



FIRST-STAGE SOCIAL PARTNER CONSULTATION ON RIGHT TO DISCONNECT BUSINESSEUROPE'S RESPONSE

25 June 2024

Introduction

1. The Commission published on 30 April 2024 the first-stage social partner consultation on possible EU action in the area of telework and workers' right to disconnect following an attempt by the European cross-industry social partners, based on their work programme 2022-2024, to negotiate an agreement on telework and right to disconnect to be put forward in the form of a directive. The negotiations concluded without agreement on a text on 27 November 2023.

General comments

2. BusinessEurope considers the Commission's first-stage social partner consultation as a new start. Steps being undertaken by the Commission following the process of Art. 154 TFEU have to be clearly distinguished from the autonomous dialogue between the European social partners in 2022-2023. Having in mind our willingness to negotiate a social partner agreement with the ETUC in 2022, we do not believe that all the issues addressed in the consultation document would bring added value to social partners and businesses on the ground.

3. The consultation document correctly highlights that a lot of existing EU social legislation covers aspects of telework and right to disconnect. Building on this, rather than regulating telework and right to disconnect, an alternative approach would be to look at how the existing legislation can be better enforced in light of today's world of work.

4. Telework and right to disconnect are very different issues and both provide opportunities and challenges; but in its document the European commission puts too much emphasis on tackling the disadvantages/risks for workers, as opposed to companies, whereas it should approach these topics with a view to balancing the needs of both sides.

5. However, an overall approach at EU level as the Commission might take, will not effectively address the full range of issues. We suggest that the EU Commission adopts a more nuanced strategy which takes into account that the increased demand for telework is also due to a demand for flexibility from workers (e.g. reduction of commuting time, greater autonomy in performing work and a better work-life balance¹).

¹ See the [Commission's study](#) of March 2024 on "exploring the social, economic and legal context and trends of telework and the right to disconnect, in the context of digitalisation and the future of work, during and beyond the COVID-19 pandemic"



6. So far, the European cross-industry social partners have been at the forefront of enabling telework and clarifying how to deal with telework through the autonomous framework agreement they negotiated in 2002 to put forward a framework for the development of voluntary telework across Europe as a new form of work organisation that does not change the employment status of a worker. This agreement remains in our view valid after the development of information and communication technologies and after Covid, which accelerated the deployment of telework. Appropriate solutions are found at national, sectoral and/or company level including on the basis of collective bargaining and/or employee engagement, in line with diverse national, sectoral and company level industrial relations practices.

7. The development of telework up to this day has shown that overly prescriptive legal regulation is not suitable for positively supporting the diverse models of telework that function very well in practice already today. An (over)regulation of telework could endanger the further deployment of telework in the Member States across the sectors. The Commission's document did not make sufficiently clear why EU action is necessary. For example, the German Government's policy workshop on telework – with the participation of all relevant social partners and stakeholders – has come to the conclusion that regulation would slow down the use of telework and that it is primarily up to the concerned company, social and collective bargaining partners to find suitable solutions.

8. In our view, the Commission should refrain from legislating at EU level in an area already covered by an EU autonomous framework agreement of the EU social partners because this weakens the role of EU autonomous framework agreements. We consider that the role of EU autonomous framework agreements needs to grow in future. Therefore, the Commission and the Member States should support this in line with the Council recommendation on strengthening social dialogue of June 2023. Further EU rules could lead employers to reconsider offering telework in a way which is also appreciated by employees.

9. Should an EU initiative on telework be considered, it must respect the voluntary nature of telework for both employers and workers (double voluntariness). Yet, it is and should remain an employers' prerogatives to organise and direct e.g. the place of work. Any right to request telework should not be misinterpreted as an automatic right to telework. Any attempt to define at EU level which jobs are teleworkable and/or rights related to telework would disregard both the voluntary nature of telework and the employers' work organisation prerogative. It would also hinder the employers' possibilities to take into account different individual preferences within the workforce, while securing enough interaction and cooperation between different types of workers to achieve progress in productivity overall and maintain a good level of personal connections at work.

10. With regards to connecting and disconnecting modalities for workers the existing EU working time directive and the related national legislation and practice is the relevant point of reference. They already define the limits of working time as well as what are the minimum requirements that must be observed in terms of daily and weekly rest time from a health and safety perspective. This legislation also applies to teleworkers. A "right to disconnect" would only interpret or contradict the existing legal framework. A more sensible approach would be to see how to enforce these rules in a way which is feasible for companies, protects workers and provides the flexibility they appreciate. The "right to



disconnect” is a relatively new notion discussed in different forms in some Member States in view of the growing use of digital devices to work. It is important that a potential regulation of right to disconnect doesn’t hamper the digitalization – and thus competitiveness – of European companies. Furthermore, there are other effective solutions in place that are not provided through collective bargaining / direct engagement models such as the Code of Practice in Ireland which arises from Statute.

11. If an EU initiative on telework and/or a right to disconnect is considered, it should avoid setting all the details in stone and include wide Member States discretion and a possibility for both individual and/or collective agreements or dialogue-based tools which allow the employer and worker(s) and/or their representatives to agree on possible and individual implementing measures in an effective and non-burdensome way.

12. Beyond the seven dimensions described in the consultation document, important considerations are missing in the Commission document. Especially, the Commission does not define what is meant by “telework”. Further, businesses are facing shortcomings when allowing cross-border telework – the EU framework especially in the field of social security coordination is not fit for purpose.

Specific comments

13. Missing items:

- Definition of telework

14. A clear definition of “telework” is needed before considering EU action in the area. In particular, a distinction must be made as to what “telework” does not include. Permanent telework at the workers’ premises differs from situations of spontaneous telework at a hotel or a park bench, both during a business trip and because of the autonomous decision of a worker. The Commission has to distinguish better the scope and whether possible EU action would be needed for the form of spontaneous, occasional or permanent telework. In our assessment the potential scope would change radically the dimensions of action being covered.

- Cross-border telework

15. In particular, it will be important to adopt a uniform approach that understands and combines the 27 different social security of the individual Member States. The aim must be to enable a cross-border dimension of teleworkers. Teleworking abroad must be feasible without major bureaucratic hurdles and without economic disadvantages for employees and employers. A significant step was made in 2023 with the guidance note on telework by the EU administrative commission mandated with the application of EU social security coordination rules, applicable from 1 July 2023, based on a [framework agreement relating to cross-border telework](#), which includes the provision for cross-border workers to telework up to 49% of the time without the need to change their country of affiliation of social security purposes. However, Reg. 883/2004 does not cover explicitly situations of cross-border telework.



16. The Commission has indicated seven potential areas of action.

- Establishing the right to disconnect

17. Establishing the right to disconnect has to be seen in the wider context of modalities to connect and disconnect. The consultation document is overly focused on the right to disconnect as an opportunity for workers and does not adequately acknowledge the impact this could have on their desire for flexibility and the challenges for companies to implement it. Both workers, performing telework and those working at the employers' premises, use digital technologies provided by the employer. The most appropriate way to promote a culture of disconnecting, is to explain that a worker is not obliged to engage in professional tasks outside their working hours, as highlighted in the consultation document. Being contactable after working hours must be based on the autonomous decision of the worker.

18. Most importantly, any EU action on the right to disconnect must take into consideration and be compatible with the Working Time Directive rest periods and recognise the important role of social partners to devise effective solutions through collective bargaining or other forms of employee engagement. A right to disconnect that goes beyond the existing requirements of the Working Time Directive would impair the ability of companies to function.

19. The current Working Time Directive, which stipulates a minimum rest period of eleven consecutive hours within a 24-hour period, already represents an obligation to disconnect. In addition, the related jurisprudence of the European Court of Justice must be respected, i.e. be without prejudice to on-call, standby, and respect specific working arrangements, in accordance with national law or collective agreements, that require the worker to be contactable during defined periods of time and consequently to perform work during rest periods when necessary. In this context, allowing consideration of unexpected and exceptional circumstances, as mentioned in the consultation document, is also important for the well-functioning of the business.

20. Meanwhile it must be possible for management and coworkers to reach out to a worker at any time – even if the worker might not answer promptly, as he is in most circumstances not legally obliged to do so. Any “hard approaches” to disconnecting should be avoided as there is no one-size-fits all solutions. Future EU action should take into consideration the important role of social partners concerned in negotiating working time arrangements that work well for employers and workers, the reality of multinational companies operating in different time zones, as well as the prerogative of autonomous working time organisation exercised by managing executives or persons with autonomous decision-taking powers.

21. It is important that a potential regulation of right to disconnect doesn't hamper the digitalization – and thus competitiveness – of European companies. E.g. regarding the topic of monitoring and respect of the teleworkers' privacy, we need to make sure that the company is still allowed to use tools monitoring the performance of the worker, such as customer satisfaction and the like. These tools are used regardless whether working remotely or at the employer's premises.



- Ensuring decent employment and working conditions for teleworkers

22. The Commission has to explain better why performing telework changes the employment or working conditions for a teleworker in comparison to a regular worker – especially given the extent of teleworking arrangements which are working well across Member States and in context with the employment conditions defined on Member State level. In our assessment all legal or collective bargaining frameworks remain unchanged for a teleworker and do not differ from the working conditions of a regular worker.

23. Risks to workers health and safety may vary when working from premises not under the control of the employer. However, there is no strong evidence to suggest that telework in and of itself is a risk to workers' health. Furthermore, the health and safety framework directive 89/391/EC contains an obligation to assess the risks (including those facing groups of workers exposed to particular risks) and decide on the protective measures necessary. This was re-confirmed as the golden standard for health and safety on the stock-taking summit in Stockholm in May 2023.

24. Telework is only a way of performing work and a form of work organisation but it does not change the employment status of a worker. Both categories of workers, those working at the employers' premises and those teleworking are subject to all relevant EU laws on working conditions and enjoy equal rights. However, it does not mean that the arrangements they benefit from must be exactly the same. Working from the employers' premises enables enjoying office space, infrastructure and services (i.e. access to cafeteria, if any).

25. The agreement between employer and employee is subject to a mutual understanding, preconditions defined by law may influence this decision negatively. Only by an agreement it can be assured that those measures are proportionate and strictly related to performing telework.

26. EU action in the field of working conditions must not create further administrative burden or new information or documentation obligations for both employers and workers when performing telework.

- Protecting teleworkers' health and safety at work

27. Given the specificity of performing work away from the employers' premises it must be acknowledged that there are limits to employers' control over the conditions in which telework is performed. Employers could provide teleworkers with necessary IT tools and equipment. However, the contribution or the complete set up to a workstation at worker's home goes beyond the scope of teleworking as the exact place of work is not always defined in the voluntary agreement of employer and worker.

28. EU action in the field of health and safety at work must not create further administrative burden or new information or documentation obligations for both employers and workers when performing telework. The employer should also not be held liable for accidents that occur at home while teleworking, which are not related to performance of the work.



- Addressing collective information and consultation rights

29. Workers performing telework have the same collective information and consultation rights as workers working from the employers' premises. The 2002/14/EC Directive defines the EU general rules on employee information and consultation, which companies need to implement before taking decisions affecting their employees.

- Points to clarify with workers

30. Telework involves various issues that need to be clarified between the employer and workers concerned at enterprise level. For example, conditions for using the necessary equipment provided by the employer, for getting technical advice in case of technical problems, how to follow privacy, data protection and confidentiality provisions etc. need to be clearly communicated by the employer and understood by the worker before starting telework. It is worth noting that depending on the individual company the combination of available support measures can vary. Any EU action in this field must remain sufficiently general to grant the necessary room for manoeuvre for companies to be able to offer the most appropriate support for their teleworkers. Too prescriptive rules can render telework impossible to organise for employers and could lead employers to reconsider offering this appreciated way of performing work.

- Promoting the role of social partners

31. In its consultation document, The European Commission rightly notes that current European legislation on working time, health and safety at work, working conditions, privacy and data protection, work-life balance and equal treatment also applies to telework and right to disconnect. The Commission also points out that telework is already regulated in all Member States, either by law or by collective agreements and that the right to disconnect is regulated in 11 Member States.

32. Social partners at appropriate levels are instrumental to ensuring that telework is beneficial both for employers and workers. National social partners must be able to adapt, complement and/or differ from any EU legislation through collective bargaining. It is essential to avoid any EU regulation restricting the scope for national social partners. If regulation takes place, it must contain sufficient Member State discretion and/or a comprehensive opening clause for national social partners. There are sector-specific considerations and the experiences in companies are that local solutions to a greater extent take into account both the needs of employees and companies. Telework-related arrangements are mostly defined at the company level. This is effective because individual employers, and where appropriate, company social partners have a deep understanding of company-specific situations and needs. Equally, practical arrangements devised directly by management and workers can also be effective in setting a mutually beneficial policy or approach to telework. Moreover, the availability of telework and/or telework-related provisions may vary significantly depending on the diverse nature of companies' activities and preferences. The first telework agreements signed at a company level after the outbreak of Covid-19 pandemic, have proven that social partners at the company/sectoral level are well placed to define effective solutions that benefit both sides. Since Covid-19, many companies have put in place customised telework arrangements that reach the right balance between employers' and workers' interests.



- Ensuring enforcement

33. The proposal to come up with an EU action on ensuring enforcement is not the right approach. There are already impartial dispute resolution mechanisms in place as well as the complete body of anti-discrimination EU law and related enforcement mechanisms. There are also national data protection supervisory authorities in charge of supervising, monitoring and enforcing compliance with EU and national legislation on data protection in the context of telework. Adding another layer of regulations related to enforcement will almost certainly create overlaps and administrative burdens for enterprises, especially SMEs. It could be expected that excessive enforcement obligations may result in limiting telework incidence as companies will fear additional burdens/threats of additional controls/court cases while offering this way of work organisation to their workers.
