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Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation: the Italian Case of the Right to Disconnect*

Contents: **1.** Context. The implementation of the European Framework Agreement on Digitalization in Italy and the future of the European Social Dialogue. **2.** The multifaceted character of disconnection. **3.** The disconnection in the Italian collective agreements. **3.1.** Scope of the analysis and methodological approach. **3.2.** The outputs. **4.** Evaluating the influence of the EFAD on the Italian collective agreements. **5.** Concluding remarks.

1. *Context. The implementation of the European Framework Agreement on Digitalization in Italy and the future of the European Social Dialogue*

This essay addresses two intertwined regulatory issues linked to the digitalization of employment relations. On the side of the subject matter of regulation, it is focused on the highly problematic topic of working time. To be more specific, the attention will be placed on the legal characterization of the worker's power to disconnect from work devices, intended as a means to control and manage the balance between the different dimensions of human life in an era dominated by the risk of "time porosity"[1].

* This paper is the result of the joint reflection of the Authors. However, sections 1 and 2 can be attributed to Iacopo Senatori, sections 3,4, and 5 to Ilaria Purificato.

[1] The phenomenon of "time porosity" has been extensively addressed in the literature (see GENIN, *Proposal for a Theoretical Framework for the Analysis of Time Porosity*, in *IJCLLIR*, 2016, vol. 32, no. 3, pp. 280-300; KRAUSE, *"Always-on": The Collapse of the Work-Life Separation in Recent Developments, Deficits and Counter-Strategies*, in ALES, CURZI, FABBRI, RYMKEVICH, SENATORI, SOLINAS (eds.), *Working in Digital and Smart Organizations. Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, Palgrave Macmillan, Cham, 2018, pp. 223-248) and will be taken for granted in this essay.

On the side of regulatory methods, the essay addresses European Social Dialogue as a method of regulation of the problems arising from the technological transformation. Therefore, it will specifically deal with the normative sources and contents generated in the context of the European Social Dialogue (hereinafter ESD) and its domestic implementing acts.

As a result, this contribution, besides discussing a very specific topic of labour law, will also attempt to provide an insight on the health of European social dialogue, from the perspective of its coordination with the national regulatory levels.

In its Communication *Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions* of 25 January 2023 (COM(2023) 40 final), the European Commission, while on the one hand emphasised the importance of a social dialogue that "adapts to the digital age"[2] and that "promotes collective bargaining in the new world of work", on the other hand lamented a progressive decline of the instruments and the culture of social dialogue. The former, demonstrated by the lack of new agreements to be implemented through EU law in the last decade, and the latter by the limited information about the impact of ESD on national systems, which obscures any possible monitoring, analysis or follow-up on the implementation of the initiatives of European social partners.

The European Social Partners Framework Agreement on Digitalisation, signed on 22 June 2020, is arguably one of the most remarkable and well-known outcomes of the European Social Dialogue on the subject "work and technology"[3]. A specific initiative on telework and the right to disconnect, in the form of an update of the 2002 Telework Agreement, to be implemented via a Directive, has been announced in the European social partners' work programme 2022-2024 but has not materialised[4].

[2] An adaptation that necessarily embraces the functioning of social dialogue practices (machinery and organization), but also its regulatory contents.

[3] Another example, limited to a single sector, is the European Framework Agreement of the European social dialogue Committee for central government administrations on digitalization signed on 17 June 2022 (https://www.epsu.org/article/eu-social-partners-adopt-agreement-digitalisation-central-and-federal-government). Its scope covers workers and civil servants who have an employment contract or a statutory relationship in central government administrations.

[4] The European social partners tried to renegotiate the 2002 Framework Agreement on Telework, but in November 2022 the process came to an end due to the rejection of the compromised text by the employers' organisations. Consequently, the European workers' organisa-

The EFAD implementation plan devises a yearly report by the Social Dialogue Committee during the first three years after the signature, and a full report during the fourth year. It is eloquent to observe that the first report, and to the best of the authors' knowledge the only available one, released by the European social partners in 2021[5], under the heading "Italy" displays only a blank space, thus confirming the concerns expressed by the Commission in the abovementioned Communication. Therefore, while awaiting the full implementation report, due within the next twelve months, this analysis of the outcome of the rulemaking action of Italian social partners on one of the topics addressed in the EFAD can provide some general indications, at least, on the degree of alignment between the two levels of social dialogue, supranational and domestic.

The choice of the topic addressed in the analysis, the right to disconnect (or, to use the vaguer terminology of the EFAD, "modalities of connecting and disconnecting"), was suggested by the remarkable entity of the debates – at the policy and scholarly levels – as well as the production – at the normative level – that stemmed on the subject at hand from the peculiar experience of remote work in Italy[6].

One should not avoid the possible objection, that very existence of this peculiar experience, whose origins pre-date the signature of the EFAD (as the first organic legislation on "agile work" was enacted in 2017), would make questionable, as well as methodologically incorrect, any direct inference drawn between the domestic provisions and the European social partners' initiative, especially in the absence of a specific reference to the EFAD made in the domestic sources that allegedly implemented the former.

It must also be pointed out that, while disconnection and the problems of "time porosity" have come to the spotlight in the context of remote

tions have requested the intervention of the European Commission. In April 2024, in accordance with Article 154(2) TFEU, the Commission has launched consultations with the social partners on possible action by the European institutions on telework and workers' right to disconnection. By the time of writing this contribution, the European social partners have submitted their responses to the European Commission's first phase of consultation.

[5] Http://erc-online.eu/wp-content/uploads/2021/09/Implementation-of-the-Digitalisation-agreement_1st-Joint-report.pdf (consulted on 17 June 2023).

[6] The experience can not be addressed into detail in this paper. For a detailed analysis of the statutory and collective agreement provisions see Senatori, Spinelli, *(Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience*, in *ILLeJ*, 2021, vol. 14. no. 1, pp. 209-260.

working, their scope largely exceeds that context, given the pervasive impact of the "digital organization" of work, that can affect also traditional office work.

Nevertheless, comparing the results of the Italian social partners' regulatory action with the contents of the EFAD, or at least jointly reading the two, can be instructive in two ways.

First, even the worst-case scenario, one that shows a state of misalignment, or indifference, or in any case the plain irrelevance of the European agreement on the domestic developments, would represent a significant finding about the "health" of the ESD in the field of digitalization of work.

Second, the domestic elaboration, in both its positive and negative features, may inspire an "upgrade" of the ESD in preparation of the following steps that have been announced (the evaluation and possible review of the EFAD in 2025 and the updated telework agreement).

The comparison between the EFAD and the national regulatory framework is made even more complicated by the open and programmatic content of the former, which is at odds with the more traditionally normative nature of the national sources, particularly collective agreements. The scarcity of provisions with a directly normative content is a characteristic of the EFAD that has been openly criticised in the literature[7].

Indeed, the EFAD does not promote the coordination of national jurisdictions through a set of common normative standards. Instead, through a typically procedural regulatory technique, it proposes a "methodological toolkit" consisting in guidelines for national social partners on how to meet the challenges of digitalization. The next section will show how this characteristic is shaped in the case of disconnection.

On the other hand, the methodological imprint of the EFAD, icastically depicted in the document by a chart that draws the circular "partnership process" that the parties of the employment relationship, and their representatives, are invited follow while dealing with the problems of digitalization, may itself represent a parameter for national social partners, potentially even more influential than an "ordinary" prescription.

Such partnership process basically consists in the establishment of a continuous dialogue throughout all the stages of the implementation of a new

[7] MANGAN, *Agreement to Discuss: The Social Partners Address the Digitalisation of Work*, in *ILJ*, 2021, vol. 50, no. 4, pp. 689-705.

technology in the workplace, based on a mutual commitment to problem-solving and balancing of opposed interests. In terms of social dialogue instruments, as it has been maintained elsewhere[8], although the EFAD, respectful of all the domestic traditions, does not take a clear stance on the issue, it implicitly suggests the adoption of a "continuous bargaining" approach, resulting from a sort of "hybridization" of collective bargaining and employee participation (as for the latter, specifically in the form of information and consultation).

The analysis, aimed at assessing whether and to what extent the measures envisaged by the Italian social partners to regulate the disconnection from digital work devices can be coordinated with the provisions of the EFAD, or can even be considered as directly implementing the European agreement, will proceed as follows. The next section reconstructs the different theoretical approaches revolving around the concept of disconnection and the corresponding implications for the regulatory contents and techniques, highlighting the specific position taken by the EFAD. The focus will then shift to the interpretations and regulatory solutions envisioned by Italian social partners, mainly in collective agreements. They compose a heterogeneous system of rules and practices, that express different understandings of the nature and the function of disconnection. As a result, their consistency with the EFAD will not emerge clearly.

2. *The multifaceted character of disconnection*

Disconnection is systematically invoked as an essential safeguard against the disruptive effects exerted by digital technologies on the traditional organizational patterns of working time. However, the legal and practical meanings attached to the concept in the scholarly and policy debate are not univocal.

Disconnection is generally referred to as a right, but such definition is more often implicit than expressed. Furthermore, it is not clear whether it should be constructed as a "new" right with a peculiar content or just as a "restyling" of established legal instruments.

[8] Senatori, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale?*, in *ILLeJ*, 2020, vol. 13, no. 2, pp. 159-175.

For instance, the EFAD carefully avoids to qualify disconnection as a right, and the measures envisaged to regulate it do not go beyond the simple reiteration of the obligations attached to the rules on working time, extra time and telework.

At the EU level, a different position has been taken by the European social partners in their work programme for the years 2022-2024, that include the "right to disconnect" among the matters to be addressed in the update of the 2022 Framework Agreement on telework. Since this document is more recent than the EFAD, the wording could suggest a shift of perspective, or perhaps an increased consideration, by the European social partners about the systemic role of disconnection for the protection of workers' interests in the context of digitalisation. Furthermore, this new perspective aligns the European social partners with the European lawmakers. The reference is to the initiative of the European Parliament of 4 December 2020 for a recommendation to the Commission on a legislative proposal on the right to disconnect, which will be sidelined, awaiting for the announced autonomous initiative by the social partners[9].

Differently from EFAD, the mentioned legislative proposal adopts a broad notion of the right to disconnect. As these Authors have argued elsewhere, while the EFAD focuses solely on safeguarding the worker from undue external interferences with her private time (like off-hour calls or emails), the Proposal aims to prevent the worker from any kind of organisational or motivational coercion, even if implicit or self-produced, to exceed the work schedule. Furthermore, its scope potentially extends beyond the realm of traditional employment relationships and by the provision of prescriptive and promotional measures it could be considered as a promising instrument for the improvement of the time-related working conditions in the digital context[10].

[9] For a more detailed examination of the relationship, including any potential issues, between EFAD and the European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect, see BATTISTA, *The European Framework Agreement on Digitalisation: a tough coexistence within the EU mosaic of actions*, in *ILLeJ*, 2021, no. 1, pp. 116-118. Further issues may arise from the relation between EFAD and the more recent Commission initiative on telework and workers' right to disconnect, urged by the European social partners (mentioned in footnote no. 5) because of the topic at stake. In any case, the very case related to the Framework Agreement on telework shows how the European Commission could intervene on matters that are already regulated by the European social partners, albeit by restricting their role.

[10] See SENATORI, *EU Law and Digitalisation of Employment Relations*, in GYULAVÀRI,

Also in Italy, with the exception of a minor piece of legislation enacted with temporary effects during the pandemic emergency, disconnection has never been expressly qualified as a right in normative sources. The main provisions (Law n° 81/17 and the Protocol on agile work in the private sector signed on 7 December 2021) ambiguously refer to it as an unlabelled prerogative that should be granted via specific technical and organizational measures.

Nevertheless, considering disconnection as a right, vested with a content that exceeds the mere organizational etiquette, seems to be the necessary precondition for equipping this workers' prerogative with a minimum degree of effectiveness and enforceability. In the same perspective, it has been observed that, insofar as disconnection serves the purpose of protecting workers' health, by preventing them from working long hours, it should be considered also as a duty, resulting from the workers' general obligation to cooperate to the implementation of adequate measures of prevention and protection of the work environment.

This said, there is no general consensus about the boundaries of the right and the specific prerogatives that can be claimed by the worker in that respect, except for the minimum denominator consisting in the worker being immune from sanctions in case she is unavailable to contacts from the employer or the colleagues outside normal working hours. This minimum content is acknowledged also by the EFAD, which states that "With full respect for working time legislation and working time provisions in collective agreements and contractual arrangements, for any additional out of hours contacting of workers by employers, the worker is not obliged to be contactable".

This common ground is the point of origin from which at least two different constructions of the right to disconnection are developed, with different views about the identification of the protected interests and, consequently, of the implementing instruments.

Starting from the protected interests, the "minimalist" approach links disconnection to the protection of workers' health in a strict sense, and therefore is focused on ensuring that the worker effectively enjoys her rest time and is not compelled by external agents to exceed her work schedule. This

MENEGATTI (eds), *Decent Work in the Digital Age. European and Comparative Perspectives*, Hart-Bloomsbury, pp. 75-76.

is the idea advocated by the EFAD, which elects as legal benchmarks "working time legislation and working time provisions in collective agreements and contractual arrangements", as well as "teleworking and mobile work rules". According to this approach, disconnection is construed as an updated and reinforced implementation of the "old-fashioned" right to rest.

Instead, the "extensive" approach is focused on the protection of the workers' sovereignty over working time. This construction of the right to disconnect has a scope that transcends the binary structure of working time regulations. In fact, it not only protects the worker from external interferences on the exercise of the statutorily granted right to rest, but it also covers the legitimate interest of the worker to manage autonomously her working schedule, deciding freely whether a given time span during the working day should be dedicated to work or to other private activities. This approach is strictly linked to the working-by-objective paradigm and to an evolving interpretation of work-life balance, which is centered on the idea of working time sovereignty intended as the possibility for the worker to plan in advance her flexible working schedule. In this perspective, disconnection can be construed as a new right, functional to a modern conception of wellbeing in a broad sense.

This "evolutionary" approach, however, does not have sound roots in the existing sources of regulation in Italy and at the EU level.

It is true that the legislative initiative proposed by the European Parliament adopts a more extensive definition of disconnection than the one contained in the EFAD, as it protects the worker not only from external contacts outside working hours, but, more generally, the right "not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time". And, indeed, the scope of this definition encompasses any kind of organizational or motivational pressure, even implicit or self-produced, to exceed the work schedule. However, also under this broader definition, the binary construction of "working time" (*i.e.* the work hours contractually established and legally enforced) remains the factor that sets the boundary of the protection granted by the law.

Confirming this ambiguity, also in Italy, the 2021 Protocol on agile work in the private sector defines the disconnection period as the time span in which the worker "does not perform work", and not, as it could have been, in which the worker "can freely decide whether to work or not, without prejudice for her obligation to respect a minimum work schedule and/or to achieve the targets set in the employment contract".

Coming to the instruments that should sustain the enforcement of the right to disconnect, the minimalist definition (protection of the right to rest) would clearly require a "technological update" of the measures and arrangements requested to ensure compliance with working time legislation. A guidance in this respect may come from the CJEU, whose "purposive" interpretation of the Working Time Directive led he European judges to affirm the employer's duty to set in place a system for monitoring the hours worked[11].

This set of "hard" instruments may be complemented by the "soft" organizational measures and practices promoted by the EFAD, which, as it has been noted above, adheres to a minimalist definition of disconnection.

Such measures address basically two dimensions of work organization: planning and workplace culture. For instance, they propose the "commitment from management to create a culture that avoids out of hours contact" and the establishment of a "no-blame culture to find solutions and to guard against detriment for workers for not being contactable".

Given their "soft" character, the direct enforceability of these organizational measures by the individual workers is questionable. However, if one wants to look at the glass half-full, this flaw leaves room for an effective intervention by collective representatives, with a function of mediation and control on the organizational design by means of employee involvement and collective bargaining practices, which would be consistent with the "partnership approach" that stands at the core of the EFAD.

With regard, instead, to the extensive approach, that construes the right to disconnect as time sovereignty, the solutions should take into account the fact that, under this construction, working time tends to become no longer the only parameter for the organization and the assessment of the work performance. As result, working time rules cannot be the only safeguard of workers' rights.

Against such background, a crucial field of intervention, besides the protection of the worker from direct external interferences on the self-organization of work schedules, is the determination of targets and parameters for the assessment of the work performance. These targets and parameters

[11] CJEU, C-55/18, *CC.OO*, ECLI:EU:C:2019:402 See KARTYÀS, *Working Time Flexibility: Merits to Preserve and Potentials to Adjust to Change*, in GYULAVÀRI, MENEGATTI (eds.), *Decent Work in the Digital Age. European and Comparative Perspectives*, Hart-Bloomsbury, 2022, pp. 147-164.

should be reasonable, in the sense that it should be possible for the worker to discharge her obligations without affecting her capacity to govern the balance between work and other personal occupations. The most efficient way to achieve this result is to determine targets and parameters jointly between employer and worker. However, given the typical asymmetries between the two parties, in terms of organizational skills, information, and bargaining power, this is an area where innovative forms of collective mediation could be tested, again in line with the "partnership process" proposed by the EFAD.

3. *The disconnection in the Italian collective agreements*

3.1. *Scope of the analysis and methodological approach*

In order to ascertain whether and how national social partners are putting into practice the "methodological toolkit" as well as, more generally, the provisions contained in the EFAD within collective agreements, more than fifty collective agreements were collected[12] and analysed.

These are national and company collective agreements as well as agreements on smart working in the private sector signed after the publication of the EFAD, and more specifically between 2022 and 2023.

For each agreement, several aspects were examined, such as:

- finding contractual terms that make explicit reference to "disconnection" or the "right to disconnect" either as an individually regulated aspect or as part of the more general regulation of working time;

- determining the type of approach, minimalist or extensive, based on which the right to disconnect is constructed, by analysing the definition provided in the text of the collective agreements for the right to disconnect and the function attributed to it;

- identifying any spaces reserved for the participation of workers and their representatives and, more generally, for means of expressing social dia-

[12] In Italy, there is no official register that collects all collective agreements. As a consequence, the collective agreements analysed were retrieved both from the national archive of collective agreements available on the website of the National Economic and Labour Council (CNEL) and from other databases open to consultation on the Internet, such as the Olympus Observatory database (https://olympus.uniurb.it).

logue as a possible method of regulating issues related to technological innovation.

3.2. *The outputs*

The first significant finding that emerges from the empirical analysis of the selected collective agreements concerns the applicative scope of the right to disconnection.

Almost all of the analysed collective agreements, both at national and company level, do not recognize disconnection as a right or, in any case, as a prerogative of all workers who, in increasingly innovative and digitalised working contexts, can perform their activities through or by means of technological devices. On the contrary, they bring the regulation of disconnection within the regulation framework of remote work, applying them to smart workers and teleworkers.

In these cases, the reference to disconnection is included in a more complex context aimed at indicating the elements of the work performance outside company premises and in which, in the cases of agile work, the identification of the "technical and/or organizational measures necessary to ensure disconnection"[13] is referred to the written agreement between worker and employer, just as also provided for in Article 19 of Law No. 81/2017.

Only a very small percentage of the analysed collective agreements, on the other hand, does not establish an exclusive link between disconnection and remote work, stating that the former should be "recognised for all workers, even outside periods of performance in agile work mode"[14].

Given this necessary premise, the cases appear more heterogeneous when moving to the collection and analysis of disconnection definitions, which can reveal even if it is elevated by collective autonomy to a genuine right recognised to the worker, in the absence of an explicit qualification of disconnection as a right by law.

There is an observed trend according to which it is the smart working agreements[15] in the most majority of cases include in their text the explicit

[13] See, for example, art. 90 of Third Sector NCA signed on March 30, 2023.

[14] Chemicals- Gas-Water Sector: NCA Draft renewal agreement, Sept. 30, 2022, but see also Chemicals-Electrical Sector: NCA renewal agreement, July 18, 2022.

[15] Other contracts refer to "periods of disconnection" and do not qualify the disconnec-

reference to disconnection as a right which is granted to the worker who performs his or her work in agile mode, without, however, concretely defining the organizational measures necessary to ensure the enjoyment of this right.

On the other hand, the number of sectoral collective agreements that refer to disconnection as a right is not negligible, but, at the same time, it cannot be considered to coincide with the totality of the contracts analysed[16].

Whether it is expressly qualified as a right, or whether it is referred to in terms of mere "disconnection", it is identified either by referring to the activity to be interrupted (e.g. it is tendentially described as abstention from performing tasks, activities and electronic work communications or abstention from performing work) or alternatively, albeit with different shades, to the digital equipment to be disconnected (for example, it is defined as interruption of telematic connections and deactivation of electronic devices, interruption of access and/or connection to company computer systems and deactivation of company communication devices).

In any case, the time delimitation of the disconnection period is also laid down according to different patterns. In some cases, the period of disconnection coincides with the non-working time, which is to be understood as the period of time beyond working hours; in other cases, specific time slots are identified during which the employee is guaranteed the right to refrain from work performed by means of electronic and IT tools.

Only one of the analysed smart working agreements seems to safeguard the main characteristics of this working modality, *i.e.* organizational flexibility with respect to working time and organization by phases, cycles, objectives, as it clarifies that "taking into account also the flexibility of the working modality defined in 'smart working', with reference to the possibility of arranging with one's manager a different time placement of the work performance based on the assigned activities, agree that at the end of the performance the worker has the right to disconnect"[17].

tion as a right. One example is Smart Working Agreement of Leonardo (Metalworking sector) signed on March 8, 2022.

[16] Examples are The NCA of Metalwoking - Craft Sector (Confimitalia) signed on June 7, 2022 and the NCA of Agroindustrial, Fishing and Fishing Enterprise sector signed on March 23, 2023.

[17] Smart Working Agreement of Chemicals - Glass, O-I Italy Origgio signed on June 7, 2022.

Such a clause suggests that, unlike other cases analysed in smart working agreements and sectoral collective agreements, the arrangement of the disconnection period within the day depends on the parties and not on the contractual provisions concerning the definition of daily working time.

Lastly, from the definition of disconnection provided by the social partners in collective agreements, it is also possible to deduce the function attributed to it and, consequently, to understand the type of approach that the national social partners opt for in shaping disconnection, *i.e.* the "minimalist" and the "extensive" approaches.

The analysed national and company-level agreements seem to follow predefined models as regards the identification of functions, since all of them provide, alternatively or complementarily, that disconnection is envisaged to protect the psycho-physical health and quality of life of workers as well as being a functional tool to ensure the work-life balance. In some cases, they also specify that disconnection can positively influence the bridging of the inclusion, starting with the sharing of family duties, as a tool "useful to promote the adoption and reinforcement of rules of conduct consistent with the new working methods"[18]. In the same vein, in order to ensure that smart working can promote gender equality and contribute to eliminating discriminations, it identifies disconnection as a useful tool to pursue these aims by recognizing a higher number of hours in which the worker can disconnect from working devices[19].

Therefore, comparing the outcomes of the observation of the selected collective agreements with the constructions of the right to disconnection proposed in the section 2 of this article, it can be observed that the "minimalist" approach is predominantly adopted. Only in one case (at least among the agreements analysed) disconnection is used not only as a means for protecting the right to rest from external influences, but also as a tool that the worker can manage autonomously in order to organize his/her working time, intrinsically linked to one of the essential features of remote work, namely the organization of work by goals.

Turning to the analysis of the third point, which concerns the spaces for participation and involvement of workers and their representatives in the

[18] See "Charter of values of the person in the enterprises of the electricity sector" attached to NCA of Chemicals - Electrical Sector signed on July 18, 2022.

[19] See the mentioned SWA of Leonardo.

regulation of disconnection, no contractual provisions were found that explicitly include disconnection among the topics covered by a regulation that is the outcome of the collective involvement of workers and their representatives.

Conversely, if disconnection is considered as a figure of the more general agile modality of work performance, then both national and company collective agreements contain references aimed at guaranteeing periodic information to workers' representatives, at monitoring the progress of this modality of work, and at setting up for the same purposes, as well as with the purpose of making proposals, observatories specifically dedicated to agile working or, alternatively, to issues related to work-life balance and technological innovations.

Furthermore, there is no shortage of examples of collective agreements[20] in which there is a commitment by the parties to jointly plan and implement training initiatives on various topics, including the use of agile working, in the part reserved to "participation and industrial relations".

4. *Evaluating the influence of the EFAD on the Italian collective agreements*

In relation to the collected outcomes, it is possible to assess the state of implementation of the measures promoted by the EFAD on "modalities of connecting and disconnecting" within the collective agreements signed in our country subsequent to its publication.

Indeed, the European social partners stipulated that within three years from the date of its conclusion, the EFAD should have been implemented by national organizations, a deadline that expire on June 22, 2023.

As a result, one could imagine that the influence of the agreement could, to date, be at least in an advanced stage.

Putting any reflection on the use or not of the circular approach proposed in the EFAD on hold for the moment, this section focuses exclusively on the measures listed in the text of the agreement to be taken into consideration in order to ensure the proper management of connection and disconnection, in order to evaluate their reception at national level.

As an introduction, it should be pointed out that the EFAD in this part

[20] Chemicals-Gas-Water Sector: NCA Draft, mentioned above.

recognizes an important role for collective bargaining in managing the effects of "technologies in the workplace, in particular on the expectations that may be placed on workers". This role becomes even more importance in a national context like Italy, where, as previously mentioned, there is no legislation regulating disconnection. Consequently, what is established in collective agreements constitutes the only form of regulation of this right or power of worker.

Turning to the evaluation in the strict sense of the implementation of the measures provided by the EFAD, the heterogeneity of the approaches adopted within the analysed collective agreements does not allow a univocal but overall finding to be made.

In the analysed collective agreements, one finds, first and foremost, a focus on compliance with the rules on working time. This leads to the identification of disconnection with non-working time, corresponding to time slots in which the employment contract provides that no work should be performed, even in the traditional way of performance.

In accordance with the provisions of the EFAD, collective bargaining also provides for spaces dedicated to information and training on the use of digital tools and the ways in which remote work can be performed, as well as their impact on workers' health and safety.

In addition, statements with a more value-based rather than programmatic nature aimed at developing awareness among workers about the absence of an obligation to respond when they are contacted out of working hours, without incurring repercussions as a result, are present in the collective contracts analysed.

Moreover, some agreements have shown that they can propose practical solutions to ensure that workers' disconnection is respected. These include a number of practices that introduce "disconnection-friendly" behaviours, such as pre-scheduling meetings in work slots for the alignment of teamwork and activities that require the involvement of multiple workers, as well as the setting of technological tools in "delayed delivery" or offline modes. These measures can otherwise fall within the guidelines outlined in the EFAD about the periodic exchanges between managers and workers on workload and work processes, as well as meeting with colleagues can be an anti-isolation practice.

Therefore, steps toward the implementation of the disconnection measures in the EFAD seem to have been taken by the social partners within collective agreements, albeit to be considered as a whole.

If what has been said is true, however, it is important to raise three observations, concerning the limitations found in the analysed collective agreements with respect to the provisions contained in the EFAD concerning disconnection.

The first limitation is to be found in the choice of the parties to consider disconnection only in relation to the performance of work in agile mode, not considering that the rapid evolution of work organization models and production processes due to technological innovations may require that disconnection should also be guaranteed to workers who perform their performance in the more traditional ways and on company premises.

The second limitation concerns the attention that the measures envisaged by the European social partners reserve for the need to create a "culture of disconnection" aimed at raising awareness and respect for the need to disconnect electronic devices beyond working hours, especially to safeguard health of workers, as well as not stigmatizing the behaviour of the worker who makes himself uncontactable outside the working time.

In this regard, it does not seem to emerge from company-level collective agreements, maybe the most appropriate level for addressing such issues, provide for the presence of principle or explanatory rules concerning the importance of the culture of disconnection for the company (as has happened in recent times with the culture of participation). Nor do they envisage practices that involve workers, their representatives and management in the joint creation of an environment in which the importance of disconnection is recognised for the implications it can have on the well-being of workers and, consequently, also on company productivity levels.

The third observation relates precisely to the involvement profiles of workers and their representatives in defining aspects related to the issue of disconnection. The observed collective agreements showed the absence of a specific interest of the parties in adopting a participatory approach (to be understood in a broad sense, including the information and consultation rights) in the definition of aspects related to disconnection. Conversely, when considered in the context of agile work or as an evolution of the organizational process or working hours arrangement then some generic provisions extend to it, leaving room for shared definition of aspects that could concern it.

One might imagine that one of the limits to the shared regulation of detailed aspects of disconnection, where it is considered in the context of

agile work (which at present seems to be the prevailing application hypothesis), which could concern, for example, the technical and organizational measures necessary to ensure disconnection, can be found in the fact that the law (l. no. 81/2017, art. 19[21]) provides that these elements are to be defined by the worker and the employer in the agile work agreement . However, this would not explain the approach adopted by the social partners in collective agreements where disconnection is considered as an autonomous matter, although, as mentioned within the present contribution, this possibility seems not to be taken into account in collective agreements.

5. *Concluding remarks*

The empirical analysis of the selected collective bargaining referring to the years 2022-2023, which, according to the timeline could already incorporate the impacts exerted by the EFAD, has shown that in our country the autonomous agreement of the European social partners has potentially influenced the choices of the national social partners regarding the issue of disconnection only to a minimal degree.

The greatest gap is the almost total disinterest in the common circular dynamic process that, in fact, constitutes the essence of the autonomous agreement itself.

The wide range of intervention spaces for collective representation, which are configured both under the assumption of a minimalist approach and in the case of an extensive approach, are currently left empty. Neither collective bargaining nor the involvement of workers and their representations seem to be committed to the development of a regulatory framework and joint organizational practices that can foster disconnection in the workplace, including virtual ones, since they leave the definition of these aspects to the individual parties.

Looking ahead and reflecting on the potential of digitization and technological innovations to suddenly change organizational and production

[21] The article states that "the agreement shall also identify the worker's rest time as well as the technical and organizational measures necessary to ensure the worker's disconnection from technological work equipment".

models of the companies, the power of disconnection is evident when considered in its "extensive" configuration.

As clarified above, in this case there would be ample room for the intervention of collective representatives and collective bargaining in the shared definition with the employer of multiple aspects that can be referred to the common definition of goals and parameters for the evaluation of work performance, which can no longer be anchored to the sole criterion of working hours.

The European Union also seems to be moving in the direction of giving social dialogue and, in particular, collective bargaining a main role in defining the regulation of disconnection. Indeed, in the Proposal for a Council Recommendation on strengthening social dialogue in the European Union, in addition to the recognition of disconnection as a right, it is stated that collective bargaining, as the place where working and employment conditions are regulated, could be the instrument that the social partners could use to intervene promptly to intercept changes in the world of work allowing the introduction of new labour protection instruments, among which it explicitly includes (and without putting it alongside others) the right to disconnection.

Abstract

The paper considers the right to disconnect as a testing field for the implementation of the European Social Partners Framework Agreement on Digitization (EFAD) in the Italian regulatory system. The right to disconnect has been expressly addressed in the EFAD as one of the tools that can accompany the implementation of new technologies in organizations and the development of new and more flexible ways of organizing work, by ensuring a balance between benefits (like a better work-life balance) and risks (like the evanescence of boundaries between work and private life). In Italy, the right to disconnect emerged in the legal debate about the regulation of remote work. The topic is not addressed into detail in statutory law. This gave social partners the opportunity to intervene extensively on the matter. The paper analyses the influence of the EFAD on Italian collective bargaining with regard to disconnection by means of a systematic and critical review of the different solutions envisaged by collective agreements signed in 2022-2023.

Keywords

Right to disconnection, European Social Partner Framework Agreement on Digitalization, Collective bargaining, Workers' participation.