

THE RIGHT TO DISCONNECT IN THE EUROPEAN UNION: WHY PERSONAL SCOPE MATTERS

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Digitalisation has changed the organisation of work and enabled employees to remain connected regardless of their physical location. While this development increases flexibility, it also blurs the boundary between working time and private life. The right to disconnect has emerged as a legal response to this phenomenon, but it is not yet regulated by EU law. In the absence of a harmonised framework, Member States have adopted different models, some of which limit the right to telework, employer size or workplace-level arrangements. This paper analyses the personal scope of the right to disconnect in selected national legal systems. It argues that the right should be linked to exposure to work-related digital communication outside working time, rather than to formal criteria. The paper also considers the equality dimension of constant availability and proposes a future EU framework.

Key words: right to disconnect; personal scope; EU labour law; work-life balance; equality

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1. INTRODUCTION **

Digitalisation has fundamentally changed the organisation of all aspects of human life, including work. Modern information and communication technologies allow employees to communicate more efficiently, perform work more flexibly and remain connected to work regardless of physical location. This development has many positive aspects, but it may also lead to the blurring of boundaries between working and private lives, as well as to an increase in psychosocial risks such as chronic stress, burnout, and loss of productivity.¹

The right to disconnect has emerged as a legal and social response to this development.² It may generally be understood as the right of employees not to engage in work-related communication and not to use work-related digital tools outside working time, particularly during daily and weekly rest periods, annual leave, or public holidays without suffering negative consequences. Its function is not limited to the regulation of working time in a narrow quantitative sense. On the contrary, it protects the quality of rest and the work-life balance of employees, which may be significantly disrupted by the constant use of digital technologies and technostress.³

European Union (hereinafter referred to as “EU”) law does not yet contain a binding and express regulation of the right to disconnect. Employees are protected only indirectly through existing rules on working time, rest periods and occupational health and safety (OSH). These instruments, however, primarily address the duration of working time and are not able to fully capture the qualitative dimension of permanent digital availability. In the absence of a harmonised EU framework, Member States have adopted diverse approaches. Some legal systems recognise the right to disconnect broadly, while others link it to specific forms of work, especially telework. In certain states, disconnection-related obligations are connected to the size of the employer. This fragmentation

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¹ Nguyen, CH., T., *A Comparative Study of the Right to Disconnect with Policy Recommendations for Vietnam*, Hong Kong Journal of Social Sciences, vol. 65, 2025, p. 137.

² Kuznetsova, M.; Karpenko, L.; Kravtsov, D.; Tykhoniuk, O.; Smoliarova, M., *Shifting Paradigms of Labor Rights in the Context of Flexible and Remote Employment*, Janus.net, vol. 16, no. 2, 2026, p. 414.

³ See Bencsik, A.; Juhasz, T., *Impact of Technostress on Work-life Balance*, Human Technology, vol. 19, no. 1, 2023, pp. 41 – 61.

raises a question that is sometimes overshadowed by the broader debate on the right: Who should be protected by the right to disconnect?

Therefore, the central research question of this article is whether the right to disconnect should be limited by employment status, place of work or employer size, or whether it should have broader personal scope. To answer the question, the article is methodologically based on a combination of (i) analysis of primary and secondary EU law, (ii) comparative analysis of the national legal regulations of the Member States, and (iii) synthesis of the findings with the aim of formulating proposals.

2. LABOUR LAW LIMITS ON CONSTANT AVAILABILITY IN EU LAW *DE LEGE LATA*

As stated in the introduction, continuous work-related availability represents one of the key consequences of the digitalisation of work and the development of information and communication technologies. In addition to the undeniable benefits of digitalisation, its side effects may also be observed, particularly where the use of digital tools negatively affects the safety, health, and well-being of employees. For this reason, the right to disconnect represents a possible effective solution counter-balancing the negative aspects of digitalisation.

The legal system of the European Union does not currently contain an express binding regulation of this developing legal instrument. The protection of employees' private time and rest is therefore ensured only indirectly, through other labour law instruments, such as rules on working time and minimum rest periods.⁴ This protection is based fundamentally on EU primary law, in particular Art. 31(2) of the Charter of Fundamental Rights of the EU, which guarantees every worker the right to a limitation of maximum working hours and to daily and weekly rest periods. Although this provision does not regulate work-related availability outside working time, it presupposes the existence of a protected period during which the employee should not be required to perform work or remain at the disposal of the employer.

The primary-law guarantee is further developed in secondary law, especially in Directive 2003/88/EC concerning certain aspects of the organisation

⁴ Dolobáč, M.; Skolodová, K., *The Right to Disconnect in the Context of Employees' Mental Health*, *Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza*, vol. 14, 2022, p. 165.

of working time (hereinafter referred to as “Working Time Directive”).⁵ The Working Time Directive establishes minimum safety and health requirements for the organisation of working time, including daily rest, breaks, weekly rest, and maximum weekly working time. Its purpose is to protect the safety and health of workers, but its regulatory technique is predominantly quantitative. It determines the number of hours during which an employee may work and the minimum periods during which the employee must rest, while using the dichotomous approach, under which a given period may be classified either as working time or as rest time and these are mutually exclusive.⁶ Such an approach has also been confirmed by the case law of the Court of Justice of the European Union (hereinafter referred to as “CJEU”). Case law developed in this area mostly concerns the scope of the concept of “working time”. The interpretation developed primarily in connection with on-call work and stand-by time, where the CJEU adopted a relatively broad interpretation of the terms. The central question was not only whether the worker was actually performing work, but also whether the constraints imposed on the worker were sufficiently intense to transform a period of availability into working time.⁷

The existing framework therefore primarily answers the question of how much time an employee works and how much rest must be guaranteed and to which category a certain period belongs. It does not fully reflect the qualitative dimension of rest, namely whether employees are free from the expectation of work-related availability during non-working time and whether their free time is not interrupted even by minor work-related intrusions, such as notifications, e-mails, phone calls or the implicit need to monitor digital communication channels. This distinction is essential for the right to disconnect. An employee may be formally outside working time and may not perform any measurable

⁵ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Official Journal of the European Union, L-299/9.

⁶ This is set by the definition of “rest period”, that is defined as any period which is not working time.

⁷ In this context, the CJEU has assessed not only whether workers were actively performing tasks, but also whether the constraints imposed on them objectively and significantly limited their ability to manage their free time and pursue personal and social interests. Where constraints reach the required level of intensity, such period may be classified as “working time”, even if the worker is not continuously performing work. See CJEU Judgement no. C-518/15, *Ville de Nivelles v. Rudy Matzak*, ECLI:EU:C:2018:82; CJEU Judgement, no. C-344/19, *D. J. v Radiotelevizija Slovenija*, ECLI:EU:C:2021:182; CJEU Judgement, no. C-580/19, *RJ v Stadt Offenbach am Main*, ECLI: EU:C:2021:183.

amount of additional work, but repeated e-mails, phone calls or messages may still interfere with rest time. In this sense, the right to disconnect complements existing working-time regulation by protecting not only the duration of rest, but also its quality and effectiveness.

The absence of the EU right to disconnect has been recognised at political level. In 2021, the European Parliament called on the European Commission to submit a legislative proposal establishing a harmonised right to disconnect. The Parliament also emphasised the negative effects on constant availability on workers' health and work-life balance.⁸ Nevertheless, no binding EU legislation specifically regulating the right to disconnect has been adopted. As a result, the development of the right has been left primarily to the Member States.

This has led to a fragmented regulatory landscape. Member States that have introduced the right to disconnect have adopted models that differ not only in the content of the right, but also in its personal scope. Some models attach the right primarily to telework. Others formally recognise the right more broadly but condition its practical implementation on the size of the employer or another criterion. These differences are central to the article, because the effectiveness of the right to disconnect depends not only on whether the right exists, but also on who is entitled to invoke it and under what conditions.

This fragmented approach also gave rise to further discussions at EU level. The Commission opened consultations with European social partners – the first-stage consultation was launched in 2024, and in July 2025 the second-stage consultations were opened.⁹ This development is relevant also from the perspective of personal scope. In the consultation process, trade unions have called for the right to disconnect to be guaranteed for all workers. However, these developments have not yet resulted in a final legislative proposal. The precise content, personal scope, and enforcement mechanisms of a potential European right to disconnect therefore remain open. This has sparked renewed interest in the right to disconnect.

However, a significant part of the debate still focuses on whether the right should be recognised as an autonomous legal institute (not only at EU level, but also at national levels) or whether the risk of constant availability can already

⁸ European Parliament, *European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL))*, 2021, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_456_R_0016 (11.04.2026).

⁹ European Commission, *Commission starts second-stage talks with social partners on right to disconnect and fair telework*, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1907 (11.04.2026).

be addressed through existing working-time regulations.¹⁰ Such discussions remain relevant, but they are no longer fully sufficient. Many Member States have adopted their own models of the right to disconnect, and those models vary in fundamental aspects. For this reason, the article does not further analyse the general need for the right to disconnect as such. Instead, it proceeds from the premise that the right has already been recognised in the practice of Member States and focuses on how its design is affecting the effectiveness of the models. It then assesses these findings in relation to the possible adoption of a common EU right to disconnect.

3. RIGHT TO DISCONNECT *DE LEGE LATA* IN EU MEMBER STATES

For the purposes of this article, national approaches may be divided into several categories. The first one consists of models that attach the right primarily to teleworkers or other forms of work performed outside of the employer's workplace. The second category consists of models in which disconnection-related obligations are linked to the size of the employer. The third category of models recognises the right to disconnect in relatively broad and universal terms. The fourth category is formed by Member States that have opted only for non-binding measures and therefore does not fit neatly with the previous categories. This classification is not intended to provide an exhaustive list of all Member States, but to demonstrate how different legislative approaches may create different personal-scope problems.

3.1. Telework-specific models

The first group of models links the right to disconnect primarily to specific groups of employees performing telework, home work, smart work or other forms of work outside the workplace.

¹⁰ See Dumančić, K., *Hi Boss, Don't Send Me an E-mail When I Sleep: Implementation of „The Right to Disconnect“ into the EU Law*, EU and Comparative Law Issues and Challenges Series (ECLIC), vol. 9, 2025, pp. 42 – 63; Jaworska, K., *The Right to Disconnect*, *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, vol. 29, no. 1, 2022, pp. 51 – 58; Rush, T.; Groarke, D., *Is it time for a specific right to disconnect in Ireland?*, *Ius Laboris*, 2020, <https://iuslaboris.com/insights/is-it-time-for-a-specific-right-to-disconnect-in-ireland/> (12.07.2026).

Slovakia provides a clear example of this model. Pursuant to the Slovak Labour Code, employees performing home work or telework have the right not to use the work equipment during daily rest, weekly rest, annual leave, public holidays or periods of justified absence from work. The employer may not treat the exercise of this right as a breach of duty and/or penalise the employee. This protection does not apply in the cases of on-call duty or overtime work.¹¹

Systematically, the right is placed within the legal framework governing home work and telework. In addition, the relevant protection also extends to employees who perform work outside the workplace occasionally or in extraordinary circumstances (home-office). Nevertheless, the protection remains connected to work performed outside the workplace. This means that the legal trigger is not the employee's exposure to work-related digital communication as such, but the formal circumstance that the employee performs work remotely.¹²

The distinction is difficult to justify if the right to disconnect is understood as a protection against digital availability and not merely as an accessory to teleworking conditions. Unfortunately, the explanatory statement to the amendment of Labour Code does not provide any clarification on the aim of the instrument. According to it, the amendment sought to introduce "a form of the employee's right to disconnect, which is construed as the employee's right not to perform work outside working hours (unless it involves overtime work or on-call work) during times of obstacles at work and a prohibition of employer to evaluate such performance as a violation of work discipline."¹³ Therefore, the legislator does not provide any guidance as to why this protection is connected specifically to home work, telework and home-office. The wording, however, appears to describe the protected interest of not being available outside working hours. If that is the underlying rationale, the limitation to employees falling within §52 of the Labour Code becomes questionable.

¹¹ Art. 52 Zákonník práce [Labour Code], Zbierka zákonov Slovenskej republiky [Official Gazette of the Slovak republic], no. 311/2001.

¹² See Mičudová, T., *Právo zamestnanca na odpojenie*, Mzdové centrum, 2026, <https://www.mzdovecentrum.sk/odborny-clanok/pravo-zamestnanca-na-odpojenie.htm> (03.06.2026).

¹³ Explanatory Statement, Zákon ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov, a ktorým sa menia a dopĺňajú niektoré zákony [Act amending Act No. 311/2001 Coll., the Labour Code, and amending certain other acts], no. 76/2021.

A similar approach can be identified in Italy, where the right to disconnect was introduced in connection with so-called smart work.¹⁴ The Italian model addresses employees who perform work partly outside the employer's premises with the use of information technologies. The conditions are regulated in the individual agreement, which gives more flexibility to the parties. However, it follows the same structural tendency as Slovakia. The right to disconnect is attached to a flexible work arrangement rather than to digital availability as such.¹⁵

3.2. Employer-size-based models and organisational models

A second group of models does not limit the right to disconnect exclusively to employees performing telework, home work, smart work or other forms of work outside the employer's workplace. Compared with telework-specific models, these approaches appear broader because they do not attach protection solely to a particular form of work. However, even broadly formulated models may contain other limitations affecting the accessibility of the right. In particular, this limitation concerns the size of the employer.

Belgium is one of the Member States with this model. Under the Belgian Labour Deal, private-sector employers with at least 20 employees are required to establish written arrangements concerning the right to disconnect, either through a collective bargaining agreement or through work regulations. These arrangements should include the practical modalities for the employee's use of the right and establish company mechanisms governing the use of digital tools.¹⁶ The model therefore has primarily an organisational character. It does not only proclaim the right to disconnect, but also requires certain categories of employers to negotiate and regulate the right at the company level, which might be positive for the effectiveness and flexibility of the right. At the same time the Belgian model does illustrate the limits of the regulation based on the

¹⁴ Art. 19 Legge per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato [The law on the protection of non-entrepreneurial self-employment and measures aimed at promoting flexible arrangements in the time and place of subordinate employment], *Gazzetta Ufficiale* [Official Gazette of the Italian republic], no. 81/2017.

¹⁵ Calderara, D., *Labor Law and the Right to Disconnect*, *Gdańskie Studia Prawnicze*, no. 2, 2025, pp. 128 – 129.

¹⁶ Art. 8 Loi portant des dispositions diverses relatives au travail [Act containing various provisions relating to work], *Moniteur Belge* [Official Gazette of Belgium], no. 2022206360.

employer's size. Employees working for employers with fewer than 20 employees may be exposed to the same pressure to remain available outside working time, but they do not benefit from the same statutory obligation to adopt written arrangements on disconnection.

France provides another example of this approach. The conditions under which employees exercise the right are primarily to be determined through mandatory negotiations on professional equality between women and men and quality of life at work (known as QVCT). This obligation applies to companies with at least 50 employees, where trade-union representation is present. If the negotiation fails or the conditions for QVCT are not met, the employer must unilaterally adopt a charter implementing the right to disconnect.¹⁷ The charter should be submitted to the social and economic council or the staff representatives in companies with less than 11 employees, but their comments do not need to be considered by the employer. Differences can also be seen in the consequences of breaching these duties. Breach of the duty to negotiate may result in fine up to 3,750 EUR or up to one year of imprisonment. Not adopting the charter, on the other hand, is not penalised.¹⁸

From the perspective of personal scope, the French model is broader than the Belgian model. Nevertheless, it still creates protection gaps, since employees in undertakings where the right is addressed only through a non-sanctionable charter, may receive weaker protection than the employees in larger companies covered by collective bargaining.

3.3. Broad personal-scope models

The third group of models recognises the right to disconnect in broad personal terms and does not limit it to specific categories of employees. These models are particularly relevant from the perspective of personal scope because they are more closely connected to the protected risk itself.

Spain provides an example of this model. Pursuant to Organic Law 3/2018 on the Protection of Personal Data and Guarantee of Digital Rights, workers and public employees have the right to digital disconnection in order to guarantee, outside legally or collectively established working time, respect for their

¹⁷ Art. L2242-17 Code du Travail [Labour Code], Journal Officiel de la République Française [Official Gazette of the Republic of France].

¹⁸ See Lerouge, L.; Trujillo Pons, F., *Contribution to the study on the „right to disconnect“ from work. Are France and Spain examples for other countries and EU law?*, European Labour Law Journal, vol. 13, no. 3, 2022, pp. 459 – 460.

rest time, leave and holidays, as well as their personal and family privacy.¹⁹ The modalities for exercising the right must consider the nature and purpose of the employment relationship and must promote reconciliation between work activity and personal life. They are also subject to collective bargaining or, failing that, to agreement between the company and worker's representatives. In addition, the employer, after hearing the workers' representatives, must draw up an internal policy defining the training and awareness-raising measures on the use of technological tools in order to avoid the risk of digital fatigue.

Article 88 expressly refers to workers and public employees generally. At the same time the model pays particular attention to certain groups or situations. For example, the employer's internal policy must be addressed to workers, including those holding managerial positions, or the right to disconnect shall be preserved in cases where work is performed wholly or partly remotely, as well as at the employee's home, in connection with the use of technological tools for work purposes. The Spanish model therefore combines broad personal scope with specific protection for groups or situations in which the risk of permanent availability may be particularly visible. At the same time, the Spanish model does not exclude workplace-level specification. The concrete modalities are left to collective bargaining or agreement. The Spanish regulation is also relevant because it expressly connects the right to disconnect with reconciliation between work and personal or family life.

Apart from Spain, this model is present also in other countries, such as Slovenia. Pursuant to Article 142a of the Slovenian Employment Relationship Act, the employer must ensure the employee's right to disconnect and, for this purpose, adopt appropriate measures.²⁰ These shall be determined either by a collective agreement, or in its absence by the employer. An important feature of the Slovenian model is also paragraph 6 of Article 142a according to which, in the event of a dispute, where the employee states facts justifying the assumption that the employer has breached the right to disconnect, the burden of proof lies with the employer. From the perspective of personal scope, the legislator does not set any specific groups of employees and the right applies to employees regardless of their position or type of work.

¹⁹ Art. 88 Ley Orgánica de Protección de Datos Personales y garantía de los derechos digitales [Organic Law 3/2018 on the Protection of Personal Data and Guarantee of Digital Rights], Boletín Oficial del Estado [Official State Gazette of Spanish Kingdom], no. 3/2018.

²⁰ Art. 142a, Zakon o delovnih razmerjih (ZDR-1) [Employment Relationships Act (ZDR-1)], Uradni list Republike Slovenije [Official Gazette of the Republic of Slovenia], no. 21/13.

3.4. Absence of binding regulation and soft-law models

In several Member States, the right to disconnect has not been expressly regulated by binding legislation. In the absence of a statutory framework, employers are generally not expressly required to recognise or implement the right to disconnect. Some undertakings may voluntarily adopt internal policies that concern after-hours communication.²¹ On the one hand, such initiatives may be considered positive for ensuring disconnection from the work-related obligations. On the other hand, the level of protection may vary considerably between employers, sectors, or categories of employees. Since the scope of protection is left entirely to the employer, internal policies may define the right narrowly, for example by limiting it to teleworkers, certain departments, employees with standard working schedules etc. This may reproduce the same personal-scope problems that appear in narrow statutory models.

This situation is not ideal from the perspective of legal certainty or equal protection. At the same time, it must be acknowledged that not every Member State is currently willing or able to introduce a binding statutory right to disconnect. In such circumstances, a non-binding or soft-law instrument may represent a solution. Although it cannot replace legislation, it may provide employers and employees with guidance on the meaning of the right, the recommended content of workplace policies or the categories of workers who should be protected.

Ireland is an example of such an approach. In 2021, the Workplace Relations Commission adopted the Code of Practice for Employers and Employees on the Right to Disconnect. The failure to follow the Code is not an offence, but it may be admissible in evidence during the proceedings. The Code itself represents a practical guide for employers in implementing the right to disconnect within their undertaking. From a personal-scope perspective, the Code also expressly states that it is universal and applies to all types of employment, whether employees are working remotely, in a fixed location, or at home.²² Structurally, the Code defines the right to disconnect, identifies the relevant legislation, sets out employer and employee obligations, provides best-practice guidance for internal policies and includes a sample policy template. Therefore, it has

²¹ Such as Volkswagen in Germany, see Hans Böckler Stiftung, *Recht auf abschalten*, 2014, <https://www.boeckler.de/de/magazin-mitbestimmung-2744-recht-auf-abschalten-5074.htm> (16.03.2026).

²² Workplace Relations Commission, *Code of Practice for Employers and Employees on the Right to Disconnect*, 2021, https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf (26.4.2026), p. 1.

a potential to positively influence the policies of Irish companies. However, the effectiveness ultimately depends on whether employers implement meaningful internal policies.

In the absence of legislation, public guidance may reduce fragmentation and promote a better understanding of the right to disconnect. By formally addressing the problem of constant availability, such guidance may stimulate public debate, and may introduce new impulses into the broader discussion on the organisation of work in digital age. At the same time, it cannot fully substitute the binding regulation, as has been also proven by research.²³ Therefore, such models may be considered a useful intermediary step, which should ideally be followed by a statutory right guaranteeing equal protection for all employees exposed to work-related digital communication outside working time.

4. ANALYSIS OF THE CURRENT MODELS OF THE RIGHT TO DISCONNECT

The comparative analysis demonstrates that the personal scope of the right to disconnect is shaped by different legislative techniques. The differences they create are not solely technical, as they determine which employee may rely on the right to disconnect and which employee remains outside its effective protection. For this reason, it is crucial to determine how the right to disconnect should be designed before it is adopted. Otherwise, the protective function of the right may be weakened and the inequalities between employees facing comparable risks may be reproduced.

4.1. Limits of formal criteria

The national models analysed above show that legislatures often define the scope of the right to disconnect through formal criteria such as the place of work, form of work, number of employees or collective representation structures. These may appear attractive as they are easy to identify and connected to contexts in which the problem of permanent availability is particularly visible. However, their use as a condition for the existence of the right may be problematic.

²³ Regier, Ch., *Who Benefits From Right-to-Disconnect Legislation in Europe? Cross-National and Gendered Effects on Employee Wellbeing*, *British Journal of Industrial Relations*, vol. 64, no. 2, 2026, pp. 330 – 336.

The first difficulty concerns telework-specific models. These models are understandable mainly from a historical perspective, as the expansion of remote work has made the problem of permanent availability particularly visible. Therefore, several authors argued that providing the employees performing work outside the workplace with the right to disconnect may restore the balance and support compliance with the principle of non-discrimination.²⁴ In current conditions this argument is persuasive only to a limited extent. It must be acknowledged that telework and other forms of remote work intensify the risk of permanent availability. According to Eurofound research, ICT-based mobile workers are significantly more likely to work longer hours and work in their free time.²⁵ However, the assumption that workplace-based employees are not required to be available outside working hours and employers cannot contact them is no longer generally valid. In many sectors, employees working at the employer's premises also use digital tools that enable the employer to contact them after working time. According to EU data, more than 81% of EU enterprises gave their employees in 2024 remote access to the e-mail systems and more than 65% of EU enterprises provided their employees with remote access to application or software of the company.²⁶ This indicates that it is not only teleworkers that might be affected by the permanent availability. For this reason, a telework-specific model may be under-inclusive as it protects employees in one situation where the risk is visible but leaves outside its scope other employees who may be exposed to the comparable interference. From this perspective, a telework-specific model may solve one equality concern while creating another. This has also been recognised by the countries that have implemented this model. For example, Italy is considering changes to the model and broader personal scope. Slovakia, on the other hand, does not plan to amend the legislation even though the authors criticise the limited effectiveness of this approach.²⁷

²⁴ Barancová, H., *et al.*, *Zákonník práce*, Nakladatelství C. H. Beck, Bratislava, 2022, p. 588.

²⁵ Vargas-Illave, O.; Weber, T.; Avogaro, M., *Right to disconnect in the 27 EU Member States*, Eurofound, 2020, <https://www.eurofound.europa.eu/en/publications/all/right-disconnect-27-eu-member-states> (30.5.2026), p. 6.

²⁶ Eurostat, *Online meetings and remote access to enterprise resources – statistics*, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Online_meetings_and_remote_access_to_enterprise_resources_-_statistics (06.06.2026).

²⁷ Adamička, M.; Greguš, J., *Výkon práce v digitálnom prostredí v čase pandémie koronavírusu*, in: Szakács, A.; Hlinka, T.; Mydliarová, M.; Senková, S.; Durec Kahounová, M. (ed.), *Zborník príspevkov z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2021*, Univerzita Komenského v Bratislave, Právnická fakulta, Bratislava, 2021, pp. 37 – 38.

The second difficulty concerns employer-size-based models. These thresholds may be understandable for reasons of administrative capacity, since larger employers have usually more developed internal structures, employee representation and capacity to negotiate internal rules. In this sense, it may reflect practical considerations concerning implementation. Nevertheless, from the perspective of the protected interest, the employees of smaller employers may experience the same expectation of availability outside working time. In some cases, the risk may even be stronger as communication may be informal, and roles are less clearly separated. The smaller size of the undertakings may also make it more difficult for employees to refuse after-hours communication when they have direct and frequent contact with the employer. An employer-size threshold may therefore create a different form of under-inclusion, that is difficult to reconcile with the protective rationale of the right.

Both models narrow the conceptual understanding of the right and shift attention away from the real protected interest – the employee's ability to be free from work-related digital availability outside working time. This does not mean that formal criteria are irrelevant. They might be relevant when determining the concrete modalities of the right. However, these factors should influence how the right is implemented and not whether it exists. The existence of the right should be broad and linked to the protected risk and the modalities may be differentiated according to the nature of the work, operational need and/or workplace organisation. Such an approach would avoid the personal-scope loopholes identified in the comparative analysis while preserving the necessary flexibility.

As a result, the formal criteria seem to be ineffective in comparison with the functional criteria, mostly the employee's exposure to work-related digital availability. The concept of exposure should be understood broadly and not be limited to situations where the employee actually performs work outside working time. The problem may also arise where the employee is repeatedly contacted, expected to monitor communication channels or placed under indirect pressure to respond. The mere expectation of availability may affect the quality of rest and may increase the negative emotions of the employee.²⁸ This may be particularly useful information for the Member States designing their right to disconnect.

²⁸ Fan, Ch.; Dong, T.; Wang, J., *Exploring the Impact of After-Hours Work Connectivity on Employee Performance: Insights from a Job Crafting Perspective*, Behav Sci (Basel), vol. 14, no. 11, 2024, p. 2.

4.2. Differentiated implementation and enforcement

At the same time, defining the personal scope by reference to exposure to digital availability does not mean that the same rules must apply identically to all employees. A broad personal scope is compatible with differentiated implementation. Certain categories of work may require specific arrangements. However, these situations should be treated as modalities of the right, not as reasons to exclude whole categories from protection.

This is particularly visible in the Spanish model, which recognises that managers and remote workers may be especially exposed to expectations of constant availability, but they are not the only employees affected by digital communication outside working time. By expressly mentioning these categories without limiting the right to them, the regulation avoids the narrowness of telework-specific models. Remote work and managerial responsibility are treated as situations requiring particular attention, not as exclusive conditions for protection.

The distinction is important. The universal personal scope does not require the legislator to ignore differences between occupations, sectors or employers. On the contrary, these differences should be considered. Rigidity in regulation could, in such a heterogeneous labour-market environment, limit the flexibility that is desirable in certain cases.²⁹ For example, teleworkers or hybrid workers may require different practical arrangements as their manner of performing work differs fundamentally. However, the basic entitlement should remain the same: employees should not be expected to engage in work-related digital communication outside working time and should not suffer negative consequences for refusing to do so, unless a lawful and clearly defined exception applies. The same might apply to employer size. Smaller employers may not have the same administrative capacity as large undertakings and should not necessarily be required to adopt equally complex internal procedures. Therefore, employer size may justify simpler forms of implementation, but it should not justify exclusion or a lower level of protection.

However, a broad personal scope would have limited practical value if it were not accompanied by effective employer obligations and enforcement mechanisms. The right to disconnect cannot operate only as a general declaration that employees should not be contacted. In practice, the pressure to remain available

²⁹ Freel, L.; Kašická, S., *Právo na odpojenie – ochrana zamestnanca pred digitálnym vyhorením*, in: Miháliková, M.; Ťažká, V. (ed.), *Bratislavské právnické fórum 2025*, Právnická fakulta Univerzity Komenského v Bratislave, Bratislava, 2025, p. 1442.

may arise from workplace culture or the fear of negative consequences. For this reason, the right must be supported by duties that require employers to organise work in a way that makes disconnection possible. This is also visible in the comparative analysis since some Member States have adopted procedural or organisational rules concerning the implementation of the right.

The first essential element is the adoption of workplace-level measures. In several models, employers are required to define the practical modalities of the right. This allows the specific features of the workplace to be assessed and the technical and organisational modalities to be evaluated. This way, the employer is obliged to create a document that translates the general right into concrete workplace rules that represent the commitment of the employer. In many models, this requires the involvement of employee representatives or social partners, as can be seen in France or Belgium. Employee participation may help identify the real sources of availability pressure and to design more effective and legitimate rules. However, the absence or the weakness of employee representation should not mean the absence of protection or its limited scope. Therefore, this obligation should only be complementary to the substantive statutory content of the right. Otherwise, such procedural obligation might not be sufficient to safeguard effective legal protection or, as some authors argue, might even weaken the existing framework.³⁰

The second element concerns the procedural enforceability. The Slovenian model is particularly relevant in this respect, as it provides for a shifted burden of proof. Although a shifted burden of proof is not unknown in labour law and may also be found in other protected areas, its express inclusion in the provision regulating the right to disconnect is particularly significant. It gives the right a clearer procedural dimension and shows that the legislator does not understand disconnection merely as a declaratory principle. On the contrary, the wording anticipates possible disputes concerning the exercise of the right and provides a specific rule on how such disputes should be treated. This strengthens the practical enforceability of the right and signals to employers that the implementation of the right to disconnect cannot remain merely formal.³¹

Therefore, differentiated implementation and enforcement should be understood as complementary to broad personal scope. The right should apply broadly to all employees exposed to work-related digital availability, while the concrete

³⁰ Zekić, N., *A right to disconnect as a necessary addition to working time reduction*, Transfer: European Review of Labour and Research, 2026, p. 12.

³¹ Beširević, I., *The right to rest and disconnect in the Slovenian legal system – a legal reform in the making*, LeXonomica, vol. 16, no. 2, 2024, p. 210.

measures may vary. What should not vary is the basic level of protection. Otherwise, there is a risk that such a fragmented approach would create inequalities.

4.3. Equality issues

The personal scope of the right to disconnect also has an important equality dimension. Constant digital availability does not affect all employees in the same way. The expectation that an employee will remain reachable after working hours may be formally imposed on all employees equally, but its practical impact may differ according to the employee's family situation, care responsibilities, gender or even position in the labour market. Some authors argue that employees in more precarious or atypical forms of employment, such as fixed-term workers or part-time workers may experience stronger pressure to remain available because their employment position is less secure. They might be willing to engage in after-hours communication in order to obtain a more stable employment contract or avoid negative consequences for their future careers.³²

This is particularly relevant in relation to employees with care responsibilities, who are highly represented in atypical forms of work. After-hours communication may interfere not only with their rest in the narrow sense but also with the organisation of private and family life. Employees responsible for childcare, eldercare or other forms of unpaid care may be less able to respond to unpredictable work-related messages, calls or requests outside working time. The right to disconnect therefore protects not only the individual employee's rest but also the employee's ability to organise non-working time in a predictable and autonomous way.

This aspect is closely connected to gender equality. Although care responsibilities may be borne by any employee, unpaid care work continues to be performed disproportionately by women. As a result, expectations of constant availability may place a heavier practical burden on them as they may be less likely reachable due to essential caring duties.³³ According to Eurofound statistics, being contacted out of hours was considered detrimental to health and well-being by 45% of respondents, with more women than men reporting this phenomenon and with the age group of 25 to 39 years old being particular-

³² Zekić, *op. cit.* (fn. 30), p. 6.

³³ Weber, T.; Vargas Llave, O., *Right to disconnect: Exploring company practices*, Eurofound, 2021, <https://assets.eurofound.europa.eu/f/279033/50e4ba79e7/ef21049en.pdf> (22.04.2026), p. 5.

ly affected.³⁴ From this perspective, narrow personal scope of the right to disconnect may contribute to indirect discrimination or, at least, reinforce existing structural inequalities. The right to disconnect should therefore be understood also as an instrument supporting substantive equality. Its purpose is not limited to preventing excessive working hours, but it also contributes to a fairer distribution of the burdens created by digitalised work.³⁵ For this reason, the criteria need to be designed in a way that supports the reconciliation of private and working life of all employees. Selective criteria may interfere with this purpose.

The example of telework-specific models is especially illustrative.³⁶ It should be acknowledged that telework itself has a gender dimension as data suggest that women are more represented among teleworkers and therefore it is considered as a measure promoting work-life balance. However, this does not justify limiting the right to disconnect only to teleworkers. Teleworkable employment represents only a part of the labour market. According to research on the teleworkability of occupations in the EU, around 37% of EU-27 employees are in occupations that can technically and practically be carried out from home. This means that a telework-specific right to disconnect would necessarily leave a majority of workers outside its scope. Secondly, even in teleworkable positions the decline in telework actually performed outside the workplace can be seen. Fully remote work in teleworkable jobs decreased from 24% to 14% between 2022 and 2024 and workplace-only arrangements increased over the same period from 36% to 41%.³⁷ Thirdly, many female-dominated sectors cannot be performed remotely. This is particularly visible in care work, education or service-related sectors, where work requires physical presence and direct interactions with other persons. According to statistics from 2024, a higher number of women than men work entirely on-site.³⁸ A telework-specific model may therefore appear gender-sensitive at first, but it risks protecting only a selected group of women, excluding

³⁴ *Ibid.*, p. 42.

³⁵ European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, https://europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Guiding_Principles_Workers_Right_to_Disconnect.pdf (22.04.2026), p. 5.

³⁶ See Torbay, L., *The Right to Disconnect as a Feminist Demand: Labor Law, Flexible Work and the Gendered Politics of Leisure*, *Columbia Journal of Gender and Law*, vol. 46, no. 3, 2026, pp. 366 – 367.

³⁷ Eurofound, *What does the future of telework look like?* <https://eurofound.shorthandstories.com/living-and-working-in-europe-2024/introduction/telework-in-transition/5-what-does-the-future-of-telework-look-like/> (23.04.2026).

³⁸ *Ibid.*

other women, also in lower-paid occupations. The equality dimension therefore strengthens the argument for a broad personal scope.

This does not mean that the right to disconnect should create identical obligations in all situations. Certain work arrangements may require specific rules, and some exceptions may be justified. However, such exceptions should be clearly defined and should not undermine the general principle that employees should not suffer negative consequences for refusing to engage in work-related digital communication outside working time. For these reasons, a future regulation should take into account the possible gendered and care-related effects of constant availability, so the right to disconnect may serve as a bridge between working-time protection, OSH, work-life balance and equality law. This is particularly relevant as several Member States consider adopting their own version of the right to disconnect³⁹, as well as potential EU right to disconnect is being discussed.

5. TOWARDS A FUTURE EU RIGHT TO DISCONNECT?

The analysis above shows that the fragmented regulation of the right to disconnect within the EU creates several practical consequences for both employees and employers. From the perspective of this article, the most important consequence is the unequal personal scope of protection. Certain groups of employees are protected more strongly than others, while certain categories of employers are subject to more extensive obligations. These differences are not limited to purely national labour-law relationships. They may also affect the functioning of the internal market and the coherence of EU labour law as a whole.

The unequal level of protection is difficult to reconcile with the EU's objective of improving the living and working conditions of workers so as to make possible their harmonisation while the improvement is being maintained.⁴⁰ This problem is particularly visible where employees exposed to comparable forms of after-hours digital communication fall within different personal scopes of protection. Such unequal treatment also creates space for so-called social dumping. Employers operating in Member States that do not provide the right to disconnect or provide it only in a limited and ineffective form, may use a

³⁹ For example, Lithuania. See Ecovis, *Lithuania Moves to Enshrine "Right to Disconnect" in Labour Code, 2025*, <https://ecovis.lt/lithuania-moves-to-enshrine-right-to-disconnect-in-labour-code/> (26.04.2026).

⁴⁰ Art. 151, Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C326/47.

higher degree of workforce availability as a form of competitive advantage. This may lead to pressure to lower protection standards in other Member States and may weaken the EU's social dimension.⁴¹ These problems may arise particularly in the context of cross-border work, including remote work and hybrid forms of employment. In such cases, the rules of the right to disconnect in different Member States may come into conflict, while the absence of a common legal basis worsens legal certainty for employees and may weaken their position.

On this basis, it may be concluded that although national approaches allow national specificities to be considered, a closer analysis reveals several systematic shortcomings. This creates legitimate space for discussion about a coordinated EU approach.

To establish the need for an EU right to disconnect, the principles of subsidiarity and proportionality must be met. From the perspective of subsidiarity, national regulation has so far produced fragmentation and unequal levels of protection (or leaves some employees without effective protection) not only within Member States, but also in cross-border relations, which increasingly define contemporary labour markets due to digitalisation, the development of atypical forms of employment and increasing cross-border mobility. This weakens legal certainty and shows that the objective of ensuring a coherent minimum level of protection cannot be sufficiently achieved by Member States acting separately. As regards proportionality, the right to disconnect regulates not only a quantitative issue of working time, but above all a qualitative aspect. Existing legislation makes it possible to limit, record and compensate work performed outside working hours, but it is not fully able to respond to the psychosocial risks connected with permanent availability. These elementary guarantees would therefore complement rather than duplicate existing working-time rules. Other aspects relevant to proportionality depend on the specific design of the right, which is covered further in the text. In view of this, the adoption of a European right to disconnect would be compatible with the principles enshrined in primary EU law. If this conclusion is combined with the factors mentioned above, especially the unequal level of protection, the question should not be whether to regulate, but how to regulate it at EU level.

In answering that question, it is possible to draw on concepts that already exist in both EU labour law and the national legal systems of Member States. The comparative analysis provides useful guidance, as well as it demonstrates several weaknesses of the models that need to be addressed, otherwise the same protection gaps may be reproduced at EU level.

⁴¹ Miernicka, I., *Regulating the Right to Disconnect at the EU Level: Considerations on the Future Legislation Scope*, *Studia Iuridica*, vol. 105, no. 1, 2024, p. 46.

From a formal perspective, the adoption of an EU directive appears to be the most appropriate legislative instrument, as it would establish minimum standards while preserving space for national specificities.⁴² This approach is already widely used in EU labour and social law, as it allows the harmonisation of workers' rights while respecting the principle of proportionality. Art. 153 TFEU appears to provide an appropriate legal basis, since it grants the EU competence to adopt measures concerning the protection of workers and their working conditions, including OSH.

As regards the content of the directive, it would be desirable to enshrine a broadly applicable right to disconnect. This means a right available to all workers exposed to work-related digital communication outside working time, regardless of the type of work performed, the place where work is performed, the size of the employer etc. Such a solution would represent a positive shift compared with those national models that limit protection to certain categories of employees. The personal scope should therefore be linked to the protected risk – exposure to work-related digital availability, rather than to formal categories. This personal scope should form part of the minimum standard to be transposed by Member States. The minimum elements of the directive should therefore include both substantive and personal-scope guarantees. Substantively, workers should have the right not to engage in work-related digital communication outside working time and the right not to suffer negative consequences for exercising this right. Procedural protection should be included as well, with some authors praising the shifted burden of proof (as used in Slovenia), as it may guarantee the effectiveness of the protection.⁴³ The purpose of defining these minimum elements would be to create a comparable level of protection across the EU and to reduce uncertainty concerning who is protected, what the right entails and how it may be enforced.

At the same time, and in view of current national practice, Member States should be left sufficient space to regulate certain aspects of the right. They should be able to decide whether to adopt a more detailed substantive approach going beyond the minimum requirements of the directive, or whether to leave greater space for employers, social partners and employee representatives through collective bargaining or internal policies. Such discretion should also allow Member States to provide specific arrangements for certain categories of workers. However, flexibility should concern only the modalities of implemen-

⁴² Agalliu, P.; Ibrahim, S., *The right to disconnect and techno-stress in home-working: A comparative legal and psychological analysis in the European union and the Western Balkans*, Edelweiss Applied Science and Technology, vol. 9, no. 6, 2025, pp. 90 – 91.

⁴³ Lerouge; Trujillo Pons, *op. cit.* (fn. 18), p. 464.

tation, not the existence of protection itself. In particular, it should not allow Member States or employers to exclude entire categories of employees from the basic guarantee of the right to disconnect.

The consequence of adopting EU regulation designed in this way would be either the introduction of the right to disconnect in Member States where it has not yet been established, or the clarification and refinement of the right in Member States where it already exists. In many legal systems, existing regulation could remain largely preserved, with only limited amendments required to ensure compliance with the EU minimum standard. This should also be the objective of EU regulations: not to impose a uniform model in every detail, but to establish a European right to disconnect with a broad and coherent personal scope, while leaving Member States sufficient flexibility to adapt the modalities of its exercise to national, sectoral and workplace specificities.

6. CONCLUSION

Digitalisation has made work more flexible, but it has also weakened the boundary between working time and private life. The problem of constant availability is therefore not limited to measurable overtime. The right to disconnect responds precisely to this qualitative dimension of digitalised work. However, the right has not developed according to a single model, but varies across national legal systems. One of the aspects that varies is the personal scope of the right.

The analysis shows that the personal scope is not a secondary or technical issue, but a central condition of its effectiveness. The article argues that the personal scope of the right should not be determined by formal criteria (e.g., where the work is performed, the size of the employer), as they might create a personal-scope loophole. An employee working entirely at the employer's workplace may be exposed to the same evening e-mails or phone calls as an employee working remotely. Similarly, an employee of a smaller employer may experience the same interference as an employee of a large undertaking. The decisive factor should therefore be the risk which the right seeks to regulate: exposure to work-related digital communication outside working time.

The issue also has a potential equality dimension. Employees with children or other care-giving responsibilities may be less able to handle unpredictable work-related communication. Where unpaid care work continues to be performed disproportionately by women, narrow protection against after-hours communication may reinforce existing structural inequalities. The right to disconnect should therefore be understood not only as a working time or OSH instrument, but also a tool supporting work-life balance and substantive equality.

Future legislation should reflect these findings. There are already several Member States considering the adoption of the right. However, it would be more advisable to adopt a common EU approach, as otherwise the regulatory landscape may become even more fragmented. A future EU framework should guarantee workers across the EU a minimum level of protection against work-related digital availability outside working time. This does not mean that identical rules must be imposed in every workplace, but a minimum standard should be established and should include broad personal scope, so the right becomes an effective response to the realities of work in the digital age, where out-of-work communication may affect the majority of employees.

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Sažetak



Kristína Ježová *

**PRAVO NA ISKLJUČIVANJE U EUROPSKOJ UNIJI:
ZAŠTO JE VAŽNO OSOBNO PODRUČJE PRIMJENE**

Digitalizacija je promijenila organizaciju rada i omogućila zaposlenicima da ostanu povezani s poslom neovisno o svojoj fizičkoj lokaciji. Digitalni alati omogućuju bržu komunikaciju i fleksibilnije oblike rada, ali istodobno slabe granicu između radnog vremena i privatnog života. Posljedično, zaposlenici mogu ostati izloženi poslovnim e-porukama, porukama, pozivima ili obavijestima čak i tijekom razdoblja koja formalno predstavljaju vrijeme odmora. Pravo na isključivanje pojavilo se kao pravni odgovor na takav razvoj događaja. Njegova se funkcija ne svodi samo na sprječavanje prekomjernog radnog vremena, već ono štiti i kvalitetu odmora te ravnotežu između poslovnog i privatnog života.

Pravo Europske unije još uvijek ne sadržava izričito i obvezujuće pravo na isključivanje. Postojeća pravila o radnom vremenu te sigurnosti i zdravlju na radu štite zaposlenike samo neizravno i ne obuhvaćaju u potpunosti kvalitativno narušavanje odmora uzrokovano stalnom digitalnom dostupnošću. U nedostatku usklađenog pravnog okvira Europske unije, države članice usvojile su različite pristupe. Neki modeli pravo na isključivanje vežu ponajprije uz rad na daljinu ili rad od kuće, dok drugi obveze u vezi s pravom na isključivanje vezuju uz veličinu poslodavca ili rješenja uspostavljena na razini radnog mjesta. Širi modeli definiraju to pravo na općenitiji način.

U radu se analizira treba li osobni opseg primjene prava na isključivanje određivati prema formalnim kriterijima, poput mjesta rada, vrste rada ili veličine poslodavca, ili bi on trebao biti šire postavljen. Zastupa se stajalište da takvi formalni kriteriji mogu biti korisni pri oblikovanju praktičnih modaliteta ostvarivanja prava, ali da ne bi trebali određivati samo postojanje toga prava. Odlučujući kriterij trebao bi biti funkcionalne naravi, odnosno izloženost poslovnoj digitalnoj komunikaciji izvan radnog vremena.

U radu se također ističe dimenzija jednakosti povezana sa stalnom dostupnošću. Komunikacija izvan radnog vremena može različito utjecati na zaposlenike, ovisno o njihovim obvezama skrbi, spolu ili položaju na tržištu rada. Preusko određen osobni opseg primjene

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prava mogao bi stoga produbiti postojeće nejednakosti i ostaviti radnike koji su izloženi usporedivim rizicima bez jednake pravne zaštite.

Ključne riječi: pravo na isključivanje; osobni opseg primjene; radno pravo Europske unije; ravnoteža između poslovnog i privatnog života; jednakost