

# Right to disconnect: Legal provisions and case examples

[Challenges and prospects in the EU: Labour market change - trends and policy approaches towards flexibilisation](#)

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## Legal provisions

### **Italy: Law Agile on Smart working**

Flexible work practices aimed at enhancing work–life balance through the use of information and communications technology are mainly referred to as ‘smart working’ (*lavoro agile*). Such practices were originally introduced at company level and were subsequently specifically recognised by Law 81 of 22 May 2017. Specifically, Articles 18–24 of Law No. 81/2017 establish the regulatory framework for smart working. The law stipulates that smart working is put in place by an individual agreement between the employer and the worker and that it represents a way to perform ordinary work.

According to the law, smart working is intended to improve competitiveness and facilitate work–life balance for workers. Work takes place partly in company premises and partly outside, with no particular constraints in terms of place of work or working time, within the limits of maximum working time set by legislation and collective agreements. The law establishes that employers must give priority to requests made by mothers of small children or parents of disabled children. The individual agreement stipulated by the employer and the ‘smart worker’ defines the ways in which the work must be performed and regulates rest periods, as well as specifying the technical and organisational measures which ensure the disconnection of workers from the technological devices they use to perform their work.

Besides unilateral management initiatives, smart working is regulated by collective agreements both at sectoral and company levels. Such industry-wide agreements include the agri-food industry (5 February 2016), energy and oil (25 January 2017), gas and water (18 May 2017) and waste management (25 July 2017). There are also several company agreements, especially in large enterprises, such as ENI (energy and oil), Poste Italiane (postal services), Ferrovie dello Stato (railways), Enel (electricity), Barilla (agri-food) and Siemens (engineering). Company agreements include more detailed and operational provisions. Such provisions tend to relate to: the frequency of teleworking; specifications regarding core hours and the flexibility around other hours during which teleworkers can perform their duties; the right (or, indeed, in some cases the duty) to disconnect; and provisions on health and safety training linked to working hours and on privacy rules.

According to the Smart Working Observatory, established as part of the Digital Innovation Observatories of the School of Management of the Politecnico di Milano, in 2018, there were some 480,000 smart workers in Italy. Currently, only 5% of company agreements cover smart working arrangements.

## France: The right to disconnect

Taking into account the position of the social partners and their national collective agreement of 2013 (Accord national interprofessionnel: Qualité de vie au travail, 19 juin 2013), the French legislator has introduced a provision in the new Labour Code that makes it compulsory to include a discussion on the issues of the right to disconnect and work–life balance in the framework of the annual collective bargaining on gender equality and quality of life at work (Law No. 2016-1088 of 8 August 2016<sup>1</sup>). According to Article L.2242-17, the annual negotiation on gender equality and quality of life at work must specify the following:

*the procedures for the full exercise by the employee of [their] right to disconnect and the implementation by the company of mechanisms to regulate the use of digital tools, in order to ensure compliance with rest and leave periods as well as personal and family life. Failing to reach an agreement, the employer shall draw up a charter, after consulting the Social and Economic Committee. This charter defines these procedures for exercising the right to disconnect and also provides for the implementation of training and awareness-raising actions for employees, managers and executives on the reasonable use of digital tools.*

(Article L.2242-17)

The law has contributed to a significant increase in the number of sectoral collective agreements since March 2018 on the issues of telework (158), the right to disconnect (55) and quality of life at work (193). One such example is the Agreement on psychological risks in financial companies of 21 January 2019,<sup>2</sup> signed by the employer organisation in the sector (L'Association française des sociétés financières) and the five representative trade unions (Fédération CFDT des Banques et Assurances; Fédération CGT des Syndicats du Personnel de la Banque et de l'Assurance; la Fédération des Employés et Cadres; Syndicat National de la Banque et du Crédit; and Union Nationale des Syndicats Autonomes – UNSA/Fédération Banques et Assurances).

According to Article 6.2 of the agreement, the right to disconnect is intended to ensure compliance with rest and holiday periods as well as to help balance work with personal and family life. To this end, the employer shall ensure that mechanisms are in place to regulate the use of digital tools so that rest and holiday periods are respected. The procedures for exercising the right to disconnect are defined by company agreement or, failing that, by a charter drawn up by the employer. This charter also provides for the implementation of training and awareness-raising actions for employees and management and executive staff on the reasonable use of digital tools.

In addition, according to the French Labour Ministry's annual assessment of collective bargaining<sup>3</sup> in 2017, the signing of working conditions agreements at company level almost doubled between

<sup>1</sup> [Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.](#)

<sup>2</sup> [Accord du 21 janvier 2019 relatif aux risques psychosociaux dans les sociétés financières.](#)

<sup>3</sup> Ministère du Travail, [Bilan annuel de la négociation collective 2017.](#)

2016 and 2017, driven in particular by telework and the right to disconnect. According to the mandatory database of company-level agreements (in place since 28 March 2018), about 1,231 agreements with the word 'disconnect' in their title have been recorded. These results can be seen as an impact of the legislation (see box below) but also as an indirect impact of the National interprofessional agreement of 19 June 2013 on quality of life at work.

In terms of the practical tools used to implement the right to disconnect, the most commonly found approaches are soft tools; for instance, using software that indicates to the employer and the employee if applications and tools are used outside of standard working hours and supplying warnings and, in some cases, training for employees on the need for work–life balance to prevent burnout. In some organisations, hard tools are also used, including the switching off of servers.

### **Belgium: Law on strengthening economic growth and social cohesion**

This law, enacted on 26 March 2018, stipulates the right of employees to negotiate their options regarding disconnection and the use of digital communication utilities. The employer has to negotiate these matters within workplace health and safety committees, either with trade union representatives (if present) or employees themselves. The law requires that negotiations on these matters take place, but does not entail a strict right to disconnect. It also does not set a frequency for such negotiations as the need for consultation varies according to the needs of each company.

### **Spain: New data protection law**

On 7 December, the Organic Law 3/2018 of 5 November, on the protection of personal data and the guarantee of digital rights entered into force. Spain has used its transposition of European data protection legislation to include new digital rights in the labour law sphere, including the right to digital disconnection, recognising employees' right to rest, leave and holidays as well as personal and family privacy. The rule expressly states that the right to disconnect applies in cases of remote work and homeworking in relation to the use of technology tools.

The law states that the implementation of this right will be the responsibility of collective bargaining (at sector or company level) or of bilateral agreements between the company and worker representatives. Likewise, the employer, after listening to the worker representatives, must draw up an internal protocol addressed to workers (including management) that defines the conditions in which to exercise the right to disconnect and the training and awareness actions to be provided to staff about reasonable use of technological tools to avoid the risk of technology-related fatigue.

There is no information regarding the number of employees benefiting from the initiative or the actual impact on work–life balance and well-being, mainly due to its recent implementation (7 December 2018). Six collective agreements already recognise the right to disconnect, but most of these were negotiated before the implementation of the law.

## Case examples

### **Cyprus: Teleworking in the Cypriot telecommunications Authority**

The Cyprus Telecommunication Authority offers certain groups the opportunity to telework: pregnant women, young parents, workers facing health issues restricting their mobility and workers completing academic studies. Teleworking is considered suitable for carrying out tasks such as data analysis and data entry, report writing, telephony-based communications, web design and research and other technology-related tasks.

At present, there are 40 workers regularly performing telework (an equal share of men and women), while additional workers are able to carry out telework on an ad hoc basis.

### **Portugal: Company agreement at SCML**

This Portuguese company agreement, between Santa Casa da Misericórdia de Lisboa (SCML) and the trade union SDPGL (Sindicato Democrático dos Professores da Grande Lisboa), negotiated in 2017, offers the right to telework to workers who are disabled, have a chronic illness, are responsible for children up to 12 years of age, or care for a disabled or sick family member. Telework is initially offered for six months and can be extended for a maximum of five years. There is a right to return to office work in the same or a similar function. The company has the right to perform visits to control work activity and equipment during normal working hours and after having given notice of not less than 24 hours.

### **Italy: Smart working at ENI group**

In Italy, a collective agreement negotiated in 2017 at the ENI group allows workers with children under the age of two to perform so-called smart work. This allows them to work from home for up to two days per week. A survey found that the productivity of smart workers increased due to improved motivation, better work–life balance, saving of commuting time and better organisation of work. Following an initial experimental phase, this arrangement was confirmed in 2018 for young parents, with a commitment to extend it to other segments of the workforce, as the agreement also expressly recognises the right to disconnect (as foreseen in the legislation on smart working – *lavoro agile*).

## **Czechia: Teleworking in police and fire services**

In Czechia, a collective agreement between the Ministry of the Interior and the trade unions of the police and fire service allows for workers with specific conditions to perform telework in the short term. This is aimed at allowing individuals with caring responsibilities for young children or those with health problems to stay employed during periods when they find it difficult to work at their regular workplace.

## **Hungary: Teleworking at Water Works Budapest**

After a period of testing, Fővárosi Vízművek (Water Works Budapest) introduced telework extensively in 2018 when it moved to new headquarters. Telework contributed to the company's ability to rent less costly office space, as well as retaining key staff with family responsibilities.

The system of teleworking was introduced gradually by the firm. Teleworkers are treated equally in all respects to those working in the office. There are three kinds of teleworkers:

- full teleworkers, who only go to the office once a month (very rare)
- split-time employees, who telework only on certain days of the week (typical)
- ad hoc, flexible, occasional teleworkers

The employee agrees the arrangements individually with their immediate manager. Usually there is core time and flexible time within the teleworking framework. The place of work is the employee's home. The workstation is set up by the company's technicians, and its technical condition is regularly checked. The occupational safety group carries out a work safety risk assessment. The firm pays a modest fee on a daily basis as a contribution to utility bills.

Measurement and monitoring of performance varies by area: JobCTRL (a job management software) is used for customer support staff. In other jobs, the number of cases to be arranged is subject to a set limit.

Work time is also regulated in the agreement, and it must be agreed between parties on an individual basis.

Work-life balance is an important aspect of teleworking for the company, as it can attract new and retain old workers who would not otherwise be able to work due to family commitments. Furthermore, employees can save a lot of time by eliminating travel, and the firm can employ more distant workers. Thus, the potential pool of labour increases.

The experience of teleworking is definitely positive for both the employees and the employer. However, some employees have asked to return to office work as they felt telework did not suit them. Among the reasons for this was loneliness and missing the company of colleagues. Split-time telework has therefore emerged as the most popular option.

## Germany: Company initiatives on the right to disconnect

In Germany, the national regulation does not include the right to disconnect. However, laws such as the Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (*Arbeitsschutzgesetz*) and the Working Hours Act (*Arbeitszeitgesetz*) set certain legal limits with regard to the constant availability of employees.

The primary goal of the German Working Hours Act (implementing the European Working Time Directive) is the protection of employees from health risks arising from working beyond a certain number of hours.

In 2016, however, the Ministry of Labour and Social Affairs produced the white paper *Work 4.0 (Weissbuch Arbeiten 4.0)*, which sets out a guideline to balance the flexibility needs of companies and workers while at the same time maintaining health and safety at work. In this context, the Ministry of Labour and Social Affairs, companies, social partners, civil society and academia reached a broad consensus regarding the fact that working time must be organised in a way that better takes into account differing needs. According to the parties involved in the project, the best way to address the issue is to negotiate collective agreements making flexibility compromises and drafting works agreements. Furthermore, it has been concluded that a real far-reaching reform would be a Working Time Choice Act (*Wahlarbeitszeitgesetz*) containing provisions regarding protection from overwork, the dissolution of work boundaries, time sovereignty and flexibility compromises. This would give employees more options regarding their working time and location and, to some extent, the possibility to deviate from the applicable provisions of the Working Hours Act. However, so far, no concrete legislative proposals have been presented.

Nonetheless, some high-profile company-level agreements in relation to the right to disconnect are already in place. For example, **BMW** has set out in a works agreement that employees may agree with their respective superior fixed hours during which they are available, and mobile activities carried out during off-work time are credited to their working time accounts. At the same time, employees have the right to be inaccessible during holidays, at the weekend and after the end of the working day. Since 2011, an agreement at **Volkswagen** has gone a step further. The agreements provide for the mail server for all smartphones to be switched off half an hour after work and not switched on again until half an hour before the official working day. At **Daimler**, all emails received when the employee's out-of-office message is on during holidays are deleted. The sender gets the out-of-office message and has to send the email again at a time when the worker is back in the office. With regard to all employees, including those at the higher management level, **Henkel** has stated that nobody has to check their emails after official working hours. Even Henkel's CEO declared that on one day of the week (Saturday), he himself would not check his emails, and he has prohibited all executive board members from contacting him between Christmas and New Year's Day. **Evonik** uses an 'email brake' (*E-Mail-Bremse*) set out in a works agreement that applies to all employees of the company. The employees, together with their supervisors, define periods of availability. Beyond this, employees do not have to answer emails, but the email servers are not turned off and emails are not blocked. **IBM Germany** blocks employees' emails between 20:00 and 06:00.



## Spain: Telework and the right to disconnect at AXA

AXA 2017 is an agreement negotiated by the management of the companies of the AXA Group and workers representatives of the CCOO Union in Spain. Its content is based on a French agreement of the AXA Group. Both the right to disconnect and teleworking are an important part of the catalogue of 85 measures developed by the company to improve work–life balance. Regarding the right to disconnect, the agreement establishes that workers are not obliged to respond to emails or professional messages outside of their working hours, except under exceptional circumstances. The agreement does not regulate or specify this right any further than this.

However, the regulation of teleworking as a flexible form of working is more developed. The agreement establishes that teleworking must be voluntary and reversible and the teleworkers must benefit from equal rights with other employees. It specifies that telework is available to workers who have the aptitude, autonomy, occupation and ability to perform telework without impacting the delivery of the service. The company determines the frequency with which teleworking is available. In cases of workers with health or mobility problems (or those providing care for close family members due to illness), exceptions can be made to extend the frequency of teleworking days.

AXA was the first company in Spain to recognise the right to disconnect. Likewise, since 2013, the company has implemented teleworking measures. It started with a pilot project, which has been progressively consolidated. In 2018, more than 1,000 employees across all departments benefited from this measure (around 40% of the workforce). The company plans to increase the number of employees who can telework each year. The number of days of teleworking per week has also increased (from one to two) in some cases. A study conducted externally by MásFamilia Foundation (2019<sup>4</sup>) highlights that AXA employees perceive the main benefits of teleworking to be the reduction of commuting time and the resulting improvement of work–life balance (mainly using any saved time to cater to children’s school times and to have more leisure time). Likewise, the company highlights that productivity in administrative departments increases by 28% on telework days (taking account of the increase in the number of calls and activities managed).

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<sup>4</sup> Fundación MásFamilia (2019). *Más allá del teletrabajo: una nueva forma flexible de trabajo*. Libro blanco del Teletrabajo. Edición II. Retrieved in: <https://flexibilidadyteletrabajo.com/>

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