

RIGHT



TO
DISCONNECT

**Protecting the health of the staff implies
the application of the right to disconnect
in this time of health crisis!**



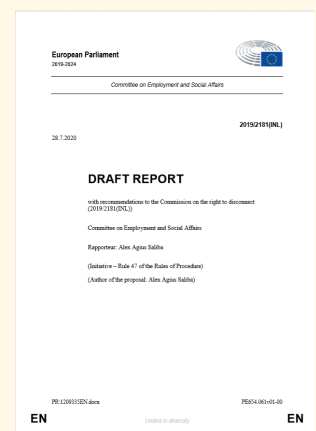
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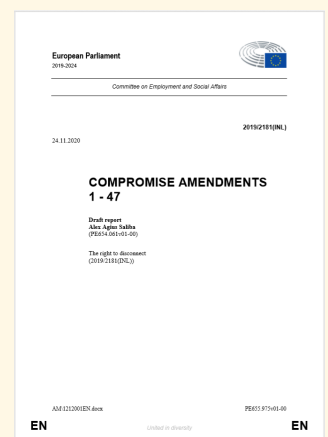
The European Parliament's Employment and Social Affairs Committee (EMPL) adopted on Tuesday 1 December (with 31 votes in favour, 6 against and 18 abstentions) a report by Alex Agius Saliba calling for a directive to enshrine at European level the right to disconnect. In this respect, the rapporteur has indicated:

"We are in a situation where legislation was drafted at a time when digitalisation was not as significant in our lives... The culture of being "always on" and the growing expectation that workers should be reachable at any time can negatively affect work-life balance, physical and mental health, and well-being."

The MEPs are therefore calling on the European Commission to present a European directive on the right to disconnect. They are also emphasising that this right should be deemed a fundamental right guaranteeing that workers may refrain from performing work-related tasks and communicating electronically outside of their working time without any negative implications. Furthermore, they are calling on the European Commission to include the right to disconnect in its future proposal on the health and safety at work strategy.



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The right to disconnect: a fundamental right to protect workers' health

The right to disconnect is two-fold:

1. The right to health;
2. The right to work-life balance.

As an example, France has already included on 8 August 2016 this right in the labour code (Article L2242-17 (7)¹). In Belgium, a law assigns companies the obligation to organize consultation within the Committee for Prevention and Protection at Work (CPPT) on the right to disconnect from work and the use of digital means of communication.

Article 153 of the Treaty on the Functioning of the European Union (TFEU) provides for the EU to adopt directives which lay down the **minimum requirements for working conditions**. Besides, Article 154 of the TFEU establishes that the **social partners must be consulted** on the possible initiatives which should be considered under Article 153 of the TFEU.

In addition, Article 7 of the Charter of Fundamental Rights of the European Union relating to "**Respect for private and family life**" states that "Everyone has the right to respect for his private and family life, his home

and his correspondence". By "correspondence", the Court of Justice considers that any recording, interception or seizure of correspondence addressed to a natural or legal person (in any form whatsoever, in particular by wiretapping²) constitutes an interference with her, his or its right to privacy. This protection extends to private correspondence (including correspondence sent from the workplace³, but also that having a professional or commercial nature³).

Article 31 of the Charter of Fundamental Rights of the EU relating to "**fair and just working conditions**" states:

1. "Every worker has the right to working conditions which respect his or her health, safety and dignity";
2. "Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave."

1. **French Labour Code. Art. L2242-17(7):** The procedures for the full exercise by the employee of his right to disconnect and the establishment by the company of devices to regulate the use of digital tools, in order to ensure compliance with the holidays and resting times as well as respect for private and family life. In the absence of agreement, the employer draws up a charter, after consulting the social and economic committee. This charter defines the procedures for exercising the right to disconnect and provides for the implementation, for employees and supervisory and management staff, of training and awareness actions on the reasonable use of digital tools.

2. [CJEU, January 17, 2019, Dzivev, aff. C-310/16 ECLI; EU: C: 2019: 30, point 36](#)

In addition, the interception of telecommunications amounts to an interference with the right to a private life, enshrined in Article 7 of the Charter. Such an interference may be allowed, in accordance with Article 52(1) of the Charter, only if it is provided for by law and if, while respecting the essence of that right and subject to the principle of proportionality, it is necessary and genuinely meets objectives of general interest recognised by the Union (see, to that effect, judgment of 17 December 2015, Web-MindLicenses, C-419/14, EU:C:2015:832, paragraphs 71 and 73).

3. [ECtHR, judgment of 22 February 2018, Libert c. France, req. No. 588/13; Trib. EU, November 8, 2018, QB, BCE, aff. T-827/16, ECLI: EU: T: 2018: 756, points 76 and 77](#)

4. [EDDH Court, judgment of 16 October 2007, Wieser and Bicos c. Austria, req. N ° 74336/01 \(arrêt du 16 octobre 2007, Wieser et Bicos c. Autriche, req. N°74336/01\)](#)

Reference: Charter of Fundamental Rights of the European Union, 2nd edition, edited by F. Picod, C. Rizzcallah and S. Van Drooghenbroeck Commentary article by article, Bruylant

What about the application of this right within the European Commission as employer and as guardian of the Treaties?

In this time of health crisis, the staff compulsorily works from home. As a result, a new culture was born, that of “*always-on*”.

DG HR, a pilot who decided to get off the plane?

Unfortunately, we regret realizing that DG HR still does not seem capable of ensuring the essential consistency of the rules implemented by the many services of our institution, thus allowing decisions at the most decentralized level with the argument that they are supposed “know better the staff and any particular situations”.

In its documents regarding future options for teleworking, the DG HR even envisages that each DG disposes in its own way (sic!) the time slots and the applicable rules, what is quite simply unacceptable!

This resignation of DG HR from its role leads to diverging implementations of the instructions in force, what is all the more unacceptable in the midst of a pandemic when it comes to protecting the health of our colleagues.

Managers at the height of their missions...

The vast majority of managers have been exemplary in managing this crisis by showing empathy and the utmost concern for their staff, **fully recognizing the right to disconnect** and thus building a climate of trust that will remain forever acquired.

Others are not so much so...

Others, unfortunately, in the absence of actual proficiency at the central level, feel authorized to interpret in a way that is as personal as it is res-



trictive the instructions in force and thus unnecessarily worsen the already difficult working conditions of those colleagues placed under their responsibility

From "face-to-face at all costs" to the obsession with "always-on" ...

It is thanks to the noticeably clear positions taken by Commissioner Hahn, whom we would like to thank once again, which prevented DG HR from going without thinking to phase 2, as well as to precise and binding instructions on access to the workplace, that the obsessive impulses for "face-to-face at all costs" have been calmed.

However, this was not the case in terms of the right to disconnect, to put an end to another obsession, that of "always-on".

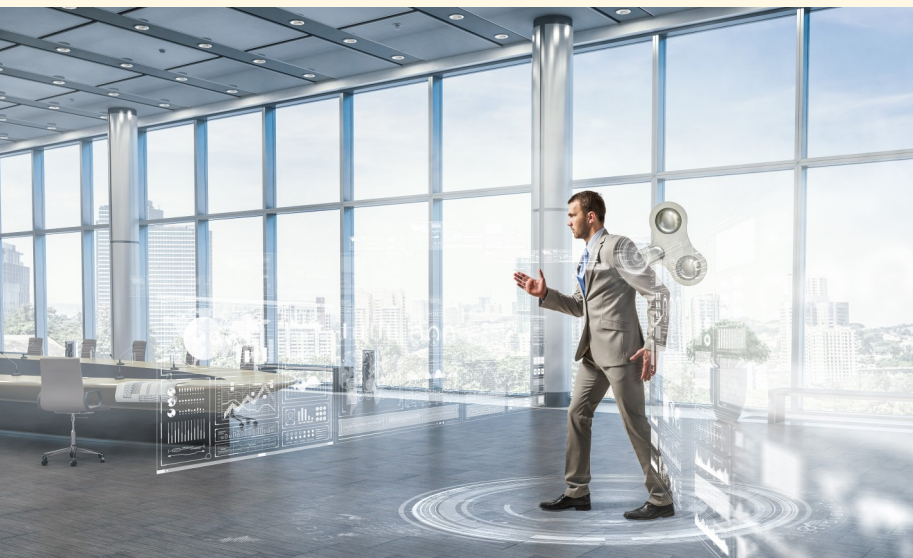
R&D has received several complaints from colleagues who are on the verge of medically proven burnout following a hyper-connection and an oversolicitation within their services. No li-

The staff has not mutated into a hybrid species, half-human, half-robot!

The staff is by definition human and, as such, needs time to rest, time to be together with their loved ones, leisure time and, above all, sleep.

mits whatsoever are imposed anymore. Our colleagues are forced to work at any time of the day, until late in the evening, and even on weekends ... surpassing the space-time border between work and private life. Hunted down by unscrupulous little bosses who, having lost a part of their power of domination because of this crisis and frustrated by the impossibility of forcing colleagues to return to the office, do not hesitate to use a policy of control often bordering on the obsessive ... even raising and letting linger doubts about the potential consequences for the annual evaluation and promotion exercise.

It is time for the Commission, as a model and modern employer, to step in and take care of the health and well-being of its staff by taking clear action against these excesses while establishing well defined rules to be followed and applied by all DGs, safeguarding minimum requirements concerning working conditions such as the respect for work-life balance, while taking into account the existing limitations of daily working time..



The Joint Committee for Prevention and Protection at Work (CPPT) has its say...

The CPPT is entitled to open a reflection on the right to disconnect from work and the use of digital communication tools.

The **R&D** delegates, closely with the staff representatives making part of that Committee, will not fail to initiate discussions in the coming days.

Considering the above:

R&D joins the demand of MEPs concerned with the health of EU workers.

R&D, as the first Union in the European civil service, concerned with the health of the Institution's staff, calls for the opening of negotiations on the right to disconnect within the services of the European Commission, which should be an integral part of the "Workplace and Wellbeing" pillar of the HR Strategy

Until the opening of these negotiations, R&D requests for:

- **The obligation to ensure, for all staff, the respect for the limitation of working time, holidays and rest periods, as well as the respect for personal and family life;**
- **The setting-up of a regulatory system for the use of digital tools;**
- **The respect of the fixed time slots already in force during which the staff can be contacted: 9:30 a.m.-12: 00 p.m. and 3:00 p.m.-4: 30 p.m. (4:00 p.m. on Wednesday and Friday).**

**Cristiano Sebastiani,
President**

