforce the right to disconnect in the workplace should not be penalised;
- Workers and their **trade union/workers' representatives should have adequate and rapid access to judicial and administrative proceedings against any adverse treatment** resulting from their (seeking to) exercising or enforcing all the rights provided for under this Directive;
- The Directive should provide for the establishment of **internal prevention measures**, such as an internal alert mechanism which allows for announcing/reporting the degradation of the workers' working conditions in the undertaking;
- The Directive should **respect the autonomy of the social partners**, and with respect for and in accordance with national labour market models, and provide for the full involvement of the social partners, not only in the implementation of this Directive as such, but also in the effective application and enforcement of the right to disconnect in the work place. In particular the practical arrangements for the exercise and enforcement of the right to disconnect should be agreed by the social partners by means of collective agreement at the appropriate levels (national, sectoral and/or undertaking); unilaterally established arrangements by the employer or based on individual agreements with the workers concerned should be prohibited;
- Member States should also ensure a **proper enforcement** on the one hand **by social partners** which can enforce laws and collective agreements, according to national labour market models, **and** on the other hand through the **national labour or other inspection authorities** which implies amongst other things that those inspection authorities are sufficiently resourced from a financial and personnel point of view;
- The Directive should also provide for a **non-regression and more favourable provisions clause** which also clarifies that nothing in the Directive shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or the MS are party, including the European Social Charter and the relevant Conventions and Recommendations of the International Labour Organisation.

Finally, the possibility of a Directive on the right to disconnect should not prevent the European Commission from coming forward with a proposal for a Directive on the prevention of psychosocial risks.

ANNEX: European sectoral social dialogue joint texts on telework and digitalisation¹⁴

Telework

Eurocommerce and UNI, Europa, European agreement on guidelines on Telework and ICT-mobile work in commerce, 25 May 2018 (commerce)

EACB, EBF-FBE, ESBG and UNI Global Union, Declaration on Telework in the European Banking Sector, 17 November 2017 (banking)

ETNO and UNI Europa, Joint Declaration on ICT-based mobile work, 2 February 2017 (telecommunications)

ETNO and UNI Europa, Joint declaration on telework, 9 June 2016 (telecommunications)

ACME, BIPAR, CEA and UNI-Europa, Joint declaration on telework by the European social partners in the insurance sector, 10 February 2015 (insurance)

CEMR-CCRE and EPSU, CEMR-EP/EPSU joint statement on telework, 13 January 2004 (local and regional government)

Eurelectric and EPSU, EMCEF, Joint declaration on telework, 13 November 2002 (electricity)

Eurocommerce and UNI Europa, European Agreement on Guidelines on Telework in Commerce, 26 April 2001 (Commerce)

ETNO and UNI Europa, Guidelines for Telework in Europe, 7 February 2001 (telecommunications)

Joint Committee, Opinion on telework, 23 November 1998 (telecommunications)

Digitalisation

ETNO and UNI-Europa, Joint Declaration on Artificial Intelligence, 30 November 2020 (telecommunications)

CEEMET and IndustriAll, Joint opinion on the impact of digitalisation on the world of work in the metal industries, 9 November 2020 (metal industry)

EFIC and EFBWW, European Social Partners joint statement on Digital Transformation in workplaces of the European Furniture Industry, 6 July 2020 (Furniture)

Federation of European Social Employers and EPSU, Joint Position Paper on Digitalisation in the Social Services Sector – Assessment of Opportunities and Challenges, 6 June 2020 (social services)

Eurelectric and EPSU, IndustriAll, Digitalisation at the heart of social partners' commitment to keep the lights on, 9 April 2020 (electricity)

Eurelectric and EPSU, IndustriAll, A Social Partners' Framework of Actions - Challenges and opportunities of the digitalisation for the workforce in the European Electricity Sector, 9 April 2020 (electricity)

PostEurop and UNI Europa, Joint Declaration on Training in the Digital Era, 6 December 2019 (postal services)

¹⁴ Based on the [European Commission EU social dialogue texts database](#), the European Trade Union Institute ([ETUI](#)) EU Social Dialogue texts database (not yet publicly available) and own research.

ECEG and IndustriAll, Joint recommendations on digital transformations in the workplace for the European chemicals, pharmaceuticals, rubber and plastics sectors, 8 November 2019 (chemical industry)

EFCI/FENI and UNI Europa, Joint Statement on the Impact of Digitalization on Employment in the Cleaning and Facility Services Industry, 29 October 2019 (industrial cleaning)

INTERGRAF and UNI-Europa, Print is vital for the future of reading - INTERGRAF and UNI Europa Graphical & Packaging joint statement, 21 October 2021 (graphical industry)

FEPOR, ESPO and ETF, Joint statement "Market based and technological developments in the shipping sector and technological innovation represent major challenges for the port sector", 24 June 2019 (ports)

AMICE, BIPAR, Insurance Europe and UNI Europa, Follow-up statement on the social effects of digitalization, 15 February 2019 (insurance)

IRU and ETF, Joint statement from Social partners for better regulation and digital enforcement, 7 December 2018 (road transport)

EBF-FBE and UNI Europa, Joint Declaration on the Impact of Digitalisation on Employment, 30 November 2018 (banking)

CEPI and IndustriAll, A social partner resolution addressing the ongoing digitalisation in the European pulp and paper sector and its potential impact on industry and employment, 6 July 2018 (paper industry)

CEEMET and IndustriAll, The impact of digitalisation on the world of work in the metal, engineering and technology-based industries, 8 December 2016 (metal industry)

AMICE, BIPAR, Insurance Europe and UNI Europa, Joint declaration on the social effects of digitalisation by the European social partners in the insurance sector, 12 October 2016 (Insurance)

EPSU and CEMR, Joint Declaration on the opportunities and challenges of digitalisation in local and regional administration, 11 December 2015 (local and regional administration)