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The right to disconnect of remote workers introduced by some Countries and at European Union level

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1. Introduction

The speech aims to analyze the following points:

- the impact of new digital technologies on the evolution of the work organization models and the issues of the workers linked to remote working;
- the importance of guaranteeing the workers' right to disconnect;
- the regulation of the right to disconnect of workers introduced by some European Countries (France, Spain and Italy) and the recent Resolution of the European Parliament on the matter.

2. The impact of new digital technologies on the evolution of the work organization models and connected risks. In particular: the risk of constant connectivity

In the last few years, the new digital technologies have radically changed the traditional work organization models. This has happened mainly with the spread of "smart working" or "remote working", a particular way of carrying out work that offers to the workers the possibility to work outside of the company's premises and, sometimes, with flexibility of hours and location. So, many people can work away from the office, from anywhere, often from their own homes, through the various technological devices (such as, for example, tablets and smartphones), remaining connected, however, to their company. This offers opportunities but also carries risks.

On one side, carrying out work remotely, through various work and communication tools, should allow the worker to plan working time with greater freedom and to better organize free time; this should have positive repercussions on the personal satisfaction and stress levels and should promote a better work-life balance.

On the other side, the digital technologies permit the employer to have pervasive tools for monitoring the workers and their activity; activity that can be easily subjected to supervision and direction by algorithms and artificial intelligence. These penetrating methods of control can have important consequences on the health of workers, due to the stress deriving from the feeling of being subjected to constant monitoring.

Furthermore — and this is the aspect that I would like to highlight — the tools used by smart workers promote a constant and continuous availability and connection with the company. So, sometimes the company asks the worker to make himself available outside of working hours. The worker, therefore, may feel obliged to guarantee immediate availability and answers, also for fear of the possible consequences. Consequently, the digital tools have increased the employees' tendency to be "always on work", "always connected" to their company, also outside of the ordinary working hours.

This can lead to an overload of work and to the disappearance of the boundaries between working life and private life. In this regard, research has shown that constant connectivity involves serious damage to health: stress, general malaise, insomnia and depression.

These issues have become even more important with the pandemic, which has showed the problems of remote working; constant connectivity (that can lead to physical and psychological health problems) and blurred the distinction between work and private life. A recent research by Eurofound shows that, in the period of the

lockdown and subsequently, almost 30% of remote workers report working in their free time every day or several times a week.

3. The importance of guaranteeing the workers' right to disconnect

What has been said highlights the need to recognize to the workers the right to disconnect from technological devices and platforms without repercussions on the employment relationship or on the salary.

In this context, some European Countries — such as France, Spain and Italy — have provided for a regulation that recognized the right to disconnect, giving workers the possibility to interrupt their jobs outside working hours, without penalties.

4. The right to disconnect of workers introduced by some European Countries

France was the first European State to regulate the right to disconnect with a 2016 law (the so-called *Loi Travail* - Loi n. 2016-1088 of 8 August 2016) which amended the *Code du Travail* (in particular the art. 2242-8 of the *Code du Travail*). This *Code* provides for the obligation for companies with more than 50 employees to provide for the right to disconnect in the collective agreement. The agreement must provide for a regulation, by the company, of the use of technological tools, in order to ensure the workers' right to disconnect and the right to their free time (the "offline" time). In addition, the agreement must set out that employees may not be contacted by email or text or by phone calls outside of working hours. In absence of an agreement, the right to disconnect must be provided for in a specific regulation after consultation with the *comité d'entreprise* (works committee), or with the workers' representatives. This regulation must set out the procedures for exercising the right to disconnect and

the training courses for the monitoring staff on a reasonable use of technological devices for monitoring work activities.

Similarly, Spain has provided for a specific regulation of the right to disconnect in Law no. 3 of 2018 on the protection of personal data (*Protección de Datos Personales y Garantía de Derechos Digitales (LOPDP)*), in art. 88, entitled *Derecho a la desconexión digital en el ámbito laboral*). This Law recognizes the right to disconnect, in favour of all workers, in order to guarantee them, outside working hours, respect for rest time, work permits and holidays, as well as their personal and family privacy. It is also established that the procedures for exercising the right to disconnect are directed at ensuring a better work-life balance. The detailed discipline must be provided for in collective agreements; in the absence of an agreement, the employer must hear the workers' representatives in order to define the modalities for exercising the right to disconnect, as well as the training actions for workers on the reasonable use of technological devices. Furthermore, the Spanish law of 2018 introduced in the Workers' Statute (in art. 13a of the *LOPDP* it introduces art. 20 *bis* in the Spanish Workers Statute - *Estatuto de los Trabajadores-ET*), the right of workers to privacy in the use of company digital devices and the right of digital disconnection. The Royal Decree of September 2020 (Royal Decree n. 28 of 22 September 2020) leaves to collective agreement the definition of the modalities to guarantee the exercise of the right to disconnect to remote workers.

The most important aspects that France and Spain regulations have in common are that:

- the definition of instruments aimed at guaranteeing the exercise of the right to disconnect is delegated to the collective agreement;
- the recognition of the right to disconnect is for all workers, not just for remote workers.

5. The right to disconnect of remote workers introduced by Italian regulation

Italy has recognized the right to disconnect only for remote workers with a recent law of May 2021 (Law n. 61 of 6 May 2021). This law establishes the right to disconnect from technological devices and platforms and establishes that the exercise of this right cannot have repercussions on the employment relationship or on the salary. According to this law, therefore, individual agreements must identify the hours in which the worker is obliged to remain connected to the technological tools and to be reachable by the company, the working hours and rest times. This means that, outside of the working hours established by the individual agreement and any established periods of availability, the worker is not obliged to remain connected to the technological tools and, therefore, to respond promptly to telephone calls and mail, without penalty.

The Italian legislation on the right to disconnect, however, has at least two critical aspects.

First, the right to disconnect is introduced not for all workers, such as in France and Spain, but only for smart or remote workers, thus prefiguring an inequality of treatment of workers.

Secondly, the regulation of this right is the subject to an individual agreement between employer and employee and not included in collective agreements, such as in France and Spain. But the agreement between the parties could put the worker in a weaker position, with respect to the company, or condition his consent.

6. The right to disconnect in the European Parliament resolution of 2021

The issue of the right to disconnection has also taken on importance at the European Union level.

It should be remembered that, at the European Union level, there is currently no legislation on the right to disconnection and Member States have very different regulations and, in most cases, do not regulate this matter.

In light of this consideration, the European Parliament, on January 2021 ("Resolution of 21 January 2021 containing Recommendations to the Commission on the right to disconnect"), approved a Resolution containing recommendations to the European Commission on the proposed Directive on the right to disconnect, without negative consequences, and which establishes standards to be enforced for remote work in the Member States.

The Resolution provides that "employers should not require workers to be directly or indirectly available or reachable outside their working time and that co-workers should not contact their colleagues outside the agreed working hours for work purposes".

The Resolution set out that "certain autonomy, flexibility and respect for time", in order to permit workers to organize "their working time around personal responsibilities, in particular caring for children or sick family members, should be respected".

The Resolution provides, in order to pursue these purposes, the obligation of Member State to ensure that employers establish, after consulting with social partners, detailed methods to allow workers to disconnect. Once regulated, the right to disconnect should be communicated to workers, indicating, in particular, the practical methods for exercising the right itself.

There are several elements of the Resolution that can be regarded as positive.

First of all, the European Parliament defines the right to disconnect as a new "fundamental" right at the level of the European Union, which is essential to the "new working models" of the digital age.

Furthermore, the European Parliament considers the right to disconnect in a broad perspective, not limited to ensuring compliance with working hours. The objective is to guarantee the protection of the rights of "all workers", both public and private, also in order to protect health and safety of workers and ensure fair working conditions, including work-life balance, also taking into account the problem connected to gender inequality.

According to the Resolution, the right to disconnect should be regarded as an important social policy instrument at Union level to ensure protection of the rights of all workers and, more specifically, the rights of "the most vulnerable workers and those with caring responsibilities", who are usually women.

Therefore, the Resolution is also regarded, in general, as a social policy instrument and, more specifically, as a tool to remove gender asymmetries.

The proposal of the European Parliament, therefore, provides for positive innovations regarding the right to disconnect.

7. Conclusion

In conclusion, it is important that the European Commission will approve a Directive compliant with Parliament's proposal.

In this way, European legislation would lead the Member State to guarantee the effectiveness of the right to disconnect, regarded as a fundamental right of the new generation, aimed at protecting the rights of workers and ensuring a better work-life balance.

