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DRAFT REPORT

with recommendations to the Commission on the right to disconnect
(2019/2181(INL))

Committee on Employment and Social Affairs

Rapporteur: Alex Agius Saliba

(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on the right to disconnect (2019/2181(INL))

The European Parliament,

– having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to point (b) of Article 153(2) TFEU, in conjunction with points (a), (b) and (i) of Article 153(1) TFEU,

– having regard to 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 work[1],

– having regard to 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 relationship[2],

– having regard to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time[3],

– having regard to Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union[4],

– having regard to Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU[5],

– having regard to Articles 23 and 31 of the Charter of Fundamental Rights of the European Union (the 'Charter'),

– having regard to the European Pillar of Social Rights, in particular principles Nos 5, 7, 8, 9 and 10,

– having regard to the conventions and recommendations of the International Labour Organization (ILO), in particular the 1919 Hours of Work (Industry) Convention (No. 1), the 1981 Collective Bargaining Recommendation (No. 163), the 1981 Convention on Workers with Family Responsibilities (No. 156) and its accompanying Recommendation (No. 165),

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1 OJ L 183, 29.6.89, p. 1.
2 OJ L 206, 29.7.91, p. 19.
3 OJ L 299, 18.11.2003, p. 9.
4 OJ L 186, 11.7.2019, p. 105.
5 OJ L 188, 12.7.2019, p. 79.

– having regard to Article 24 of the Universal Declaration of Human Rights,

– having regard to the European Added Value Assessment study of the European Added Value Unit of the European Parliament Research Service (EPRS) entitled 'The right to disconnect'[6],

– having regard to the report of Eurofound of 31 July 2019 entitled 'The right to switch off',

– having regard to the case-law of the Court of Justice of the European Union (CJEU) on the criteria for determining working time, including on-call and standby time, on the significance of rest time, on the requirement to measure working time, and on the criteria for determining the status of a worker[7],

– having regard to the UNI Global Union's report entitled 'The Right to Disconnect: Best Practices',

– having regard to paragraph 17 of its resolution of 10 October 2019 on employment and social policies of the euro area[8],

– having regard to Article 5 of the Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament[9],

– having regard to Rules 47 and 54 of its Rules of Procedure,

– having regard to the report of the Committee on Employment and Social Affairs (A9-0000/2020),

A. whereas there is currently no specific Union law on the worker's right to disconnect from digital tools, including information and communication technology (ICT), for work purposes;

B. whereas digitalisation has brought many advantages to employers and workers, but also disadvantages, because it can intensify work, extend working hours and increase the unpredictability of working hours, blurring the boundaries between work and private life;

C. whereas the ever greater use of digital tools for work purposes has resulted in an 'ever-connected' or 'always on' culture that can have detrimental effect on workers' fundamental rights, fair working conditions, including a fair remuneration, the limitation of working time and work-life balance, and health and safety at work, as well

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6 PE 642.847, July 2020; https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf

7 See, inter alia, judgments of the Court of Justice of 5 October 2004, Pfeiffer and others, C-397/01 to C-403/01, ECLI:EU:C:2004:584, paragraph 93; of 21 February 2018, Matzak, ECLI:EU:C:2018:82, C-518/15, paragraph 66; of 7 September 2006, Commission v United Kingdom, C-484/04, ECLI:EU:C:2006:526, paragraph 36; of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18, ECLI:EU:C:2019:402, paragraph 60; and of 17 November 2016, Betriebsrat der Ruhrlandklinik, C-216/15, ECLI:EU:C:2016:883, paragraph 27.

8 Texts adopted, P9_TA(2019)0033.

9 OJ L 262, 7.10.2005, p. 1.

as, because of their disproportionate impact on workers with caring responsibilities, who tend to be women, equality between men and women;

D. whereas the measures taken as a result of the COVID-19 crisis have changed the way in which people work; whereas over a third of Union workers started working from home during the lockdown, compared to 5 % who usually worked from home, and there was a substantial increase in the use of digital tools for work purposes;

E. whereas the right to disconnect should be a fundamental right and an important social policy objective to ensure protection of the rights of all workers in the new digital era;

1. Stresses that digital tools, including ICT, for work purposes have increased flexibility with regard to the time, place and manner in which work can be performed and workers can be reached;

2. Highlights that constant connectivity combined with high job demands and the rising expectation that workers are reachable at any time can negatively affect workers' fundamental rights and their physical and mental health and well-being;

3. Notes that 'an increasing body of evidence underlines that the effects of a reduction of regular long working hours include positive impacts on workers' physical and mental health, improved workplace safety and increased labour productivity due to reduced fatigue and stress, higher levels of employee job satisfaction and motivation and lower rates of absenteeism'[10];

4. Acknowledges the importance of using digital tools for work purposes properly and efficiently, with care to avoid any infringement of workers' rights to fair working conditions, including a fair remuneration, the limitation of working time and work-life balance, as well as health and safety at work;

5. Believes that interruptions of workers' non-working time increase the risk of unremunerated overtime, have a negative impact on their work-life balance, prevent them from properly recovering from work, and increase the risk of psychosocial and physical problems, such as anxiety, depression and burnout;

6. Acknowledges Eurofound findings that show that people who work from home are more prone to working longer and more irregular hours; stresses that the number of workers in the Union reporting long working hours or who are unable to benefit from non-working time is increasing;

7. Reiterates that the combination of long working hours and higher demands on people working from home during the COVID-19 crisis is likely to pose higher than expected risks for workers, with a negative impact on the quality of their working time and their work-life balance;

8. Stresses that workers' right to health and safety at work is key to the right to disconnect

[10] Messenger, ILO, quoted in 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

in protecting workers' physical and mental health and well-being and protecting them from psychosocial risks; reiterates the importance of implementing psychosocial risk assessments at company level;

9. Acknowledges that the right to disconnect is not explicitly regulated in Union law; recalls that a number of Member States have taken steps to regulate the use of digital tools for work purposes in order to provide safeguards and protection to workers;

10. Calls on the Commission to evaluate and address the risks of not protecting the right to disconnect;

11. Calls on the Commission to ensure that Member States and employers ensure that workers are able to exercise their right to disconnect;

12. Calls on the Commission to adopt a Union directive to ensure that workers are able to exercise their right to disconnect and to regulate the use of existing and new digital tools for work purposes;

13. Is of the opinion that the new directive should particularise and complement Directives 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158, and believes that it should provide for solutions to address the responsibilities of employers and the expectations of workers regarding the organisation of their working time when they use digital tools;

14. Stresses that the right to disconnect allows workers to refrain from engaging in work-related tasks, activities and electronic communication, such as phone calls, emails and other messages, outside their working time, including during rest periods, official and annual holidays and other types of leave, without facing any adverse consequences;

15. Reiterates that the limitation of working time is considered to be essential to ensure the health and safety of workers in the Union;

16. Stresses that the Commission, Member States, employers and workers must actively support and encourage the right to disconnect and promote an efficient, reasoned and balanced approach to digital tools at work, as well as awareness-raising measures, education and training campaigns relating to working time and the right to disconnect;

17. Strongly believes that employers should not require workers to be directly or indirectly available or reachable outside their working time and should provide workers with sufficient information, including a written statement, setting out the workers' right to disconnect, namely at least the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring or surveillance tools, the manner in which working time is recorded, the employer's health and safety assessment, and the measures for protecting workers against adverse treatment and for implementing workers' right of redress;

18. Stresses the importance of the social partners to ensure the effective implementation and enforcement of the right to disconnect; believes that Member States must ensure that workers are able to exercise their right to disconnect, including by means of collective agreements;

19. Calls on Member States to ensure that workers who invoke their right to disconnect are protected from victimisation and other negative repercussions and that there are mechanisms in place to deal with complaints or breaches of the right to disconnect;

20. Requests that the Commission submit, on the basis of Article 225 of the Treaty on the Functioning of the European Union, a proposal for an act on the right to disconnect, following the recommendations set out in the Annex hereto;

21. Considers that the requested proposal does not have financial implications;

22. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and to the parliaments and governments of the Member States.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

TEXT OF THE LEGISLATIVE PROPOSAL REQUESTED

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the right to disconnect

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with points (a), (b) and (i) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

Whereas:

1. Points (a), (b) and (i) of Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to support and complement the activities of the Member States in the fields of improving the working environment to protect workers' health and safety, of working conditions and of equality between men and women with regard to labour market opportunities and treatment at work.

2. Article 31 of the Charter of Fundamental Rights of the European Union (Charter) provides that every worker has the right to working conditions which respect his or her 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. Article 30 of the Charter provides for the right to protection in the event of unjustified dismissal and Articles 20 and 21 of the Charter provide for equality before the law and prohibit discrimination. Article 23 of the Charter requires equality between men and women to be ensured in all areas, including employment, work and pay.

3. The European Pillar of Social Rights provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, that the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured, that innovative forms of work that ensure quality working conditions are to be fostered, and that employment

[1] OJ C...
[2] OJ C...
[3] Position of the European Parliament...

relationships that lead to precarious working conditions are to be prevented, including by prohibiting the abuse of atypical contracts (Principle No 5). They also provide that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship (Principle No 7), that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices (Principle No 8), that parents and people with caring responsibilities have the right to suitable leave and flexible working arrangements (Principle No 9), and that workers have the right to a healthy, safe and well-adapted work environment and data protection, as well as the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market (Principle No 10).

4. This Directive takes account of the conventions and recommendations of the International Labour Organization with regard to the organisation of working time, including, in particular, the 1919 Hours of Work (Industry) Convention (No. 1), the 1981 Collective Bargaining Recommendation (No. 163), the 1981 Convention on Workers with Family Responsibilities (No. 156) and its accompanying Recommendation (No. 165).

5. Article 24 of the Universal Declaration of Human Rights states that everyone has the right to rest and leisure, including the reasonable limitation of working time and periodic holidays with pay.

6. Digital tools enable workers to work from anywhere at any time and can contribute to improving workers' work-life balance. However, the use of digital tools, including ICT, for work purposes also has possible negative effects, such as resulting in longer working hours by inducing workers to work outside their working time, higher work intensity, as well as the blurring of the boundaries between working time and free time. If not used exclusively during working time, such digital tools may interfere with workers' private lives. For workers with unremunerated caring responsibilities, digital tools can make it particularly difficult to find a healthy work-life balance. Women spend more time than men in fulfilling such caring responsibilities, work fewer hours in paid employment and may drop out of the labour market entirely.

7. Moreover, digital tools that are used for work purposes can create constant pressure and stress, have a detrimental impact on workers' physical and mental health and well-being and can lead to occupational illnesses, such as anxiety, depression and burnout, which in turn place an increasing burden on employers and social insurance systems. Given the challenges presented by the significantly increasing use of digital tools for work purposes, atypical employment relationships and teleworking arrangements, in particular in the context of the increase in teleworking that arose as a result of the COVID-19 crisis, it has become even more urgent to ensure that workers are able to exercise their right to disconnect.

8. The expanding use of digital technologies has transformed the traditional models of work and has created an 'ever-connected' and 'always on' culture. In that context, it is important to ensure the protection of workers' fundamental rights, fair working conditions, including their right to a fair remuneration and the implementation of their working time, health and safety, and equality between men and women.

9. The right to disconnect refers to workers' right not to engage in work-related activities or communications outside working time, by means of digital tools, such as phone calls, emails or other messages. The right to disconnect should entitle workers to switch off work-related tools and not to respond to employers' requests outside working time, with no risk of adverse consequences, such as dismissal or other retaliatory measures. Conversely, employers should be prohibited from using the workers' labour outside working time.

10. The right to disconnect should apply to all workers and all sectors, both public and private. The purpose of the right to disconnect is to ensure the protection of workers' health and safety, and of fair working conditions, including work-life balance health and safetyand of fair working conditions, including work-life balance.

11. There is currently no Union law specifically regulating the right to disconnect. However, Council Directives 89/391/EEC[4] and 91/383/EEC[5] have the purpose of encouraging improvements in the safety and health of workers with an unlimited, fixed-term or temporary employment relationship; Directive 2003/88/EC of the European Parliament and of the Council[6] lays down minimum safety and health requirements for the organisation of working time; Directive (EU) 2019/1152 of the European Parliament and of the Council[7] has the purpose of improving working conditions by promoting more transparent and predictable employment; and Directive (EU) 2019/1158 of the European Parliament and of the Council[8] lays down minimum requirements to facilitate the reconciliation of work and private life for workers who are parents or carers.

12. Pursuant to Directive 2003/88/EC, workers in the Union have the right to minimum safety and health requirements for the organisation of working time. In that context, that Directive provides for daily rest, rest breaks, weekly rest, maximum weekly working time and annual leave, and regulates certain aspects of night work, shift work and work patterns. It is settled case-law of the Court of Justice of the European Union (CJEU) that on-call time, during which a worker is required to be physically present at a place specified by the employer, is to be regarded as "wholly working time, irrespective of the fact that, during periods of on-call time, the person concerned is not continuously carrying on any professional activity"[9], and that standby time, which a worker is obliged to spend at home, while being available to the employer, is to be considered to be working time[10]. Moreover, the CJEU has interpreted minimum rest periods as "rules of European Union social law of particular importance from which every worker must

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4 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 work (OJ L 183, 29.6.89, p. 1).

5 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 relationship (OJ L 206, 29.7.91, p. 19).

6 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

7 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

8 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

9 Judgment of the Court of Justice of 5 October 2004, Pfeiffer and others, C-397/01 to C-403/01, ECLI:EU:C:2004:584, paragraph 93.

10 Judgment of the Court of Justice of 21 February 2018, Matzak, ECLI:EU:C:2018:82, C-518/15, paragraph 66.

benefit as a minimum requirement necessary to ensure the protection of his health and safety"[11]. However, Directive 2003/88/EC makes no express provision for a worker's right to disconnect outside working hours, during rest periods or other non-work time.

13. The CJEU has confirmed that Directives 89/391/EEC and 2003/88/EC require employers to set up a system enabling the duration of time worked each day by each worker to be measured and that such a system be "objective, reliable and accessible"[12].

14. In its case law, the CJEU has established criteria for determining the status of a worker. The interpretation of the CJEU of those criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, atypical workers, such as on-demand workers, part-time workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices, whether they are engaged in the private or public sector, fall within the scope of this Directive. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship. For the purposes of this Directive, the term worker refers to any worker who has an employment relationship that fulfils the criteria of the CJEU.

15. In recent decades, standard employment contracts have declined and the prevalence of atypical or flexible working arrangements has increased, due in large part to the digitalisation of economic activities. There is Union law on some types of atypical work. Council Directive 97/81/EC[13] implements the framework agreement between the European social partners on part-time work and has the purpose of providing for the removal of discrimination against part-time workers, improving the quality of part-time work, facilitating the development of part-time work on a voluntary basis and contributing to the flexible organization of working time in a manner which takes into account the needs of employers and workers. Council Directive 1999/70/EC[14] puts into effect the framework agreement between the European social partners on fixed-term contracts and has the purpose of improving the quality of fixed-term work by ensuring the application of the principle of non-discrimination and preventing abuse arising from the use of successive fixed-term employment contracts or relationships. Directive 2008/104/EC of the European Parliament and of the Council[15], which was adopted following the failure of the European social partners to adopt a framework agreement, has the purpose of ensuring the protection of temporary agency workers and improving

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11 Judgment of 7 September 2006, Commission v United Kingdom, C-484/04, ECLI:EU:C:2006:526, paragraph 36.

12 Judgment of the Court of Justice of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18, ECLI:EU:C:2019:402, paragraph 60.

13 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14, 20.1.98, p. 9).

14 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

15 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

the quality of temporary agency work by ensuring equal treatment and by recognising temporary work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working. Moreover, the European social partners adopted framework agreements on telework in July 2002 and on digitalisation in June 2020. The latter provides for possible measures to be agreed between the social partners with regard to the workers' connecting with and disconnecting from work.

16. Point (a) of Article 3(1) and Article 3(2) of Directive 2008/104/EC provide for the concept of 'worker' to be defined by national law. However, the CJEU has determined that the criteria established in its settled case-law are to be applied to assess whether someone has the status of a worker. In particular, whether "a person performs services for and under the direction of another person, in return for which he receives remuneration" is determinative and "the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons [are not] decisive in that regard"[16].

17. Some Member States have taken steps to regulate the right to disconnect for workers who use digital tools for work purposes. Other Member States promote the use of digital tools for work purposes without specifically addressing the risks, a third group of Member States applies general legislation to the use of digital tools and a fourth group has no specific legislation[17]. Action at Union level in this area would provide for minimum requirements to protect all workers in the Union who use digital tools for work purposes, and, more specifically, their fundamental rights with regard to fair working conditions.

18. The purpose of this Directive is to improve working conditions for all workers by laying down minimum requirements for the right to disconnect while ensuring labour market adaptability. This Directive should be implemented in a manner consistent with Directives 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158.

19. The practical arrangements for the exercise of the right to disconnect by the worker and the implementation of that right by the employer should be able to be agreed by the social partners by means of collective agreement or at the level of the employer undertaking. Member States should ensure that employers provide workers with a written statement setting out those practical arrangements.

20. The autonomy of the social partners should be respected. Member States should be able to allow the social partners to maintain, negotiate, conclude and enforce collective agreements to enforce all or certain provisions contained in this Directive.

21. Member States should ensure, in accordance with national law and practice, the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive. Member States should be able to entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps

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16 Judgment of the Court of Justice of 17 November 2016, Betriebsrat der Ruhrlandklinik, C-216/15, ECLI:EU:C:2016:883, paragraph 27.

17 Eurofound.

to ensure that they can at all times guarantee the results sought under this Directive.

22. Employers should not be entitled to derogate from their requirement to implement the right to disconnect other than by means of collective agreement or by agreement between the social partners at the level of the employer undertaking. Such agreements should also provide for the criteria for determining compensation for any work carried out outside working time. Such compensation should be able to take the form of leave or financial compensation. In the case of a financial compensation, it should be at least equivalent to the workers' usual remuneration.

23. Workers who exercise their rights provided for in this Directive should be protected from any adverse consequences, including dismissal and other retaliatory measures. Such workers should also be protected against discriminatory measures, such as a loss of income or of promotion opportunities.

24. Workers should have adequate judicial and administrative protection against any adverse treatment resulting from their exercising or seeking to exercise the rights provided for under this Directive, including the right of redress as well as the right to initiate administrative or legal proceedings to ensure compliance with this Directive.

25. Member States may lay down the arrangements for the exercise of the right to disconnect established in this Directive, in accordance with national law, collective agreements or practice. Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive.

26. The burden of proof with regard to establishing that a dismissal or equivalent detriment did not take place on the grounds that a worker exercised or sought to exercise the right to disconnect should fall on the employer where a worker has established, before a court or another competent authority, facts capable of giving rise to a presumption that the worker has been dismissed or suffered other detrimental effects on such grounds.

27. This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. This Directive should not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.

28. The Commission should review the implementation of this Directive in order to monitor and ensure compliance with this Directive. To that end, Member States should submit regular reports to the Commission.

29. In order to assess the impact of this Directive, the Commission and the Member States are encouraged to continue to cooperate with one another in order to develop comparable statistics and data on the implementation of the rights established in this Directive.

30. Since the objective of this Directive, namely to establish appropriate safeguards for the enforcement of the right to disconnect in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go

beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down minimum requirements to enable workers who use digital tools, including ICT, for work purposes, to exercise their right to disconnect and to ensure that employers respect workers' right to disconnect. It applies to all sectors, both public and private, and to all workers, including on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices, provided that they fulfil the criteria for determining the status of a worker laid down by the CJEU.

2. This Directive particularises and complements Directives 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158 for the purposes mentioned in paragraph 1.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(1) "disconnect" means not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time;

(2) "working time" means working time as defined in point (1) of Article 2 of Directive 2003/88/EC.

Article 3

Right to disconnect

1. Member States shall ensure that employers provide workers with the means to exercise their right to disconnect.

2. Member States shall ensure that employers record individual working times in an objective, reliable and accessible way. Any worker shall be allowed at any time to request and obtain the record of their working times.

3. Members States shall ensure that employers implement the right to disconnect in a fair, lawful and transparent manner.

Article 4

Measures implementing the right to disconnect

1. Member States shall ensure that workers are able to exercise their right to disconnect and that employers implement that right. To that end, Member States shall provide for at least the following working conditions:

   (a) the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring or surveillance tools;

   (b) the manner in which employers record working time;

   (c) the content and frequency of employers' health and safety assessments, including psychosocial risk assessments, with regard to the right to disconnect;

   (d) the criteria for any derogation by employers from their requirement to implement a worker's right to disconnect;

   (e) in the case of a derogation under point (d), the criteria for determining how compensation for work performed outside working time is to be calculated;

   (f) the awareness-raising measures, including in-work training, to be taken by employers with regard to the working conditions referred to in this paragraph.

   Any derogation under point (d) of the first subparagraph shall be provided for only in exceptional circumstances, such as force majeure or other emergencies, and subject to the employer providing each worker concerned with reasons in writing, substantiating the need for the derogation on every occasion on which the derogation is invoked.

   Member States shall prohibit employers from derogating from their requirement to implement the right to disconnect under point (d) of the first subparagraph other than by means of agreement between the social partners as referred to in paragraphs 2 and 3.

   Compensation for work performed outside working time as referred to in point (e) of the first subparagraph may take the form of leave or financial compensation. In the case of financial compensation, it shall be at least equivalent to the workers' usual remuneration.

2. Member States may entrust the social partners to conclude collective agreements providing for the working conditions referred to in paragraph 1.

3. Where Member States do not make use of the option provided for in paragraph 2, they shall ensure that the working conditions referred to in paragraph 1 are agreed between the social partners at the level of the employer undertaking.

Article 5

Protection against adverse treatment

1. Member States shall ensure that employers are prohibited from discrimination, less favourable treatment, dismissal and other adverse measures on the ground that workers

have exercised or have sought to exercise their right to disconnect.

2. Member States shall ensure that employers protect workers, including workers' representatives, from any adverse treatment and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

3. Member States shall ensure that where workers who consider that they have been dismissed on the grounds that they exercised or sought to exercise their right to disconnect establish, before a court or other competent authority, facts capable of giving rise to a presumption that they have been dismissed on such grounds, it shall be for the employer to prove that the dismissal was based on other grounds.

4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to workers.

5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.

6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by Member States.

Article 6

Right of redress

1. Member States shall ensure that workers whose right to disconnect is violated have access to effective and impartial dispute resolution and a right of redress in the case of infringements of their rights arising from this Directive.

2. Member States shall ensure that trade union organisations or other worker representatives have the power, on behalf or in support of the workers and with their approval, to engage in any administrative or judicial proceedings with the objective of ensuring compliance with or enforcement of this Directive.

Article 7

Obligation to provide information

Member States shall ensure that employers provide each worker with sufficient information on their right to disconnect, including a written statement setting out the terms of any applicable collective or other agreements. Such information shall include at least the following:

(a) the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring or surveillance tools, as referred to in point (a) of Article 4(1);

(b) the manner in which working time is recorded, as referred to in point (b) of Article 4(1);

(c) the employer's health and safety assessment of the right to disconnect, including psychosocial risk assessments, as referred to in point (c) of Article 4(1);

(d) the criteria for any derogation by employers from their requirement to implement the right to disconnect, as referred to in point (d) of Article 4(1);

(e) in the case of a derogation under point (d) of this Article, the criteria for determining how compensation for work performed outside working time is to be calculated, as referred to in point (e) of Article 4(1);

(f) the employer's awareness-raising measures, including in-work training, as referred to in point (f) of Article 4(1);

(g) the measures for protecting workers against adverse treatment in accordance with Article 5;

(h) the measures for implementing workers' right of redress in accordance with Article 6.

Article 8

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, or the relevant provisions already in force concerning the rights which are within the scope of this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by ... [two years after the date of entry into force of this Directive], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Article 9

Level of protection

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.

2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers.

3. This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

Article 10

Reporting, evaluation and review of the right to disconnect

1. By ... [five years after the entry into force of this Directive] and every two years thereafter, Member States shall submit to the Commission a report on all relevant information regarding the practical implementation and application of this Directive, as well as evaluation indicators on the implementation practices of the right to disconnect, indicating the respective viewpoints of national social partners.

2. On the basis of the information provided by the Member States pursuant to paragraph 1, the Commission shall, by ... [six years after entry into force of this Directive] and every two years thereafter, submit a report to the European Parliament and to the Council on the implementation and application of this Directive and consider the need for additional measures, including, where appropriate, amendments to this Directive.

Article 11

Transposition

1. By … [two years after the entry into force of this Directive], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those measures from … [three years after the date of entry into force of this Directive].

   When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments, of any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

3. In accordance with Article 153(3) TFEU, the Member States may entrust the social partners, at their joint request, with the implementation of this Directive, provided that they ensure compliance with this Directive.

Article 12

Personal data

Employers shall process personal data pursuant to points (a) and (b) of Article 4(1) of this Directive only for the purpose of recording an individual worker’s working time. They shall not process such data for any other purpose. Personal data shall be processed in accordance

with Regulation (EU) 2016/679 of the European Parliament and of the Council[18] and Directive 2002/58/EC of the European Parliament and of the Council[19].

Article 13

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the Union.

Article 14

Addressees

This Directive is addressed to the Member States.

[18] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

[19] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

EXPLANATORY STATEMENT

It is important to recognise the advancement and impact information and communication technologies (ICT) have on the world of work in many sectors and occupations, making it possible for work to be taken anywhere and carried out anywhere and at any time and for workers to be reachable outside their working hours. As a result, many new challenges have evolved beyond the existing Union legal framework.

The widespread use of digital tools, including ICT, for work purposes has enabled workers with greater working time autonomy and flexibility in work organisation. In contrast, however, they also have created new ways of extending working hours and diluting the boundaries between working and free time. They have also been associated with types of "work nomadism", as a result of which workers often become unable to disconnect from work, which, over time, leads to physical and mental health problems, such as stress, anxiety, depression and burnout, as well as impacting negatively on workers' work-life balance.

Furthermore, since the beginning of the COVID-19 crisis, flexible and remote working arrangements using digital tools, including ICT, have proved to be effective for business continuity in some industries and there has been a spike in the number of teleworkers and teleworkable solutions, which are expected to become increasingly common in the aftermath of the COVID-19 crisis.

This report aims to provide suggestions for the EMPL Committee of the European Parliament with regard to a directive on the right to disconnect, specific recommendations on the critical elements of such a directive and the possible scope and content of the future right to disconnect, to be implemented at Union level.

The Rapporteur has endeavoured to consult stakeholders as widely and as transparently as possible in order to ensure that the report tackles real problems and to limit unnecessary and unintended consequences.

On the basis of the Rapporteur's assessment and observations, the rapporteur concludes that it is necessary to introduce safeguards at Union level to ensure a minimum level of protection for workers in the new digital world of work, and proposes a Directive on the Right to Disconnect. The Directive should apply to all workers who use digital tools, including ICT, in the course of their work, including atypical workers, and to all sectors of activity, both public and private.

The rapporteur recommends that a European right to disconnect is necessary to improve protection of workers and reinforce their rights to fair working conditions, fair remuneration, a work-life balance, periods of rest time and holiday and a healthy and safe workplace.

The Directive introduces minimum requirements on the use of digital tools for professional purposes outside working time, which over time aims at creating a culture that avoids out of hours contact.

The draft directive on the right to disconnect aims to reaffirm the right of no professional solicitation outside working time with full respect for working time legislation and working time provisions in collective agreements and contractual arrangements. The right to disconnect should be generally described as the right for workers to switch off their digital tools including

means of communication for work purposes outside their working time without facing consequences for not replying to e-mails, phone calls or text messages.

The proposal also raises employers' obligation to ensure workers' right to disconnect is respected, as well as their rights to fair working conditions and safety and health in every aspect related to work. The proposal aims to further address a system of defined rights, responsibilities and duties of employers and all workers, where the principle of prevention is accorded the highest priority.

The proposal addresses the importance of appropriate measures to ensure proper compliance and implementation of the measures proposed by the directive and to this end recognises the important role of the social partners for the implementation of the right to disconnect tailored to the specific needs and constraints of companies depending on the different national and regional levels, sectors and industries.

The proposal also introduces safeguards to ensure that employers provide workers with a written information on the collective agreement provisions on the operation of the right to disconnect. The employer should also inform workers on the methods to be used to support the right to disconnect, such as the arrangements for disconnecting and switching off digital tools for work purposes, the manner in which working time is recoded, and the employer's health and assessment.

The proposal also provides safeguards to workers who invoke their right to disconnect from any victimisation or negative repercussion and a mechanism to deal with complaints or breach of right to disconnect.

The proposal fully respects the Union rules protecting personal data as well as the fundamental rights of workers and existing Union law.