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"Judicial Protection of Fundamental Rights in the European Area of Freedom, Security and Justice"

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TWENTY YEARS OF EU AGREEMENTS ON REMOTE WORK FROM 2002 TO 2022. WHAT NEXT?

Marianna Russo*

CONTENTS: 1. Introductory remarks on the EU social partners' interest in remote work. – 2. The driving force of the 2002 framework agreement on telework. – 3. The boom in telework during the Covid-19 pandemic and the Eurofound tips. – 4. All that glitters is not gold: psychosocial risks of remote working from the EU perspective. – 4.1. The right to disconnect. – 4.2. An in-depth look at the EU Parliament resolution. – 4.3. Cyberbullying and domestic violence within the prism of remote work. – 5. The Joint work programme 2022-2024: what future for remote work?

1. Introductory remarks on the EU social partners' interest in remote work

Digitalisation is changing our lives and, consequently, the way we work too. This is not necessarily negative, because the binomial “work and technology” has a lot of potential. Indeed, digitalisation opens the ground for new forms of work organisation and job opportunities, by promoting not only emerging sectors, but also work-life balance, thanks to technological tools. However, at the same time, it raises a number of issues regarding labour rights, psychosocial risks, social protections, and extensive technological unemployment¹. The combination of work and technology is a sort of two-faced Janus: just as the ancient Roman god was depicted with two faces because he simultaneously looked at both the past and the future, technological work is, at once, a multiplier of opportunities and a stressor for legal concepts².

Double blind peer reviewed article.

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¹ OECD, *Automation and independent work in a digital economy*, in www.oecd.org, 2016; A. MCAFEE, E. BRYNJOLFSSON, *The Second Machine Age: Work, Progress, and Prosperity in a time of brilliant technologies*, New York, 2016; E. LACKOVA, M. RUSSO, *Regulating (Un)Employment Effects of Automation. Challenges For Employee-Oriented Technological Transition*, in *Hungarian Labour Law E-Journal*, 2022, no. 2, p. 25.

² “The relationship between innovation and employment is a ‘classical’ controversy, where a clash between two views can be singled out”: V. VAN ROY, D. VÉRTESY, M. VIVARELLI, *Technology and employment:*

Identifying a balance between opposing needs is not easy and requires great attention. This explains the significant interest shown over the years by the European social partners³ in remote work, which is one of the most relevant and common examples of technologies applied to work. First of all, it is important to clarify what remote work is and how it works. Remote work is a way of carrying out working performance outside company premises. In practice, remote workers complete their duties outside of a traditional office environment, generally using technological tools. This form of work is based on the concept that work can be successfully executed from anywhere.

Remote work may be a win-win strategy, both from the perspective of employers and employees. On the one hand, it is a way for companies and public administrations to modernise their internal organisation⁴ and cut costs⁵. Furthermore, it allows for the introduction of a more effective system for evaluating results and a relevant decrease in rates of absenteeism. On the other hand, it is a way for workers to balance work and personal life, reducing commuting time and consequent stress. In addition, it might be a good opportunity to give workers greater autonomy in the accomplishment of their tasks. Therefore, the result may be better productivity and, at the same time, it might be a tool for promoting inclusion in the labour market since working remotely increases the accessibility of employment for persons with disabilities and mothers.

It is within this context that the EU social partners can play a strategic role to promote better working conditions and improve labour protections for remote workers, in the light of art. 31⁶ of the Charter of fundamental rights of the European Union⁷. Social dialogue between workers' and employers' representatives is a key component of the European social market economy⁸ and the Treaty on the Functioning of the European Union states that its promotion is one of the common objectives of the European Union and the Member States⁹. As provided for by art. 155 TFEU, agreements concluded at Union level are called to co-design with the European Commission and national governments balanced measures to create an enabling environment for enterprises and better living and working conditions.

In order to fully understand not only the extent to which the EU social partners have so far been involved in improving labour conditions of remote workers, but also how they

Mass unemployment or job creation? Empirical evidence from European patenting firms, in *Research Policy*, 2018, no. 47, p. 1762.

³ The term "European social partners" specifically refers to those organisations at EU level which are engaged in European social dialogue, provided for under artt. 154 and 155 of the Treaty on the Functioning of the European Union (TFEU). They are representatives of management and labour (both, employer organisations and trade unions).

⁴ Using a flexible work organisation, which is more responsive to production needs.

⁵ For instance, heating and electricity costs.

⁶ The first paragraph of art. 31 establishes that "every worker has the right to working conditions which respect his or her health, safety and dignity".

⁷ It was laid down in Nice on 18.12.2000 and became legally binding with the ratification of the Treaty of Lisbon on 1 December 2009.

⁸ European Commission, *The role of social partners in the design and implementation of policies and reforms*, Brussels, 2016, p. 1.

⁹ Art. 151 TFEU.

could identify and address critical issues in the future, it is essential to examine the main agreements signed in the last two decades.

2. The driving force of the 2002 framework agreement on telework

The first relevant fruit of the European Union social dialogue on the topic of remote work was the Framework Agreement signed on the 16th of July 2002. During a consultation with social partners on modernising and improving employment relations, the European Commission invited them to start negotiations on telework. The items on the agenda were the following: identifying flexible working arrangements, making undertakings productive and competitive, and achieving the necessary balance between flexibility and security. This framework agreement was the tangible outcome of their collective bargaining. It is important to highlight that the EU social partners were far-sighted because, at the time, digitalisation applied to work was still taking its first steps.

In this framework agreement, remote work took the name of telework to emphasize the use of integrated telecommunication systems. Even though it might seem strange, working remotely without using technological tools is possible. If we apply set theory to the idea of remote work, we could say that it is the species, which includes two sub-areas, represented by work carried out through technological tools and work performed without them (i.e., the genera). When the job is performed using technological tools, it is called telework.

The definition of telework covers a wide and fast-evolving range of circumstances and practices. It is “a form of organising and performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis”¹⁰.

The agreement does not specify where the work will be performed. The general assumption is that teleworkers¹¹ carry out their duties from home. This kind of telework is also called home working. However, it is not the only possibility. Teleworkers can also work elsewhere, as long as it is in a fixed location¹². For instance, coworking spaces (shared offices where people working from different companies have a desk and can share equipment) may be a good solution for numerous teleworkers. The drawback is that coworking spaces are expensive. Depending on the city, in Italy the daily price for a spot in an open space is around 15 euros¹³. However, company premises may be far away, and the coworking space could be more reachable. Furthermore, teleworkers might choose to work from a coworking space instead of from home for a variety of other reasons. The coworking space might have a better internet connection, or more equipment, such as a

¹⁰ Art. 2 of the framework agreement.

¹¹ Who are people carrying out telework.

¹² “On a regular basis”: art. 2.

¹³ <https://www.informagiovanioroma.it/gli-spazi-di-coworking-a-roma/>.

printer and a copier, or it also may be a way to avoid the isolation of working from home. To encourage this kind of choice, some companies offer to pay the fees of coworking offices for their employees.

One of the most relevant aspects of teleworking is specified in art. 3 of the framework agreement. It establishes that telework is voluntary both for the employer and the employee. Consequently, telework may be required as part of a worker's initial job description or it may be engaged in as a voluntary arrangement afterwards, but it cannot be forced. If telework is not part of the initial job description, the employer can offer telework, but the worker is free to accept or refuse it. Similarly, if a worker expresses the desire to opt for telework, the employer may accept or refuse their request.

Another important point to keep in mind is that the passage to telework only modifies the way to perform the work. It does not affect the teleworker's employment status.

Therefore, if a worker refuses to opt for telework, this cannot be a reason for terminating the employment relationship or changing the terms and conditions of their employment.

Teleworkers benefit from the same rights, guaranteed by applicable legislation and collective agreements, as comparable workers at the employer's premises¹⁴. A comparable worker is defined as an employee working for the same employer, who is engaged in the same or similar work. Obviously, telework has some particularities and, therefore, it may need specific complementary collective or individual agreements to regulate specific aspects, especially when they concern technical modalities. In this perspective, one of the most important subjects to take into consideration is the introduction of a specific training in the informed use of digital tools, even to achieve the EU goal of "promoting a skilled, trained and adaptable workforce"¹⁵, which is capable to deal with labour markets in economic and technological transition.

Some of the most challenging points are disciplined by artt. 5 and 6 of the framework agreement and entail data protection and privacy. The employer is responsible for taking the appropriate measures regarding software, to ensure the protection of data used and processed by teleworkers for professional purposes. Therefore, the employer must inform teleworkers of all relevant legislation and company policies concerning data protection¹⁶ and the teleworker must comply with these rules. In case of non-compliance, specific sanctions are provided for. However, cybersecurity nowadays should be a priority for everyone, especially at work. Eurostat data¹⁷ show that 39% of EU citizens who used internet in 2019 experienced security-related problems. Digital threats, such as data breaches, online fraud, or data leaks impact seriously European businesses and should be prevented through proper measures¹⁸.

¹⁴ Art. 4 of the framework agreement.

¹⁵ Art. 145 TFEU.

¹⁶ For example, any restrictions on the use of the internet for personal purposes.

¹⁷ https://ec.europa.eu/eurostat/cache/metadata/en/isoc_i_esms.htm.

¹⁸ The EU's cybersecurity strategy in the digital decade was adopted on 16.12.2020: <https://digital-strategy.ec.europa.eu/en/library/eus-cybersecurity-strategy-digital-decade-0>

Another key aspect is that technological tools now exist that employers can use to monitor employees with serious implications for the freedom and dignity of the worker. Art. 6 focuses on the need to find proportionality with respect to the objective to be pursued, but it does not identify the modalities to avoid intrusions and guarantee effective protection for remote workers. This is a sensitive aspect, as attested by the succession of relevant European regulations on the topic¹⁹. Telework – especially when it is performed at home – requires particular attention to prevent the risk of overlapping between personal and professional life. It may threaten the right protected by art. 7 of the EU Charter of fundamental rights, i.e. the respect for workers’ private and family life, home and communications. Indeed, a distorted use of remote work might invade some intimate aspects of workers’ personal and family life. Just think about videocalls, which may show to employer and colleagues some environments of the home and its furniture or people²⁰. Numerous arrangements can be technically introduced to avoid these intrusive effects of remote work²¹ and the role of social partners in identifying them might be strategic.

Art. 7 of the framework agreement involves the equipment needed to carry out remote work. It clarifies that all questions concerning work equipment, liability and costs should be defined before starting to telework. As a rule, the employer is responsible for providing, installing, and maintaining the equipment needed for telework unless teleworkers use their own equipment. Obviously, teleworkers have to take good care of the equipment.

Finally, occupational health and safety are also a fundamental issue for telework. Protecting the psycho-physical integrity of the worker is a problem that cannot be separated from the continuous comparison with progress and evolution of health and safety techniques, as well as with ever new forms of potential injuries to the worker. Therefore, art. 8 specifies that the employer is responsible for the protection of teleworkers and must inform them of the company’s policies on the matter.

This brief overview of the framework agreement of 2002 may be useful to identify the key points of the matter and the most critical challenges for the EU social partners, even though at that time telework was merely a niche topic. However, they laid the groundwork so each Member State could build its national regulations on remote work.

According to the impact assessment conducted in 2008 by the EU Commission, the Framework Agreement on Telework “may be considered a success” because the instruments chosen and the level of protection and guidance provided by them are deemed adequate in the majority of EU Member States²².

¹⁹ Lately, General Data Protection Regulation (GDPR), 2016/679.

²⁰ For example, family members or roommates.

²¹ For instance, blurring background or introducing a corporate background which is the same for all employees.

²² See the Ramos partners’ Framework Agreement on Telework {COM (2008) 412 final}.

3. The boom in telework during the Covid-19 pandemic

The huge contribution made by remote work to the job world was brought into the spotlight during the Covid-19 emergency. Since the first months of 2020, the Covid-19 pandemic has put a strain on production activities and work organisation worldwide²³. In this dramatic scenario, managing the risks of contagion was very tough, considering both the extraordinary nature of the event²⁴ and the situation of uncertainty from a medical-scientific point of view²⁵. In the challenge to face the health, economic and social emergency, workplaces played a crucial role in containing the spread of contagion. While keeping workplaces open (especially those services considered essential) was vital for preventing the paralysis of countries and their economies, it was also necessary to identify adequate measures to prevent workplaces from becoming vehicles of contagion. The perceived risk of contracting the virus due to work was quite high, considering that 44% of European employees who participated in the Eurofound survey on the matter declared they believed themselves to be at risk of contracting Covid-19 at work. The self-reported risk varies considerably across different sectors of activity and was perceived more by a larger proportion of those working in transport (54%), commerce and hospitality (64%) and health sectors (70%)²⁶.

In this demanding context, working remotely has been specifically considered an effective measure to limit the spread of the Coronavirus in the workplace for two main reasons. Firstly, remote working reduces the presence of employees at the offices, allowing social distancing. Secondly, employees can avoid travelling by public transport. Increasing remote working, as well as using personal protective equipment and sanitizing workplaces protected the health and safety of workers in the best possible way (based on current medical-scientific knowledge), even during the most critical phase of the health emergency. Moreover, adopting remote working methods has been particularly advantageous for medically vulnerable people, given that face-to-face work runs the risk of becoming a vehicle of contagion. The greater the fragility, the more dangerous the risk will be.

Data on teleworkers before, during and after Covid-19 pandemic are significant. European statistics from 2019 show that only 5.4% of employed people were working

²³ “We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we have never before seen a pandemic that can be controlled, at the same time”: WHO - World Health Organization, *WHO Director-General’s opening remarks at the media briefing on COVID-19*, 11.03.2020, in <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

²⁴ “The impact of the COVID-19 pandemic is of unprecedented scope and magnitude, affecting the health and socioeconomic situation of millions of people across the globe”: Eurofound, *Living, working and Covid-19*, Luxembourg, 2020, p. 1.

²⁵ The World Health Organisation declared the outbreak a Public Health Emergency of International Concern on 30 January 2020, gave the official name COVID-19 on 12 February 2020 and recognised it as a pandemic on 11 March 2020. Due to the recent identification of the virus, and, consequently, the lack of accurate and validated data, the technical guidelines on the WHO website were constantly updated: see <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance>.

²⁶ Eurofound, *Living, working and Covid-19*, Luxembourg 2020, p. 42.

remotely²⁷. During the health emergency, close to 70% of full-time workers were working from home all over Europe. While there was a small decline in 2022²⁸, this upward trend in teleworking is set to resume as technological developments increase the number of teleworkable jobs, and employee and employer preferences lean more towards remote working.

According to the research conducted by the European Commission²⁹, the feasibility of telework is greater for high-paid jobs, for jobs in larger firms and for those typically held by women. Whereas most low and middle-skilled occupations are not teleworkable, making these workers more vulnerable. In this perspective, a “teleworkability divide” could exacerbate existing labour market inequalities.

However, non-teleworkable jobs should be considered differently, depending on their characteristics. When non-teleworkable jobs require a significant amount of physical interaction with people – for instance, nurses, doctors, surgeons, childcare workers, etc... – they can hardly be remoted due to their necessary social contact. Conversely, other jobs currently considered non-teleworkable – including most manual occupations in manufacturing, transport, and mining – could become so in the future thanks to technological progress and the development of automation.

4. All that glitters is not gold: psychosocial risks about remote working from the EU perspective

Even though telework has numerous strengths and advantages, all that glitters is not gold, and some risks and critical issues cannot be overlooked. Indeed, the excessive use of digital tools may have some side effects with possible dangerous consequences for the health and well-being of teleworkers. First of all, telework can cause ergonomic problems, such as muscle strain and musculoskeletal disorders, due to the posture necessary when spending many hours in front of the computer³⁰. Then, vision problems can also arise. In addition, some Italian case laws admit the possibility of a causal link between continuous occupational exposure to radiofrequency and the onset of neoplasms³¹. Another specific

²⁷ European Commission, *Telework in the EU before and after the COVID-19: where we were, where we head to*, 2020, https://joint-research-centre.ec.europa.eu/system/files/2021-06/jrc120945_policy_brief_-_covid_and_telework_final.pdf.

²⁸ Because “remote work is often seen as anathema by some who associate it with laziness, low productivity and the degradation of the social fabric of firms and of their creative and collaborative potential”: N. COUNTOURIS, V. DE STEFANO, *Out of sight, out of mind? Remote work and contractual distancing*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE, *The future of remote work*, ETUI, Brussels, 2023, p. 147.

²⁹ European Commission, *Who can telework today? The teleworkability of occupations in the EU*, 2020, in https://joint-research-centre.ec.europa.eu/system/files/2020-11/policy_brief_-_who_can_telework_today_-_the_teleworkability_of_occupations_in_the_eu_final.pdf.

³⁰ European Commission, *The increasing use of portable computing and communication devices and its impact on the health of EU workers*, Luxembourg, 2010, p. 13.

³¹ See Court of Appeal of Torin 14.01.2020, in <https://www.ilfattoquotidiano.it/2020/01/14/cellulare-e-tumori-corte-di-appello-di-torino-conferma-nesso-tra-uso-e-cancro-allorecchio-spesso-studiosi-sono-in->

risk of telework is the probability of the isolation of the worker³², who is likely to be trapped in an exclusive relationship with their machine and not involved in face-to-face communication. This isolation could even lead to mental health disorders. This kind of risk must be assessed during risk assessments to elaborate measures to prevent the possibility of working in isolated places that are not easily reachable, particularly difficult or remote. Therefore, the choice of place where workers can perform their professional activity is of essential importance.

These issues involve directly the first paragraph of art. 31 of the EU Charter of fundamental rights since they affect seriously workers' health and safety. Furthermore, according to the report "Working anytime, anywhere", written by Eurofound and ILO in 2017, remote workers generally work longer hours than "traditional" employees³³. Thus, they risk exceeding the maximum working hours limit, violating not only the provisions of the second paragraph of art. 31 of the EU Charter of Nice on the right to limitation of maximum working hours and daily and weekly rest periods³⁴, but also numerous directives on the matter of social rights. The most relevant ones are the directive 2003/88/EC concerning certain aspects of the organisation of working time, the directive EU 2019/1152 on transparent and predictable working conditions in the European Union, the directive EU 2019/1158 on work-life balance, and the Council directive 89/391/EEC regarding measures to encourage improvements in the safety and health of workers³⁵. Furthermore, they run a greater risk of contracting pathologies deriving from the so-called hyperconnectivity. "Hyperconnectivity" is a term invented by two Canadian social scientists³⁶ to indicate the availability to be reached continuously via multiple types of communications regarding work, such as email, instant messaging, mobile phone calls, etc... One of the effects of hyperconnectivity is an increased intensity at work, which, on the one hand, could be a good thing, allowing higher productivity and better results. However, on the other hand, it could lead to overworking, and this could be related to the statistics on the growing number of workers at risk for burnout. Burnout is a state of emotional, physical, and mental exhaustion caused by excessive and prolonged stress. It occurs when one feels overwhelmed, emotionally drained, and unable to meet constant

conflitto-dinteresse/5670261: "with a criterion of high logical probability it is possible to admit an etiological link between the prolonged and conspicuous work exposure to radio frequencies emitted by mobile phones and the illness reported by the worker".

³² Eurofound and ILO, *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, 2017, p. 37.

³³ Eurofound and ILO, *Working anytime, cit.*, p. 34.

³⁴ R. DEL PUNTA, *I diritti sociali fondamentali: riflessioni sulla Carta di Nizza*, in G. VETTORI (ed.), *Carta europea e diritti dei privati*, Padova, 2002, p. 192. The Author highlights that the employer cannot make someone work for 18 hours a day based on a simple principle of solidarity. The reason is to respect, even within the company, their freedom and dignity as workers, *ergo* as citizens.

³⁵ Considering the directives 89/391 and 2003/88, the CJEU stated that employers must set up a system that allows the measurement of the duration of the daily working hours in an "objective, reliable and accessible" way. See judgement of the Court 14.05.2019, C-55/18, *Federación de Servicios de Comisiones Obreras (CCOO) v. Deutsche Bank SAE*, in <https://curia.europa.eu/>.

³⁶ A. QUAN-HAASE, B. WELLMAN, *Hyperconnected Net Work. Computer-Mediated Community in a High-Tech Organization*, in C. HECHSCHER, P. ADLER, *Collaborative Community in Business and Society*, Oxford, 2005, p. 285.

demands. Recent studies conducted by the Center for Emotional Intelligence and the Child Study Center of Yale University, reported by The New York Times, argue that 20% of workers are at serious risk of burnout³⁷. Comparing this with the results of the research carried out in 2011 by Eurofound³⁸, it is possible to extrapolate that the risk of burnout has significantly increased.

4.1. The right to disconnect

One of the most challenging issues is the presence of blurred boundaries between paid work and private life. How can remote workers successfully manage the relationship between professional, personal, and family life?

The Court of Justice of the European Union repeatedly highlighted the need to keep working time and rest periods separate³⁹. It is impossible to avoid the use of digital technology at work, but, since the line between private and professional life is thin, it is essential to pay particular attention to identifying the limits of remote workers' duty of diligence. In practice, the increase in digitalisation at work expands the so-called "time porosity"⁴⁰, which is a sort of osmosis between online and off-line dimensions of workers. Consequently, even though remote workers have the right to "pull the plug" from work during rest periods, it is difficult to identify the proper ways to do so without negative consequences.

The so-called right to disconnect⁴¹ is exactly the right to not use technological work tools and not engage in work-related electronic communications out of service hours, without disciplinary consequences. In other words, employees cannot be disadvantaged by keeping their mobile phones or PCs turned off, not answering phone calls, or picking up emails and messages during their holidays and rest periods. Therefore, the right to disconnect has a transversal scope, concerning fundamental issues such as working time, health and safety, and work-life balance. For these reasons, the right to disconnect is in the spotlight in European countries. In some cases, it has been introduced in the legal system; in others, instead, it is at the center of collective bargaining, or it is regulated by company policies.

For instance, in France, the Labour Code was modified in 2017⁴² to introduce a specific provision on the right to disconnect for all employees – not only for remote

³⁷ http://www.ansa.it/canale_salutebenessere/notizie/medicina/2018/11/07/lo-stress-e-unepidemia-oggi-la-giornata-mondiale_e7dd302d-c96d-4ca7-aa01-a7969d2ee3d7.html

³⁸ Eurofound, *Health and well-being at work: A report based on the fifth European Working Conditions Survey*, Dublin, 2012.

³⁹ *Ex multis*, CJEU 03.10.2000, C-303/98; CJEU 09.09.2003, C-151/02; CJEU 14.10.2010, C-243/09; CJEU 14.05.2019, C-55/2018, in <https://curia.europa.eu>.

⁴⁰ E. GENIN, *Proposal for a theoretical framework for the analysis of time porosity*, in *International journal of comparative labour law and industrial relations*, 2016, vol. 32, no. 3, p. 280.

⁴¹ J.E. RAY, *Naissance et avis de décès du droit à la déconnexion, le droit à la vie privée du XXIème siècle*, in *Droit social*, 2002, n. 11, p. 939; J.E. RAY, *Grande accélération et droit à la déconnexion*, in *Droit social*, 2016, n. 11, p. 912.

⁴² Art. 2242-17, par. 7, as modified by law. no. 1088/2016, so-called "Loi travail". On the topic, see M.B. METTLING, *Transformation numérique et vie de travail*, in <https://www.vie-publique.fr/>, 2015; L. MOREL,

workers – in order to ensure the respect of rest and leave periods, as well as the personal and family life. This protection measure allows for a balance between work and private life and avoids the cognitive and emotional overload of being constantly connected. In Spain, art. 88 of the *ley organica* of 2018⁴³ has introduced the right to disconnect for both private and public employees. In Italy, there is no general law on the right to disconnect, but it has been introduced for agile workers, who perform a particular form of remote work⁴⁴. Agile workers – or smart workers, as they are commonly called in Italy – carry out their performance, partly within company premises and partly outside, without a fixed location, within the limits of maximum duration of daily and weekly working hours, using technological tools⁴⁵. Art. 19 of the Italian law no. 81 of 2017 states that “the pact [between employer and employee] also identifies the worker’s rest time as well as the technical and organisational measures necessary to ensure the worker’s disconnection from the technological work equipment”⁴⁶. In Germany, there are no laws on the matter, but large German companies have implemented policies on the right to disconnect since 2011, stating, for instance, that they would stop email servers from sending emails to the mobile phones of employees between 6 p.m. and 7 a.m. In 2014, there was an attempt to introduce an “anti-stress legislation” to prevent the rising levels of stress and mental disorders. One of the provisions of that draft law intended to ban companies from contacting employees outside of work hours. Dutch labour law does not include the right to disconnect. However, the legislative proposal “The right to disconnect” was submitted in July 2020. The main goal of that legislative proposal is that employer and employee will debate the right to be disconnected outside working hours as part of the working conditions policy.

Le droit à la déconnexion en droit français. La question de l’effectivité du droit au repos à l’ère du numérique, in *Labour & law issues*, 2018, vol. 3, no. 2, p. 3.

⁴³ Law 5 December 2018, no. 3, on protection of personal data and guarantee of digital rights.

⁴⁴ Art. 18 and following law 22 May 2017, no 81.

⁴⁵ Regarding agile work, see, *ex multis*, M. BROLLO, *Il lavoro agile nell’era digitale tra lavoro privato e pubblico*, in *Il Lavoro nelle pubbliche Amministrazioni*, 2017, no. 1, p. 119; G. SANTORO PASSARELLI, *Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro*, in *Rivista italiana di diritto del lavoro*, 2017, no. 3, p. 369; M. MARTONE, *Il lavoro agile nella l. 22 maggio 2017, n. 81: un inquadramento*, in G. ZILIO GRANDI, M. BIASI (a cura di), *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Milano, 2018, p. 461; C. SPINELLI, *Tecnologie digitali e lavoro agile*, Bari, 2018; M. TUFO, *Il lavoro digitale a distanza*, Napoli, 2021; M. RUSSO, *Il datore di lavoro agile. Il potere direttivo nello smart working*, Napoli, 2023.

⁴⁶ On the topic see E. DAGNINO, *Il diritto alla disconnessione nella legge n. 81/2017 e nell’esperienza comparata*, in *Diritto delle relazioni industriali*, 2017, no. 4, p. 1024; R. ZUCARO, *Il diritto alla disconnessione tra interesse collettivo e individuale. Possibili profili di tutela*, in *Labor & law. issues*, 2019, vol. 5, no. 2, p. 215; M. RUSSO, *Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata*, in *Diritto delle relazioni industriali*, 2020, no. 3, p. 682.

4.2. An in-depth look at the EU Parliament resolution

The relevance and urgency of ruling on the topic have been attested by the European Union Parliament resolution, laid down on 21.01.2021⁴⁷. In the *consideranda* of the resolution, the European Parliament specifies that there is currently no specific Union law on the worker's right to disconnect from digital tools for work purposes. The ever-greater use of digital tools has resulted in an 'ever-connected', 'always on', or 'constantly on-call' culture, which can have detrimental effects on workers' fundamental rights and fair working conditions, including just remuneration, limits on working time, work-life balance, physical and mental health and safety at work and well-being in all its forms. In the EU perspective, the digital transition should be guided by respect for human rights and the fundamental principles and values of the Union. Therefore, it should have a positive impact on workers and working conditions. From this point of view, the first step should be the normative introduction of the right to disconnect, which is considered a fundamental right. It is an inseparable part of working patterns in the new digital era and an important social policy instrument at the Union level to ensure the protection of the rights of all workers, especially the most medically vulnerable ones and those with child or elder care responsibilities. The right to disconnect may be one of the most effective ways to put in practice not only art. 31 of the EU Charter of fundamental rights on fair and just working conditions⁴⁸, but also art. 23 regarding equality between men and women, as highlighted in the text of the resolution⁴⁹. Since statistical data show that it is primarily women working from home, this fact could increase the gap between male and female workers in the office, strengthening gender stereotypes and relegating women "to the home", where they can become crushed by the difficulty of combining working remotely with caring for their homes and children⁵⁰. In this perspective, the right to disconnect may be an effective tool to find a healthy work-life balance, benefiting women, who traditionally spend more time than men in fulfilling such caring responsibilities.

In light of the above, the EU Parliament has laid down some recommendations for the EU Commission with a text that contains a proposal for a directive on the right to disconnect. Indeed, one of the tasks of the European Union is adopting, by means of directives⁵¹, minimum requirements for gradual implementation in certain fields, including improvement of the working environment to protect workers' health and

⁴⁷ EU Resolution no. 2019/2181. On the topic, see A. FENOGLIO, *Una veste digitale per il diritto al riposo: il diritto alla disconnessione*, in *Lavoro Diritti Europa*, 2021, no. 4, p. 12; E. FIATA, *L'iniziativa europea sul diritto alla disconnessione*, in *Lavoro Diritti Europa*, 2021, no. 4.

⁴⁸ As seen in the previous paragraphs.

⁴⁹ A. ADINOLFI, *Evoluzione tecnologica e tutela dei diritti fondamentali: qualche considerazione sulle attuali strategie normative dell'Unione*, in *Quaderni AISDUE*, 2023, n. 15, p. 331.

⁵⁰ K. ARABADJEVA, P. FRANKLIN, *Home-based telework, gender and the public-private divide*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE, *The future of remote work*, ETUI, Brussels, 2023, p. 61.

⁵¹ Art. 153, par. 2, lett. b, TFEU.

safety⁵², working conditions⁵³, and equality between men and women regarding labour market opportunities and treatment at work⁵⁴.

The principal points of the proposal are the following. First of all, identifying minimum requirements to enable workers who use digital tools for work purposes to exercise their right to disconnect and to ensure that employers respect workers' right to disconnect. It should be applied in all sectors, both public and private, and for all workers, independent of their status and their working arrangements. In this perspective, the attached proposal for the directive extends beyond the borders of remote work and applies to all workers who use technological tools for work purposes. Secondly, Member States shall ensure that employers take the necessary measures to provide workers with the means to exercise their right to disconnect. To make it effective, the involvement of social partners in establishing detailed arrangements is important for ensuring the disconnection in a fair and transparent manner. Furthermore, Member States should recognise the right of redress for employees whose right to disconnect has been violated and lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive⁵⁵.

ETUC – which is the European Trade Union Confederation – welcomed the European Parliament's interest in the right to disconnect⁵⁶. It considered this resolution as an important right for the quality and dignity of life of working people. However, more than two years have passed since this resolution, yet the directive is still a mere proposal. This speaks to the fact that this issue is very complex and hotly debated.

4.3. Cyberbullying and domestic violence within the prism of remote working

Identifying new risks of digitalisation and the necessary protections to reduce them is one of the most demanding and current challenges. New technologies potentially make the perpetration of aggressive and denigrating behaviours even more harmful. During the pandemic period, two still little explored phenomena emerged in an alarming manner: cyberbullying and domestic violence against remote workers.

Cyberbullying⁵⁷ is a form of voluntary abuse repeated over time, implemented in the workplace, using digital tools, in order to damage a single worker or an identifiable group

⁵² Art. 153, par. 1, lett. a, TFEU.

⁵³ Art. 153, par. 1, lett. b, TFEU.

⁵⁴ Art. 153, par. 1, lett. i, TFEU.

⁵⁵ Art. 8 of the directive proposal.

⁵⁶ <https://www.etuc.org/en/document/right-disconnect-no-legislative-veto-amendment>.

⁵⁷ P.K. SMITH, J. MAHDAVI, C. CARVALHO, N. TIPPETT, *An investigation into cyberbullying, its forms, awareness and impact, and the relationship between age and gender in cyberbullying. A Report to the Anti-Bullying Alliance, 2006*, in <https://docplayer.net/16925011-An-investigation-into-cyberbullying-its-forms-awareness-and-impact-and-the-relationship-between-age-and-gender-in-cyberbullying.html>; V. DE STEFANO, I. Durri, H. Stylogiannis, M. Wouters, *Tackling cyberbullying in the world of work, 2020*, in <http://global-workplace-law-and-policy.kluwerlawonline.com/2020/02/14/tackling-cyberbullying-in-the-world-of-work/>; H.M. ROSENTHAL, G.I. BELMAS, *(Non)existent Laws of Workplace Cyberbullying: Limitations of Legal Redress in a Digitized Market*, in VV.AA., *Research Anthology on Changing Dynamics of Diversity and Safety in the Workforce*, IGI Global, 2022, p. 2019.

of subjects. The aim of this behaviour consists in harassing and creating discomfort. In essence, it is bullying in its technological version, likely to arouse greater social alarm due to the speed and breadth of the spread of offensive conducts thanks to the possibilities offered by digitalisation. Since this is a recent phenomenon – not yet codified at an international level – it is not easy to ascertain its incidence in workplaces. However, the first studies on the subject show worrying data. A survey conducted by the University of Sheffield on academic and administrative staff in the United Kingdom highlighted how – more than ten years ago – eight out of ten employees had suffered harassment attributable to cyberbullying⁵⁸. Similarly, research studies conducted by the Queensland University of Technology found that, of 600 Australian civil servants interviewed, 72% said they had been the subject of cyberbullying in the previous six months⁵⁹. Similar issues have also been detected in the private employment sector. The most striking examples have been reported in the journalistic field⁶⁰ and in the manufacturing sector⁶¹.

Another phenomenon which is causing particular concern is the growing number of episodes of domestic violence against remote workers engaged in homework. International statistical data indicate an increase precisely in the two-year period harshly marked by the pandemic experience. Restrictions on freedom of movement during the pandemic and the consequent need for remote work carried out from one's private home have had the side effect of a significant increase in the number of domestic violence⁶². Domestic violence means violence that occurs within the family unit, regardless of the actual existence of biological or legal ties. Victims are generally women⁶³, as this type of violence has its roots in gender inequality and in models of coercion and control towards them. It is a serious violation of the right to life and integrity of the human person⁶⁴. For many female workers who are victims of violence, the workplace represents a safe refuge for at least part of the day. If the dividing line between workplace and home disappears due to the adoption of remote working methods, even the only possible loophole disappears.

⁵⁸ University of Sheffield, *Hidden cyberbullying is as common as conventional counterpart in the workplace*, 2012, in https://www.myscience.uk/news/2012/hidden_cyberbullying_is_as_common_as_conventional_counterpart_in_the_workplace-2012-Sheffield.

⁵⁹ Queensland University of Technology, *Cyberbullying making Australian public servants miserable*, 2016, in www.qut.edu.au/news?news-id=101295.

⁶⁰ Eurofound, *Violence and harassment in European workplaces: Extent, impacts and policies*, Dublin, 2015, p. 59.

⁶¹ C. PRIVITERA, M.A. CAMPBELL, *Cyberbullying: The New Face of Workplace Bullying?*, in *CyberPsychology & Behavior*, 2009, p. 395.

⁶² R. HARVEY, *The ignored pandemic. The dual crises of gender-based violence and Covid-19*, 2021, in www.oxfam.org.

⁶³ It is appropriate to clarify that potential victims of domestic violence can also be men, elderly people, minors, LGBTIQ (lesbian, gay, bisexual, transgender, non-binary, intersex and queer) people.

⁶⁴ A. DI STASI, *Il diritto alla vita e all'integrità della persona con particolare riferimento alla violenza domestica (artt.2 e 3 CEDU)*, in A. DI STASI (ed.), *CEDU e ordinamento italiano. La giurisprudenza della Corte europea e l'impatto nell'ordinamento interno (2016-2020)*, Milano, 2020, pp. 1-31.

In 2022, the European Commission prepared a proposal for a directive on combating violence against women and domestic violence⁶⁵. The objectives of this proposal are making current legal instruments within the European Union more effective and uniform and filling gaps in terms of protection, access to justice, assistance, prevention, coordination and cooperation. The European Commission's proposal moves in the wake of what has already been outlined with the Istanbul convention on the prevention of violence against women and domestic violence⁶⁶ and aims to create a connection between European legislation and international standards on the matter.

The involvement of the European social partners may be very useful in this field in order to contribute to identifying the most challenging issues and the most effective ways to avoid or reduce this kind of harassment. Nevertheless, at least at the moment, this is a topic which is still too little explored and debated.

5. The Joint work programme 2022-2024: what future for remote work?

Digitalisation and its impact on the labour market and the world of work have been on the EU social partners' agenda in recent years. In June of 2020, a framework agreement on digitalisation was signed to implement their multiannual work programme 2019-2021. It was the result of negotiations between the European social partners to promote tools and measures⁶⁷, where necessary at national, sectoral, and/or enterprise levels, in the light of article 155 of the consolidated version of the Treaty on the functioning of the European Union⁶⁸. According to the framework agreement on digitalisation, the overall goal is to achieve a consensual transition not only via the successful integration of digital technologies in the workplace, but also through reaping opportunities and preventing and minimising the risks for both employees and employers. The aim thus seeks to ensure the best possible outcome for everyone.

Another step forward in the digital transition and in recognition of the right to disconnect is the Joint work programme 2022-2024, signed by the European social partners on the 28th of June 2022. Even though the aims of the Joint work programme are numerous, the right to disconnect is the first of the priorities. The other issues included in the programme are the green transition, youth employment, work-related privacy, and surveillance, improving skill matching in Europe, and capacity building. In practice, social partners' greatest interest is regulating in the most balanced way the transformations taking place in the labour market due to the ecological and digital transition. Updating remote work is the first action in this EU list because it – in its various

⁶⁵ Proposal COM(2022)105.

⁶⁶ Convention adopted by the Council of Europe on 7.04.2011.

⁶⁷ <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9729&furtherNews=yes>.

⁶⁸ “Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements” (par. 1).

modalities, depending on the Member State and its own regulation – may represent a valid driving force for a sustainable transition.

After the experience of the Covid-19 pandemic, improving remote working in a sustainable way is deemed a key challenge. Therefore, the EU social partners think that negotiation on issues such as hybrid work, the right to disconnect, organising work duties in a flexible way, health and safety, work-life balance, privacy, and data protection is essential. In their opinion, the principal tool to achieve this goal is reviewing and updating the framework agreement on telework of 2002 and pushing for the adoption of a legally binding agreement implemented via a directive. The time may be ripe, and a regulatory framework may be issued in order to promote technological development at work and, at the same time, successfully and effectively address the needs of remote workers in compliance with the EU values⁶⁹.

These recent agreements on the matter are encouraging signs of a new spring of social dialogue within the European Union. As attested by the ILO, in the past few years “EU-level social dialogue has been rich, involving social partners in individual sectors making statements on the impact of digitalization on the economy”⁷⁰. Even though diversity of national systems of social dialogue⁷¹ and decline in membership density of unions and employers’ associations in many Member States⁷² are critical issues that EU social partners have been facing in recent years, “no doubt such social dialogue at EU level will feed and stimulate the social partners to conclude more specific agreements”⁷³. Furthermore, over the years, the European social partners have become more and more aware of the responsibility they have not only in implementing and monitoring activities, but also in assisting national social partners as needed⁷⁴.

Obviously, agreements on digitalisation are subject to continuous updates. They are a never-ending work in progress, since technologies advance very quickly and the attempts to regulate digital work are struggling to keep up with them. Losing sight of the fundamental social rights might be one the most dangerous risks in this exhausting race.

⁶⁹ In a broader perspective see European Declaration on digital rights and principles for the digital decade signed by the Presidents of the European Parliament, the Council of the European Union, and the European Commission on 15.12.2022.

⁷⁰ Y. GHELLAB, D. VAUGHAN-WHITEHEAD, *Enhancing social partners’ and social dialogue’s roles and capacity in the new world of work: Overview*, in D. VAUGHAN-WHITEHEAD, Y. GHELLAB, R.M. DE BUSTILLO LLORENTE (eds.), *The New World of Work. Challenges and Opportunities for Social Partners and Labour Institutions*, ILO publications, 2021, p. 9.

⁷¹ The differences involve not only the institutional frameworks, but also differing levels of operational capacity of social partner organisations in different countries, *a fortiori* after Eastern enlargements: Poland, Hungary, Slovenia, the Czech Republic, Slovakia, Latvia, Estonia, Lithuania, Cyprus, and Malta joined the EU in 2004. In 2007 Bulgaria and Romania were added. The last entry was Croatia in 2013.

⁷² Even though there are substantial differences in union density figures across EU Member States, since the early 1980s, trade union density rates have been declining, largely due to the growing number of employees who choose not to join a trade union and the expansion of non-standard forms of employment: <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/trade-union-density>.

⁷³ Y. GHELLAB, D. VAUGHAN-WHITEHEAD, *cit.*, p. 9.

⁷⁴ J. VISSER, N. RAMOS MARTIN, *Expert report on the implementation of the social partners’ Framework Agreement on Telework*, University of Amsterdam Publications, 2008, p. 67.

Considering that “promoting employment” is “a matter of common concern”⁷⁵, the compass for social partners, as well as for the EU institutions and the Member States, should be to ensure the improvement of living and working conditions⁷⁶, even in an increasingly technological working environment.

ABSTRACT: Digitalisation is changing our lives and the way we work too. This is not necessarily negative because there is a lot of potential in the binomial “work and technology”, starting from the creation of new sectors of work up to the introduction of new job opportunities thanks to technological tools. Moreover, the huge contribution made by technology to the world of work has been very useful during the health emergency caused by the Covid-19 pandemic. However, all that glitters is not gold. There are numerous and insidious physical and psychosocial risks involved in digitalisation. In light of the above, this paper aims at highlighting the key role played by the European social partners in stipulating relevant framework agreements on the matter. As provided for by art. 155 TFEU, they are called to co-design with the European Commission and national governments balanced measures to create an enabling environment for enterprises and better living and working conditions.

KEYWORDS: Digitalisation – Remote work – EU social partners – Framework agreements – Psychosocial risks.

⁷⁵ Art. 146, par. 2, TFEU.

⁷⁶ Artt. 151 and 153 TFEU.