

Implementing Workers' Right to Disconnect

Guiding principles of the European Law Institute

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Introduction – News from Australia

The New York Times

Australia Introduces Workers' 'Right to Disconnect'

If the legislation passes, companies could face fines if they penalize employees for failing to respond to work-related communication in off-work hours.

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Office workers in the central business district of Sydney, Australia. Matthew Abbott for The New York Times

Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2024

333M Employee right to disconnect

- (1) An employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable.

Where do we stand in Europe?

- European Parliament Resolution of January 21, 2021 with recommendations to the Commission on the right to disconnect (R2D) (2019/2181(INL)).
 - R2D = right “not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time” (Art. 2.1)
- 10/2022 -11/2023: Negotiations between social partners in order to revise the European Framework Agreement on Telework (2002)
- 11/2023: Failed negotiations

📅 27.11.2023 **PRESS RELEASE**

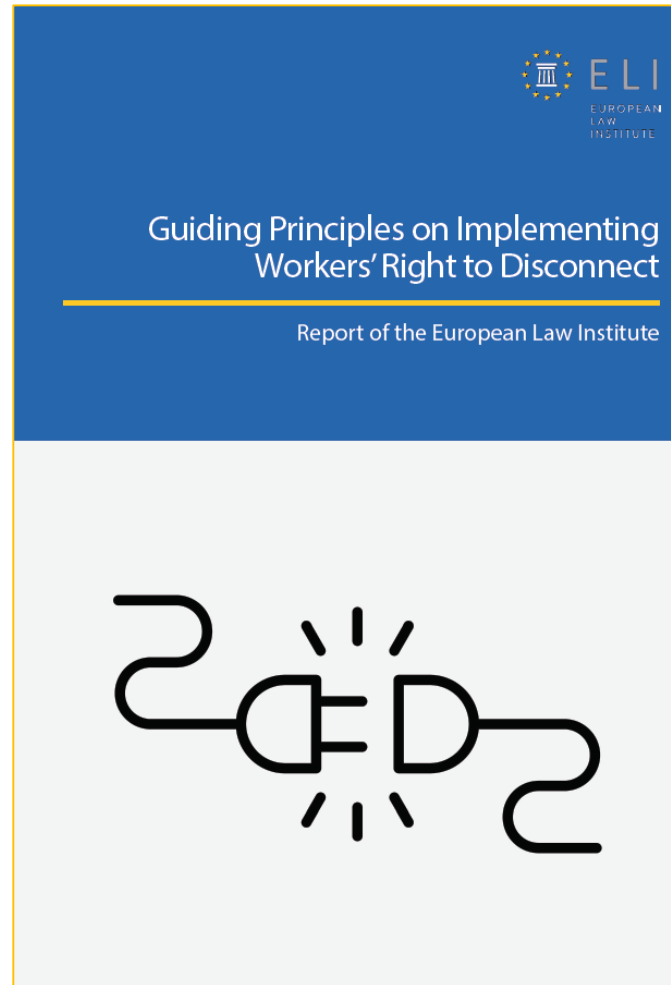
Telework: Legislative action needed by EU Commission



The ETUC is calling on the European Commission to initiate swift legislative action on telework and the right to disconnect following the blocking of a European social partner agreement by employers.

ELI Guiding Principles on Implementing Workers' Right to Disconnect

<https://www.europeanlawinstitute.eu/projects-publications/publications/eli-guiding-principles-on-implementing-workers-right-to-disconnect/>



Why recognize a right to disconnect? (1)

- Eurofound 2023: ~80 % of respondents indicate that they are contacted about work related issues outside their contractual working hours.

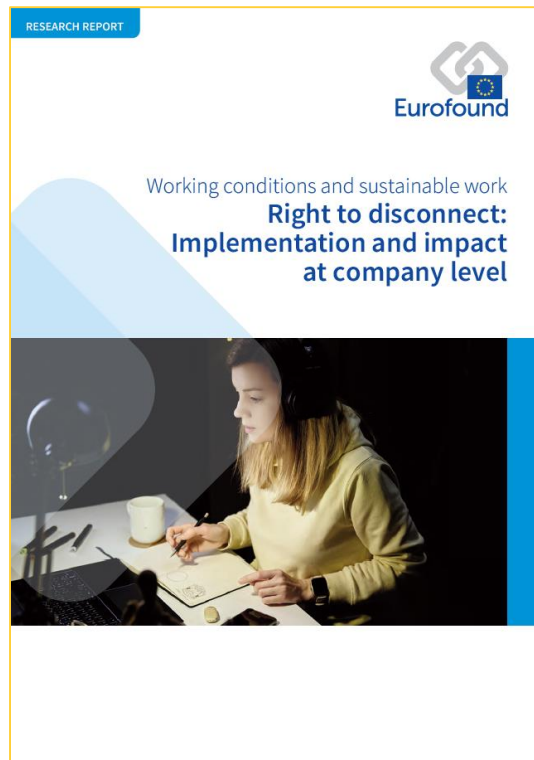
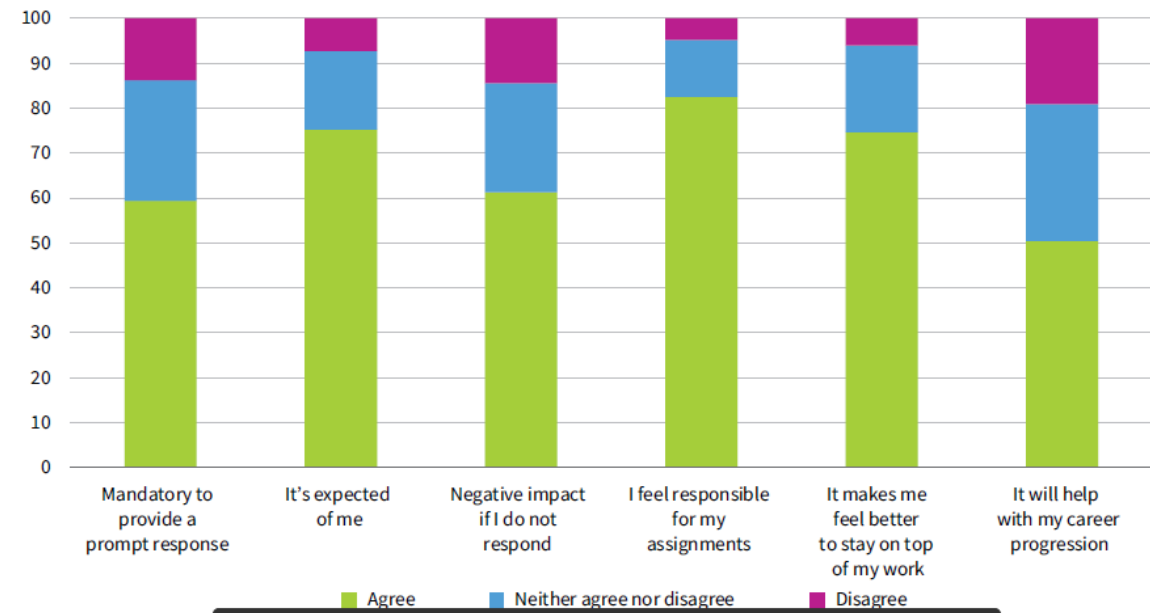


Figure 6: Reasons for responding to out-of-hours calls or messages (%)



Note: Percentages for plot number of observations.

Source: Authors' calculations, based on the Right to disconnect survey 2022

Why recognize a right to disconnect? (2)

- ELI Guiding Principle 1

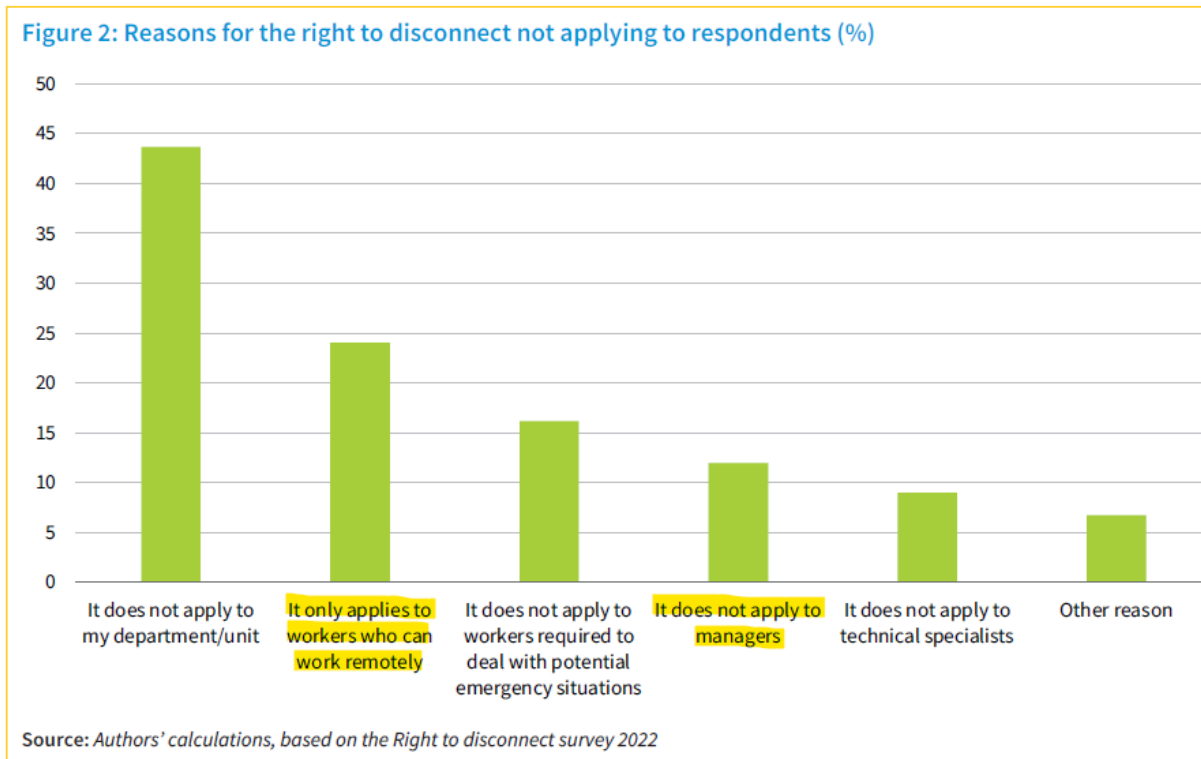
Guiding Principle 1: PURPOSE

1. The purpose of the R2D is to protect the physical and mental health of all workers, by effectively ensuring workers' rest time.
2. The R2D helps to promote gender equality and work-life balance and ensures predictability of working schedules.

- -> Directives 2003/88/EC (working time), 2019/1152 (transparent and predictable working conditions), 2019/1158 (work-life balance), 89/391/EEC (safety and health)

What should be the scope of the right to disconnect? (1)

- Small, medium-sized and large companies
- *In situ*, remote or hybrid work
- Managers
- Eurofound 2023 (20)



What should be the scope of the right to disconnect? (2)

- ELI Guiding Principle 2

Guiding Principle 2: SCOPE

1. The R2D applies to **all employing entities** without consideration of the number of workers employed and to **all workers, including managerial staff**, regardless of their contractual arrangements, in both the private and the public sector.

In what cases is there a duty to reconnect during a disconnection period? (1)

- ELI Guiding Principle 4

Guiding Principle 4: DUTY TO RECONNECT

1. The **duty to reconnect** during a disconnection period must be limited to **absolutely extraordinary situations**.
2. All **reconnections during a disconnection time entitle the employee to compensation commensurate with the facts**.

In what cases is there a duty to reconnect during a disconnection period? (2)

- Notion of emergency
 - Belgian Law on civil servants (2021)
 - *for exceptional and unforeseen reasons requiring action that cannot wait until the next working period*
 - Spain, collective agreement for financial institutions of credit (2021)
 - *in the case of events that may involve a serious risk to people or potential damage to the business, its customers and/or its shareholders*
- Mode of communication in case of circumstances justifying reconnection → SMS?

At what levels should the right to disconnect be regulated?

- ELI Guiding Principle 5

Guiding Principle 5: LEVEL OF REGULATION

1. The R2D must be recognised by **law** as an individual right of workers.
2. The specific implementation and modalities of the R2D shall be determined by **collective agreements**, of any kind, adapted to each work situation.
3. Collective agreements should be negotiated at any appropriate level, with full respect of social partners' autonomy, in accordance with national laws and practices. **In the absence of an applicable collective agreement, the law shall promote alternative sources of the R2D, including Codes of Conduct**, ensuring workers' involvement and respecting the purpose of the R2D.

What measures should be taken at company level to implement the right to disconnect? (1)

- Policy on disconnection
- Hard of soft measures
- Eurofound 2023 (22)

WRC, Code of practice, Dublin (2021)

Table 3: Actions taken to implement the right to disconnect and measures respondents have participated in (%)

Action	Action implemented	Respondent participated in action
Automatically deleting email messages received during holidays	40	42
Stopping work email delivery during certain times	32	24
Raising awareness of the right to disconnect policy	25	17
Setting up an email/communication corridor	25	21
Managing out-of-hours connection	21	18
Prohibiting contact with colleagues outside working hours	21	23
Providing training for managers	19	11
Providing training for employees	12	11

Note: Response percentages refer to those who indicated that a right to disconnect exists in their company and who were aware of actions implemented in relation to the right to disconnect.
Source: Authors' calculations, based on the Right to disconnect survey 2022

Template Email Out of Office and Footers

“My normal working hours are from X to Y. I will respond to you when I am back at work.”

“I am currently working flexibly so while it suits me to send this email now, I do not expect a response or action outside your own working hours”

What measures should be taken at company level to implement the right to disconnect? (2)

- ELI Guiding Principle 3

Guiding Principle 3: PREVENTIVE ACTION AND INFORMATION

1. The effective implementation of the R2D requires preventive actions in order to prevent an 'always on' culture in employing entities.
2. A systematic assessment of the risks of over-connection and its causes must be conducted by all employing entities on a regular basis, as an integral part of their occupational health and safety duties, with due regard to the functioning of micro and small enterprises. All workers, and in particular managers, should be informed about the main findings of this assessment.
3. The need to respect working time limits and the right of other employees to disconnect must be incorporated into the employer's preventive actions, which may include training activities.

Who is responsible for monitoring compliance with the right to disconnect?

- Managers
- Labor inspectorate
 - ELI Guiding Principle 7

Guiding Principle 7: MONITORING AND ENFORCEMENT

1. Compliance with the R2D within employing entities should be regularly assessed and monitored at appropriate levels by labour inspectorates or other independent competent bodies.
2. Employees' representatives and/or trade unions having a legitimate interest in ensuring that the principles on the R2D are complied with may engage, either on behalf or in support of the complainant, with their approval, in any judicial and/or administrative procedure for the enforcement of the R2D.

What are the sanctions for violating the right to disconnect?

- General or specific sanctions (-> ELI Guiding Principle 9)
- Example: Luxembourg Labour Code, Article L.312-10.

Art. L. 312-10.

Si l'employeur, dont les salariés utilisent des outils numériques à des fins professionnelles, ne met pas en place le régime visé à l'article L. 312-9, il est passible d'une amende administrative de 251 à 25.000 euros prononcée par le directeur de l'inspection du travail et des mines qui en fixe le montant en prenant en compte les circonstances et la gravité du manquement, ainsi que le comportement de son auteur après constatation de l'infraction par un membre de l'inspection du travail visé à l'article L. 613-4 et selon la procédure d'injonction prévue à l'article L. 614-13.

Thank you for your attention!

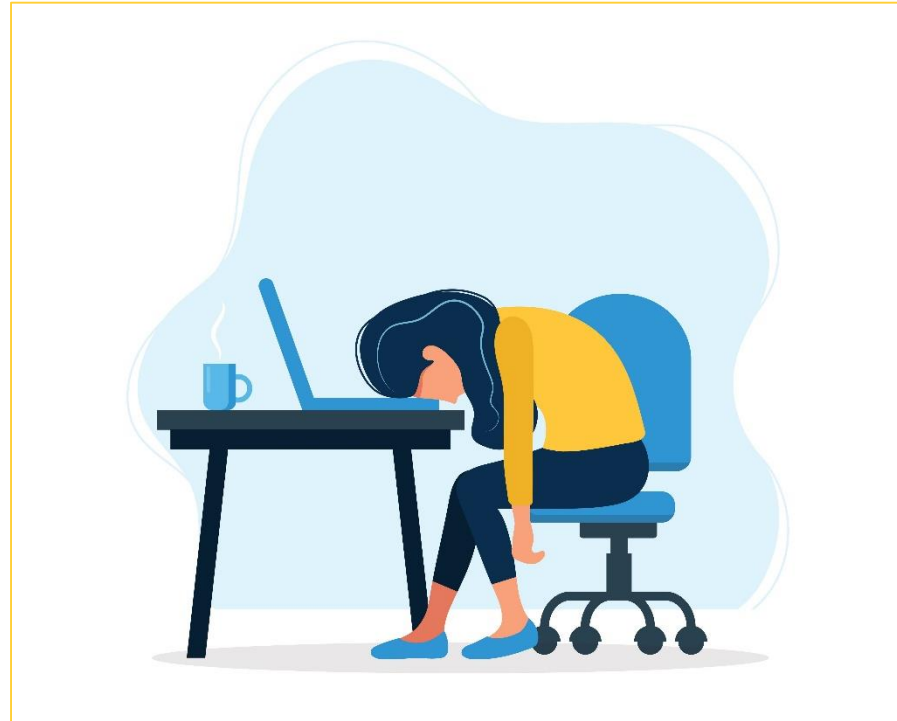


Image: The Washington Post (iStockphoto)