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**POSSIBLE EU ACTION IN THE AREA OF TELEWORK
AND WORKERS' RIGHT TO DISCONNECT**

**CONTRIBUTION TO A FIRST-PHASE
CONSULTATION OF SOCIAL PARTNERS**

The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and European trade union organisations from over 20 European countries, with a total of more than 6 million individual members. Founded in 1990, CESI is a recognised European sectoral social partner and advocates improved employment conditions for workers in Europe and a strong social dimension in the EU.

CESI believes that flexible work arrangements and teleworking, when properly designed and promoted, can help balancing work and caregiving responsibilities and lead to greater inclusion in the labour markets.

In relation to the European Commission's consultation document C(2023) 6610 final:

1. *Do you consider that the Commission has correctly and sufficiently identified the opportunities [section 3] and challenges [section 4] related to telework and the right to disconnect?*

If not, what challenges or opportunities have been incorrectly or insufficiently identified, or what other challenges and opportunities could be considered?

- **On section 3.1 on the right to disconnect:** This section describes correctly possible benefits that a right to disconnect can bring, in particular as regards increased flexibility for a better reconciliation of work and domestic responsibilities.
- **On section 3.2 on fair telework:** The section correctly maps many opportunities for more fairness that can be linked to telework. The section needs however qualification on points made on opportunities for a better the integration disabled persons to labour markets and for strengthened territorial and socio-economic cohesion within countries and across Member States.
 - It is correct that telework can allow disabled persons perform their work better and more easily. Employees with disabilities do not have to undertake the cumbersome commute to their workplace and contend with suboptimal working conditions. However, integration is more than just an easier performance of work. Integration means inclusion in corporate structures, (physical) contact with colleagues, and facilitated career advancement. In these respects telework does not necessarily lead to better integration for disabled persons. Instead, there is even a risk of the opposite effect, i.e. that this group of employees will be overlooked and their needs and professional aspirations will not be sufficiently addressed. The right balance between facilitated telework and on-site work will be crucial to meeting the needs of people with disabilities.

- The section states that that the possibility of working from home and at any time can contribute to territorial and socio-economic cohesion within countries and between Member States. It is true that employees living in rural or remote areas can indeed have better access to the labour markets. Additionally, it is correct that the ability to work from home has the advantage for some employees that they can more easily live in rural areas and do not have to move to urban centers and their surroundings. However, the decision of many employees regarding their place of residence is often influenced by other factors such as cultural offerings, schools, kindergartens, public transportation services, and road infrastructure. The mere fact that people spend their workday alone at home is not sufficient to create socioeconomic or territorial cohesion. In fact, the effect could be quite the opposite: If colleagues no longer see each other daily and only communicate digitally, cohesion is at risk of being lost.
- **Addition to section 3:** Section 3.2. on telework mentions that “teleworking can have a positive impact on traffic congestion and pollution with both short- and long-term benefits for all.” It would be adequate to spell out that teleworking translates into reduced carbon footprints and can contribute to benefit the climate, next to reducing pollution for people and environment.
- **On Section 4.1 employment and working conditions, working time and work-life balance:** The consultation document does not sufficiently address the issue of cost bearing. It correctly states that teleworking costs and equipment are important factors people in telework. However, the crux of ‘mobile work = place of performance also outside the business premises’, i.e. from ‘anywhere’ is that one’s own home does not necessarily become a workplace, and then there may per se be no fundamental obligation for employers to bear costs. If the employee uses own work equipment with the employer’s consent, regulations on cost bearing should always be established. Specifically, the issue of who is responsible for repairs, maintenance, damage, or loss needs regulation. The question of the costs of (necessary) internet access must also be clarified.
- **On section 4.2 on occupational safety and health (OSH):** This section correctly describes a lacking right to disconnect as a risk factor for the health of workers. Without regulation, there is a latent challenge – or even desire – to be constantly available which needs to be resisted. If this resistance is not successful, workers work more in telework than in on-site work and find neither resting time nor time for leisure. Work-life balance is compromised as clear boundary between work and personal life disappear. It also means that there is never a state of mental relaxation, which can have adverse psychological impacts and can lead to compromised (mental) health, including stress and burnout. From an OSH perspective, disconnecting becomes crucial for workers’ personal and professional well-being and quality of life.
- **On section 4.3 on worker performance and monitoring:** The paper correctly recognises that digital technologies and work-related software offer employers tools to monitor employees remotely, and that these differ from the traditional monitoring methods on which current labour law is based. The main problem is that systems which are often used for teleworking (such as Microsoft Teams) now enable permanent monitoring of all teleworking activities using appropriate features (Delve) or artificial intelligence (CO-Pilot). A study of the applicable systems, at least of the market leaders, must be carried out in the to obtain a realistic view of the situation of employees.

- **On section 4.4 on equal treatment and non-discrimination:**
 - The phrase “telework may boost women’s access to employment and, in certain cases, career opportunities” is inaccurate because it remains unclear in which “certain cases” teleworking can improve career prospects. In fact, improving career prospects can only be achieved with the right level of hybrid work: Working from home to enable or facilitate women's work – and working in the office to enable or facilitate the social interaction and business contacts necessary for a professional career.
 - In relation to the need to overcome “inequalities between teleworkers and workers at the employers’ premises as well as those based on, for example, gender, racial or ethnic origin, disability, age, and sexual orientation”, the discussion about telework of disabled persons has to be carried out in nuanced way – in line with section 3.2 on fair telework above.
- **On Section 4.5. on geographical mobility and cross-border telework:** The description of problems related to the unregulated status of workers in cross-border telework is correct. This aspects necessitates EU level action.

2. *Do you consider that EU action is needed to address any of the identified issues?*

If so, what should be the direction of that action?

What should be the precise scope of that action (namely, should it cover telework, the right to disconnect, or both; and should it address all identified aspects of those topics, or only certain subsets thereof)?

- In line with the considerations laid out above, **EU action is needed on both telework and the right to disconnect** in order to set boundaries and minimum standards across the EU for all Member States. EU action should enable/facilitate collective bargaining for the construction and implementation of ad-hoc policies which take into consideration different work organisations within sectors and companies/administrations as employers. It should respect the principle of social partner autonomy.
- Special attention should be paid to the **scope of the right to disconnect**. In principle a right to disconnect should be the target solution for workers. Workers should generally have the ability to log off after working hours, but also have the freedom to remain available if they wish so in order to be able to better manage domestic responsibilities.

However, depending on the case, an imposed disconnection can be preferable compared to a more self-determined right to disconnect. A right to disconnect does leave more flexibility and self-management to workers, but it also requires strong self-control competences: Through snowball effects it can also entail an intrinsic pressure to be available: As soon as a worker makes himself/herself visibly available during non-office hours, other colleagues may feel pressured to follow suit, despite having a right to disconnect. This is especially true for workers that aspire a wage rise or promotion or fear adverse behaviour by the management if they switch off.

In such cases, an imposed disconnection of all workers can be more effective than an increased flexibility that a (mere) right to disconnect can mean to workers. An EU measure should only set rough guidelines for this and enable/facilitate the possibility of a right to be disconnected but leave decisions to social partners at sectoral and company level.

- **A right to disconnect should not be an absolute right.** There may be special circumstances that make it necessary to be on-call anyway. This is true most notably for management personnel, where a relatively high degree of reachability may naturally be necessary.

3. *Do the potential areas for EU action set out in Section 7 of this document present a comprehensive overview of the action needed?*

If not, what actions should not be pursued, or what other action could be considered?

- Section 7 generally features a correct set of areas of EU added value and possible EU action.
- An EU measure should pay attention to not create **disproportionate bureaucratic burdens** for companies and administrations as employers.
- In the area of ‘Ensuring decent employment and working conditions for teleworkers’, an obligation for employers should be featured to provide for the **means to report working hours** in telework. Shifting this responsibility to workers would not be practical.
- In the area of ‘Protecting teleworkers’ health and safety’, **measures in psychosocial health risks** should specifically relate to a monitoring and support of mental health conditions of teleworkers.
- In the area of ‘Addressing collective information and consultation rights’, it is vital to **ensure that workers in telework schemes will not be decoupled from each other and their worker representatives and trade unions**. Since the large-scale rise of teleworking during the Covid pandemic, in many cases have trade unions struggled to counteract such a decoupling of workers. Where workers are less present physically in offices/factories/company spaces, trade unions have difficulties in connecting to workers and organise them. A right to disconnect should therefore always be complemented by flanking coupling measures.
- In the area of ‘Providing information to workers’, it would be adequate to include a dimension on **continuous training for staff and managers**. Programmes should be developed to help effectively manage teleworking and use new work technologies. Programmes should also include awareness raising for managers and employees on the importance of balancing work and domestic responsibilities.
- In the area of ‘Ensuring enforcement’, a **tightening of sanctions for violations of statutory working time rules** by employers should be added.
- An additional area to be considered for EU action pertains to **data protection and work monitoring**. Arrangements for telework must ensure that teleworkers are adequately informed about their monitoring at work and are protected against secret and undue digital surveillance.