A new urgent need of workers: the right to disconnect

THE RIGHT TO DISCONNECT - SHORT UPDATE, ANALYSIS AND SKETCHING OF CLAIMS AND NEXT STEPS

The purpose of this article is to contribute to the discussion on workers' "right to disconnect" from digital business communication outside well defined working time. This discussion has become necessary as:

1. Modern communication means allow skilled workers to work almost from everywhere and respond fast to any request, any time (employer's paradise). The potential amount of work that could gradually be converted into digital teleworking is high and growing fast (on average already, 40% of administrative work is currently considered the order of magnitude);

2. Workers have been facing constantly growing demands related to their availability in any environment at any time over the two last decades.

The results of recent large scale studies on the consequences of this increasing level of availability need to be looked at by Unions. Positions, claims need to be defined, agreements and legislation which would allow the framing of this fundamental evolution of the whole work environment need to be discussed, developed and enacted.

Many studies and surveys are available, but this article takes the 2017 ILO / EUROFOUND study "Working anytime, anywhere: the effects on the world of work." as one main starting point[1] as it is comprehensive and recent. Some hints are also taken from a study performed by the 2018 "European Social Observatory" based in Brussels and presented at a conference jointly run by VerDi, EPSU and the Friedrich Ebert Foundation in Berlin in June 2018 and the ETUC report[2].

The issue encompasses a population of workers going

1 https://www.ilo.org/global/publications/books/WCMS_544138/lang--en/index.htm

2 https://www.etuc.org/sites/default/files/publication/file/2018-09/Voss%20Report%20EN2.pdf

much beyond the declared teleworkers, as workers who are officially working only in their employers' premises are facing the same problem of being asked to respond at any time, from anywhere.

The work environment in international public service organizations is different from national public services in some aspects; especially internal labor law and the role and means of staff representations and unions may differ, the international environment being often deprived of robust negotiation rights and procedures. USF therefore needs to develop and adopt a tailored approach at the latest at the 2019 Congress.

Working anytime, anywhere: negative aspects

Negative effects of teleworking on workers' health are reported. The origin of problems is manifold and ranges from stress due to a higher and constant intensity of work to equipment with sometimes inferior ergonomic standards, mental fatigue due to expected quick reaction anytime. The consequences range from poorer sleep to problems with vision and musculo-skeletal disorders.

There is a clear general tendency reported about the number of hours worked: depending on the employer, they may rise by 3 up to 5 hours per week beyond the working time either agreed or laid down in legislation. Mostly these hours are unpaid.

There is also a clearly defined danger identified with social aspects: solitude and alienation from the work environment. This alienation may entail also poorer training opportunities and occasionally limited career prospects.

On the organizational side the obligation to work at home a substantial part of the working time, for instance when the employer simply aims at saving office space, may be unpopular. When interests are conflicting in the opposite sense, reluctant managerial attitudes mostly result from a lack of trust towards employees or from a feared loss of power over employees.

There sometimes seems to be an unwelcome blurring of professional and private life that constitutes a burden for many workers.

The right of a teleworker to disconnect from business processes is a relatively new aspect of the whole issue. Indeed, beyond the issues related to regular teleworking, the universally prevailing very high work pressure now entails a questionable practice: all workers that may be contacted technically are in danger of being asked to respond from anywhere, at any time, including in the absence of any special teleworking arrangement or rules.

The question of when and how such a right would be codified and enforceable calls for further investigation and discussion.

Working anytime, anywhere: positive aspects

Despite the known dangers described above and exhaustively investigated in seriously conducted studies, it would be inaccurate to claim that teleworking is unpopular with workers in general.

Positive aspects are reported upon related, inter alia, to flexibility and work-life balance. The ability to cope with conflicting demands in the family environment and sparing commuting by car or public transport to the employer's premises is perceived as a relief. Less frequent interruptions by colleagues or superiors seem to lead to a high quality of work and can contribute to job satisfaction. A flat rejection by workers' unions would therefore be inappropriate.

The way forward: focusing on the right to disconnect

Some legislation is already in place (like in France), however not always explicitly covering the issue "right to disconnect". EU Directives related to health and safety issues are relevant, as well as EU Directives governing social dialogue issues. The European Framework Agreement on Telework concluded 2002 between the social partners at European level also gives some guidance. The existing framework at national and European level calls for a review and update.

From the considerations above, a double approach may be the most appropriate.

First, a general framework defining fundamentals (non-discrimination of teleworkers, training and career opportunities, non-obligation...) needs to be revisited at EU level. The Telework Agreement may be a starting point or a new agreement on psycho-social risks. The right of the individual worker to disconnect from business communication must be enshrined such that only duly justified and negotiated exceptions are possible.

Second, all considered limitations to general principles enshrined in such legislation should find their way into the agendas of management and staff or union representatives to allow for jointly developed, tailored, mutually acceptable solutions. The way forward must therefore start with the determination of both social partners at all levels, including the internal level of International organizations to seriously and jointly take stock of the whole telework and right to disconnect issue.
In this context, the right of the individual worker to know when and under which circumstances disconnection from business processes is guaranteed by his or her employer will play an essential role. Where work processes are too unpredictable both in time and sensitiveness, special joint supervisory bodies may be envisaged to achieve an appropriate balance between employers' and workers' interests. Misuse by management must be avoided and appropriate rewards part of the agreement.

The European Trade Union Confederation (ETUC) is currently discussing the digitalization issue in the framework of psycho-social risks .

It is now high time to start thinking of and drafting legislation under Art.151-155 TFEU (social legislation) to define fundamentals around the right to disconnect, either as an autonomous Directive or as part of a directive around the teleworking or psycho-social risks issue. Internal agreements and procedures to follow up on these agreements are important, as they allow adapting and fine tuning the needs of the workers and employers. They are welcome, but taken alone, they fall short of the real need: fundamental rights need to include the right to disconnect in order to set a frame to allowable agreements and impose them where they are lacking.

These fundamentals, especially the right to disconnect, need to be enshrined in a piece of EU-legislation, because otherwise no harmonization will be possible. More likely, in the absence of appropriate EU legislation "forum shopping" by employers and distortions in Internal Market issues will inevitably appear, granting Member states with lower levels of protection, unfair competitive advantages over other Member States. The "Laval" saga (see CJEU case C-341/05) taught all European workers' unions how dangerous lacking key legislation at EU level can be: local or national legislation designed to protect the rights of workers remains inapplicable as soon as employers' rights such as freedom circulation of services protected under the Treaty can be invoked in court.

All EU Institutions and agencies would then have the duty to enact internally or simply abide by this new legislation, as the Staff Regulations are required to be aligned anyway by Art.1e (a special Union Syndicale claim before the "2004 Reform" honored by the then Commissioner in charge Neil Kinnock). Full involvement of Staff representations and unions will be paramount, especially in international organisations that are known to be slow or reluctant on enacting internally rules that follow the general evolution of European social and labour legislation.

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