

Industrial relations

# Regulations to address work–life balance in digital flexible working arrangements





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*This report presents the results of research conducted prior to the outbreak of COVID-19 in Europe in February 2020. For this reason, the results do not take account of the outbreak.*

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# Introduction

Over the past two decades, developments in information and communication technology (ICT) have been among the key drivers of change in working life. These developments have contributed to the rise of new methods of work organisation by providing greater flexibility in relation to when and where work tasks can be performed. In some countries, sectors and companies, this has been accompanied by a move away from judging performance in terms of hours worked and towards a greater emphasis on outputs delivered. In short, working life is experiencing a shift from regular, bureaucratic and 'factory-based' working-time patterns to more flexible models of work.

Telework and ICT-based mobile work (TICTM) is an example of how digital technology has led to more flexible workplace and working time practices. The growth of TICTM has coincided with an increasing demand for such flexibility, which has been fuelled by a steady rise in dual-earner households (due to the increasing participation of women in the labour market) (International Labour Organization, 2019).

The report *Working anytime anywhere: The effects on the world of work* (Eurofound and the International Labour Office, 2017) underlines that the growth in TICTM has also been driven by the needs of companies for higher productivity and improved performance. This is linked to enhanced availability, but also more efficient work processes and time-saving as a result of reduced commuting times.

TICTM growth has also been driven by the development of new business models, such as platform work. The flexibility of TICTM also helps employees to balance their work demands with family commitments, personal responsibilities and aspirations.

Since the early 2000s, several European countries have developed regulations to facilitate TICTM and improve the work-life balance of workers. At European level, the framework agreement on telework signed by the social partners in 2002 provided a reference that has been extensively used for new legislation or agreements at national level (ETUC et al, 2002).

However, TICTM can also have negative implications for work-life balance. The ability to work anywhere and at any time can lead to greater work intensification, competition and work-on-demand. Workers and/or companies can be pushed to adopt irregular working

time patterns that may have a negative impact on both work-life balance and the health and well-being of employees – manifesting in physical or mental health conditions, including burnout (Eurofound, 2018a). To some extent, these consequences are the result of digital technologies blurring the boundary between working and non-working time.

Ensuring that workers have an appropriate work-life balance is not only important for their health and well-being, but also for efforts to increase the involvement of women in the labour market. Eurofound has therefore been carrying out extensive research on the impact of information and communications technology (ICT) and TICTM on working conditions (Eurofound, 2017a, 2019 and 2020b) and on work-life balance (Eurofound, 2017b and 2018b) over the last several years.

As part of this, the Network of Eurofound Correspondents provided information about regulations relating to improving work-life balance in the context of flexible work and ICT use. This contribution covered regulations aimed at promoting telework and improving work-life balance, and regulations aimed at protecting workers against the negative impact of these work arrangements. It also included legislative provisions on recording and monitoring the working time of remote workers, and examples of companies that are seeking to combine TICTM with a better work-life balance for employees. This report uses this information to show how policymakers are addressing new challenges in the world of work. It will also serve as a reference for future initiatives in relation to digitalisation, working time and work-life balance, which play a significant role in the quality of work in the 21st century.

Although this research was carried out before the COVID-19 pandemic, the regulations included can be seen as ways to tackle problematic working conditions, which are typical of telework and other flexible working time arrangements. According to several sources of information, teleworking has been the normal form of work for at least 30% of the working population in Europe during the COVID-19 crisis (Eurofound 2020a). The findings in this report may provide a foundation to improve teleworking and other flexible working time arrangements in the future. Chapter 5 has been added to this report to take account of new and growing concerns about teleworking in Europe.

The structure of the report is outlined below.

**Chapter 1** introduces the impact of TICTM on working time and work–life balance.

**Chapter 2** presents the strengths and weaknesses of current European legislation that aims to address the impact of TICTM.

**Chapter 3** maps the regulations in the EU27, Norway and the UK that aim to improve work–life balance of workers undertaking TICTM and protect them from the potential downsides of this work arrangement. It also looks at the regulation of TICTM via collective agreements at sectoral and company level. In doing so, it builds on Chapter 6 of the report *Telework and ICT-based mobile work: Flexible working in the digital age* (Eurofound, 2020b).

**Chapter 4** maps European and national legislation relating to recording the working time of remote workers.

**Chapter 5** takes account of the impact of the COVID-19 pandemic on teleworking and flexible working arrangements in Europe.

**Chapter 6** takes the existing regulations into account and looks at how to address the challenges of TICTM. It also explores how to promote the potential benefits of TICTM and how it can improve work–life balance of workers in Europe.



# 1 The impact of TICTM on work–life balance

At European level, the share of workers reporting difficulties in reconciling work and family life has remained stable since 2000 (at around 20%). However, there are significant differences between countries. For example, 23% of workers in France and 27% of workers in Greece report a poor work–life balance. In Germany, only 17% of workers report the same.

Three key trends have had implications for flexible working and work–life balance across Europe.

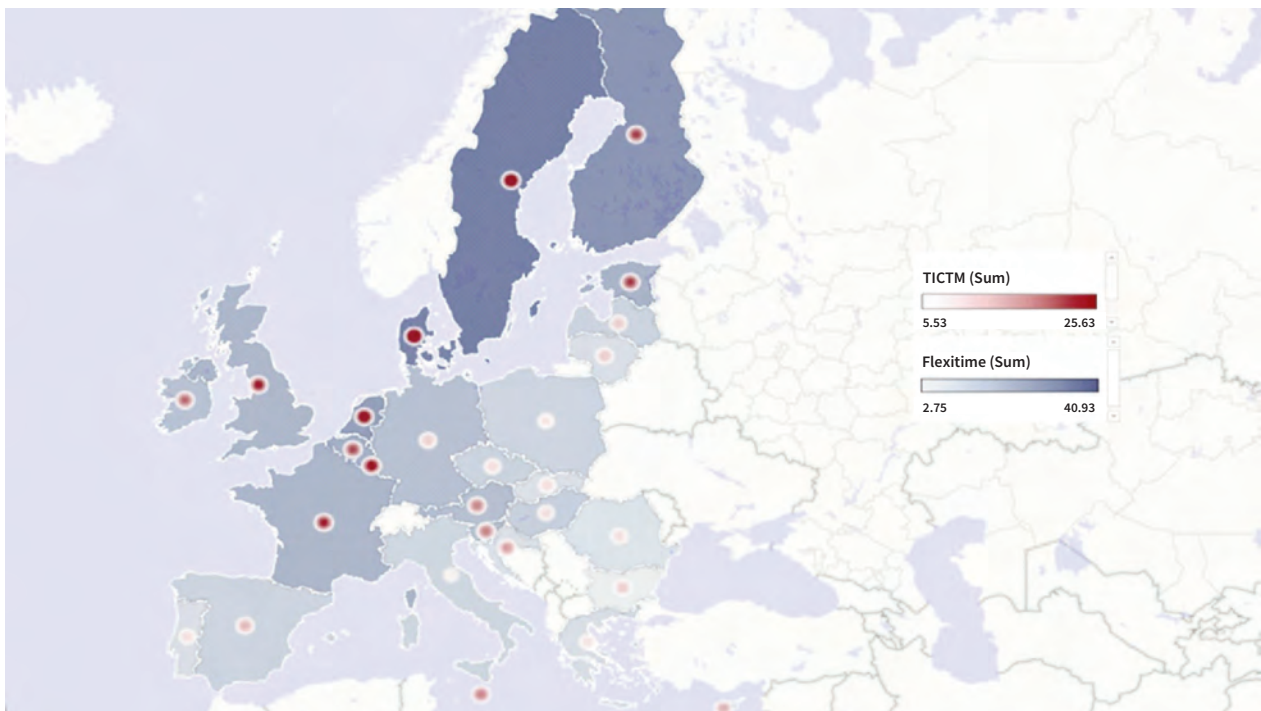
**The increasing participation of women in the labour market:** The number of women participating in the labour market rose from 62% to 69% between 2003 and 2018. There has also been an increase in the share of dual-earner households (Smith, 2005). For families with care-related responsibilities, work–life balance has therefore become an increasingly important issue.

**The increasing flexibility of the labour market and the organisation of working time:** For example, the share of part-time workers increased from 16% in 2003 to 19% in 2018, while workers with flexible working time arrangements increased from 24% in 2010 to 28% in 2015 (based on information from the European Working

Conditions Survey (EWCS)). The growth of flexible arrangements is partially in response to the increasing participation of women in the labour market and the fact that women still assume the majority of care-related responsibilities. In addition, there has been an increasing demand for flexibility from companies in some sectors.

**The increasing implementation of digital technologies at work:** Advances in ICT mean that workers have significantly more opportunities to work anywhere and at any time, especially in the context of a growing knowledge-based and service economy. The major shift in working time patterns in the last decade is related to an increase in flexible working time patterns rather than changes in the duration of weekly or daily working hours. Figure 1 shows that the countries that have a high share of workers on flexible schedules also have a relatively high number of workers undertaking TICTM. This points to a link between the flexible organisation of working time and the use of ICT and, more generally, digitalisation of the work environment.

Figure 1: Share of workers with flexitime schedules and share of workers who undertake TICTM



Source: Data from EWCS 2015

Eurofound 2017a and 2019 found that around 19% of workers in the EU27 and the UK are involved in TICTM arrangements. Of these workers, almost one-half are employees doing occasional mobile work and one-quarter are employees doing frequent mobile work (working intensively with ICT and being very mobile).

TICTM is most widespread in Scandinavia. Other countries with a relatively high share of workers undertaking TICTM are Estonia, France, Luxembourg, the Netherlands and the UK. TICTM arrangements are therefore more common in the north and west of Europe, although there are some exceptions (for example, Germany, with only 13% of workers, is below the EU average). In the south of Europe, Spain has the highest share of workers doing TICTM (16%).

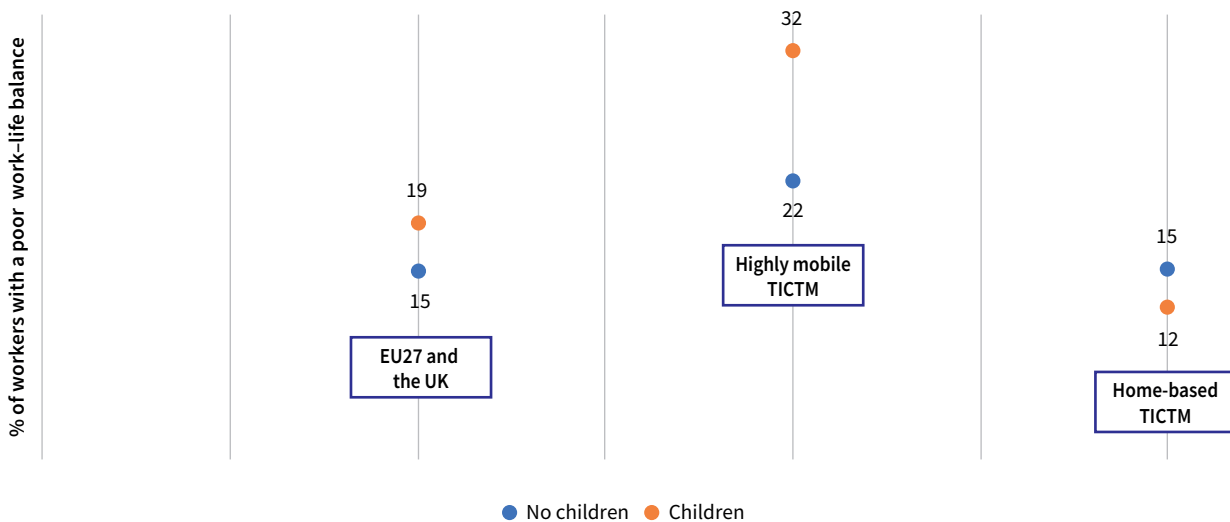
The sectors with the highest proportions of workers with TICTM arrangements are information and communication (61% of workers in the sector), professional and scientific activities (55%), financial and insurance services (44%), real estate activities (44%), and public administration (30%). Typically, these sectors have a high level of dependence on ICT and more flexibility regarding the location of work. In terms of occupation, workers doing TICTM are mainly professionals (6.5% of the EU27 and the UK), technicians and associated professionals (4.5%), clerical workers (2.5%) and managers (2.5%).

Findings from the EWCS show that there is a higher share of men doing TICTM: 54% of workers are men, and 46% women (Eurofound and the International Labour Office, 2017). Women are more likely to undertake regular home-based telework, the genders are almost equal in terms of occasional TICTM, and men are more likely to have highly mobile arrangements. This might be a reflection of the traditional gender roles that still persist in the EU27 and the UK. Although an increasing number of women work, they generally continue to have more household and care-related responsibilities than men and are therefore more likely to do regular home-based telework (Eurofound and the International Labour Office, 2017).

As Eurofound research has shown, employees that frequently undertake TICTM are more likely to work longer hours and overtime, have fewer rest periods, and have less predictable and more irregular schedules (except night work). The reasons for this are a heavy workload, the need to be available to work even outside of normal working hours, frequent interruptions and – to some extent – the level of autonomy.

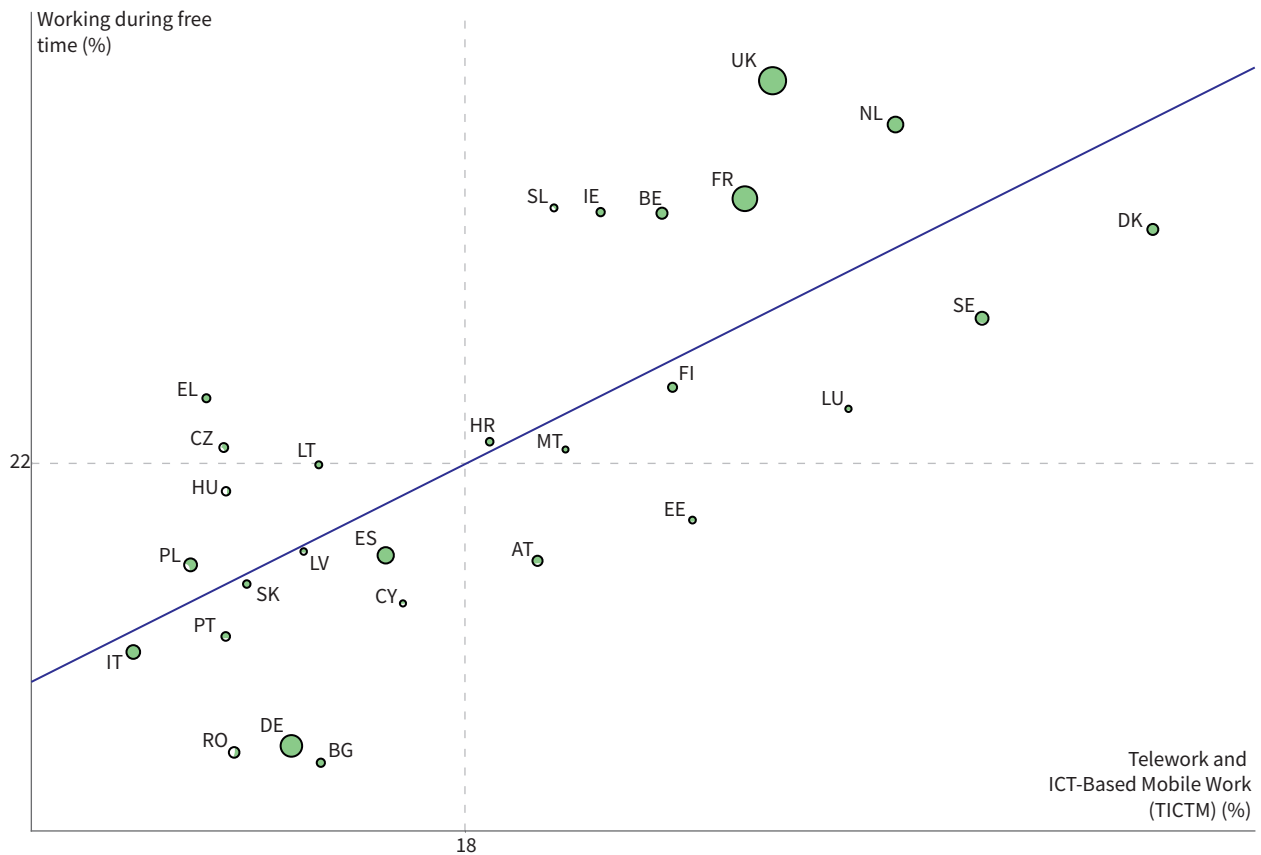
These findings show that while remote and flexible working can allow for a better balance between work and other responsibilities (for example, childcare), it can also have a negative impact on work–life balance (Eurofound, 2017b, 2019 and 2020) (Figure 2).

**Figure 2: Share of workers undertaking TICTM and reporting a poor work–life balance (with and without children)**



Source: Data from EWCS 2015

**Figure 3: Share of workers in the EU27 and the UK undertaking TICTM and working in free time (at least several times a month)**



**Note:** Country bubbles represent the share of workers in relation to the total in the EU27 and the UK (EU27 and the UK = 100%).

**Source:** Data from EWCS 2015

These challenges are confirmed at European level by an ad hoc module of the Labour Force Survey (LFS) 2018. This module shows that the most common work–life balance obstacles for those with childcare responsibilities are long working hours and unpredictable working conditions, followed by having a demanding and exhausting job (Eurostat, 2019).

These problems can arise when, for example, workers or employers use the flexibility and autonomy of TICTM to work long and irregular hours, including working in their free time. Country comparisons show a correlation between frequent TICTM and employees working in their free time. Countries like France, the Netherlands and the UK have a relatively high share of workers who work in their free time and also a high percentage involved in TICTM, whereas Germany and Italy have a lower share of both (Figure 3). Overall, in the EU27 and the UK, only 20% of employees work in their free time. This compares to 60% for home-based teleworkers, and 48% of men and 40% of women who are very mobile and frequently work with ICT (Eurofound, 2017a).

Working during free time is more typical of flexible work; research confirms that workers with such arrangements are more likely to report that it leads to a poor work–life balance (Eurofound 2017b, 2018b, 2019 and 2020b). There is therefore a real risk of working time intruding on non-working time. More generally, the growing use of ICT in the workplace has created an ‘always on’ culture for many workers.

The recent COVID-19 health crisis has resulted in an expansion of TICTM, especially of regular home-based telework. Eurofound’s online *Living, working and COVID-19 survey* (April 2020 wave) shows that **37% of those teleworking in April 2020 switched to working from home because of the crisis** (Eurofound, 2020a). Some estimates show that in some countries the number of workers working from home could reach up to 40% of the workforce (Banco de España, 2020; DARES, 2020; Instituto Valenciano de Investigaciones Económicas, 2020). The survey also confirms that the group of workers teleworking for the first time experience the same results: there is a higher proportion of persons working in their ‘free time’ among those working from home as a result of the pandemic and those workers with children are more likely to struggle to concentrate on work and achieve an adequate work–life balance than other groups.

TICTM arrangements are also associated with health risks, including musculoskeletal disorders, sleeping disorders, stress and anxiety, headaches and eye strain. Some of these problems are related to the use of technology and others to some aspects of the organisation of TICTM or the interaction between both (Eurofound, 2020b).

The findings in this chapter raise the question of how the benefits of ICT-enabled flexible work can be maximised, while limiting its negative impact on work–life balance. In some European countries, policymakers are trying to facilitate the use of such work arrangements to enhance work–life balance, although only a few have introduced a ‘right to disconnect’. These measures are explored in more detail in Chapter 3, while the next chapter looks at relevant European-level policy developments.

## 2 Policy context and European regulations

Regulators and social partners at European and national levels have become aware of the challenges of TICTM and have sought to establish regulatory frameworks both to promote work–life balance and to protect employees.

This chapter provides a brief overview of such provisions at European level, with a focus on measures related to TICTM and work–life balance, as well as working time in general.

### European Working Time Directive

The European Working Time Directive (2003/88/EC) is a relevant regulatory framework in the context of TICTM. While the main aim of this directive is to protect the health and safety of workers, the duration and organisation of work have an impact on the work–life balance of workers.

The directive establishes a legal framework that sets a maximum working week of 48 hours, including overtime. The reference period for the calculation of average working hours should not exceed four months but may be extended to up to six months. Under certain conditions (for example, in the case of the existence of a collective agreement containing relevant provisions), it may be extended to up to one year. Against the findings from the EWCS that a considerably higher share of workers undertaking TICTM report long weekly working hours (more than 48 weekly hours) than other workers (for example, 30% of highly mobile workers compared to an average of 11% for all employees in the EU27 and the UK), this is an important provision for this work arrangement.

The Working Time Directive also provides for minimum periods of consecutive hours of daily rest (11 hours) and weekly rest (35 hours). The latter can be averaged over a two-week period. This is relevant for workers that do TICTM, as they tend to have insufficient rest periods. The EWCS 2015 found that 58% of employees that do highly mobile TICTM, 41% of those that do regular home-based telework and 24% that do occasional TICTM report that they rested fewer than 11 hours at least once during last month. In contrast, the EU average for all employees is 21%.

In order to effectively enforce the above rules on maximum working hours and rest breaks, it is essential to obtain an accurate record of hours worked and rested. The Working Time Directive only requires

employers to record the working hours of employees who have consented to opt-out of the 48-hour maximum working time provisions. More recent case law from the Court of Justice of the European Union (CJEU) is likely to impact national provisions and place stricter requirements on the monitoring and recording of working hours. While national legislation in many Member States already goes beyond the requirements of the directive and stipulates that working hours should be recorded for all workers, only a minority have specific provisions on recording working time whilst working remotely. This issue is discussed in more detail in Chapter 4 of this report.

Stand-by time is another relevant issue, as employers sometimes ask workers who undertake TICTM to perform tasks while outside the employers' premises. CJEU law draws a distinction between 'on-call time' spent entirely on the employers' premises (which is counted as working time) and 'stand-by time', where a worker is at a place of their choosing but is required to be contactable and ready to work if called upon. During such stand-by time, only the hours that an employee actually works are officially counted as working time.

The distinction between on-call and stand-by time is complicated for home-based teleworkers as their place of work (as defined by the employer) is home. Arguably, if a teleworker is required to remain at home in order to be at the immediate disposal of the employer and provide services, this on-call time could be classified as working time. Conversely, if a teleworker is free to go wherever they prefer, but must be reachable by the employer upon request, the on-call time could be classified as standby time.

All workers undertaking TICTM are more likely to work in their free time (beyond their allotted working hours). This raises a more general question about what should be considered 'working time' in work arrangements that are different from traditional arrangements based at an employers' premises, but which are not considered as on-call or standby time. In the directive the definition of working time is binary: the worker is either in working time or in a rest period/no working time. Evidence from literature and the EWCS shows that workers that do TICTM often experience blurred boundaries between work and life, which makes it more difficult to distinguish what is working time and what is not. This also makes it more challenging to record, monitor and control working time.

Where TICTM is not part of the regular working schedule, it is important to consider whether the

amount of work performed by employees after the end of the working day and outside the employers' premises is counted as working time or overtime (and paid accordingly). This can depend on provisions in collective agreements or individual contracts, as well as corporate and management culture and practice. In this regard, there is also evidence from some countries showing that workers doing TICTM also do unpaid overtime (Eurofound and the International Labour Office, 2017).

A number of derogations are available for most of the core provisions of the Working Time Directive, which can also be relevant for TICTM. These include the possibility to make use of the individual opt-out (in which case, individual workers have to 'consent' to working more than 48 hours per week).

The directive's current provisions have been under review since 2003, but no agreement has yet been reached between social partners, or between the Commission, Council and Parliament, on any amendments. Discussions have focused on:

- the precise use and retention (or otherwise) of the opt-out provisions
- the use of derogations (for example, the specific definition of autonomous workers that is used)
- the reference period for calculating working time
- the definition and calculation of on-call time and provision of compensatory rest
- the application of the directive per worker or per contract

Telework and the right to disconnect have not been a significant part of the policy debate so far.

## Work–Life Balance Directive

The Work–Life Balance Directive (EU/2019/1158) was adopted in June 2019 and is due to be implemented by Member States within a three-year period. The directive extends the existing right to request 'flexible working arrangements'<sup>1</sup> to all working parents of children up to eight years of age,<sup>2</sup> and to all carers. Workers who exercise this right should be protected against discrimination or any less favourable treatment on those grounds.

The directive means that parents and carers in some countries will be able to request TICTM arrangements for the first time, as remote working was not one of the flexible working patterns that was covered under the previous Parental Leave Directive (2010/18/EU). However, while the directive acknowledges the positive

contribution that telework and remote working can make to enhancing work–life balance, it does not address the potentially negative impact of these forms of working. It is also important to note that while employees have the right to request remote working, employers can reject such requests (as long as they provide a clear reason for the refusal and do so within a reasonable period).

## Transparent and Predictable Working Conditions Directive

The Transparent and Predictable Working Conditions Directive (EU/2019/1152) has the potential to address some of the challenges associated with the protection of workers that undertake TICTM. The directive requires provisions related to the place of work and work patterns to be clarified in the employment contract. This ensures more predictable working time patterns for the worker, which could have a positive impact on work–life balance.

## European Framework Agreement on Telework

The European Framework Agreement on Telework (2002), negotiated by the European cross-industry social partners, is still the main reference document for regulating telework. It was agreed as an autonomous European-level agreement and had to be implemented according to the procedures and practices specific to each Member State. As a result, its implementation has varied across countries. In most countries, it has been used to frame the provisions defining the implementation of this form of work (either through legislation, collective agreements, joint guidelines or other texts).

However, as highlighted by Eurofound and the International Labour Office (2017), there are some aspects of TICTM arrangements that are not clearly covered by the agreement. The first are the informal and occasional aspects of TICTM. The framework agreement refers to a voluntary but formal agreement, which includes regular telework. This is probably because the high level of flexibility enabled by more recent technology was not foreseen when this agreement was signed in 2002.

The second consideration is about the different rights regarding voluntariness and the reversibility principle. For TICTM arrangements that are voluntarily agreed between the employer and the employee, the work

1 Flexible working arrangements means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules or reduced working hours.

2 A higher age limit can be set at Member State level.

arrangement is reversible. Normally, this is also the way in which provisions of the agreement have been translated into national regulation.

However, in TICTM arrangements that are required as part of the job description, workers are not entitled to change to a fixed-location job at the employer's

premises. Highly mobile sales people are an example of such an occupation. These workers may find themselves with a double burden. They may not only experience conditions that have a negative impact on their work-life balance and well-being but may also lack the legal means to change the situation unless they change job.

## Box 1: Summary of EU-level regulations relating to TICTM

### Working Time Directive

- Considering the time limits related to rest and maximum weekly working hours, evidence shows that they are more difficult to enforce in the context of TICTM arrangements. This may also have implications for workers reporting unpaid overtime.
- It is difficult to distinguish between working time and rest periods with TICTM. This aspect has implications for determining how and when working time should be recorded.
- The distinction between on-call and stand-by work is more blurred in TICTM situations.

### Work-Life Balance Directive

- Although the right to request flexible arrangements has been incorporated into legislation, it might not be sufficient to address the potentially negative effects of TICTM on the work-life balance and well-being of workers.

### Transparent and Predictable Working Conditions Directive

- The directive has the potential to contribute to a better work-life balance for employees in TICTM arrangements by making working time and work arrangements more predictable.

### Framework Agreement on Telework

- The agreement does not consider situations in which employees do telework informally or on an occasional basis (which are typical situations in TICTM).
- It establishes that telework should be done on a voluntary basis. However, evidence suggests that some employees do telework because of employer-driven job demands, putting its voluntary dimension into question.
- In some occupations, teleworking and being mobile is part of the conditions included in the contract (or job specifications) and workers in this situation do not have the legal means to change to another work arrangement.





### 3 Regulation at national level and its link to work–life balance

The new work environment and the interaction between technology, work organisation and work–life balance has received increasing attention from legislators and social partners at national level. They have developed provisions that aim to improve the work–life balance of workers undertaking TICTM or to protect such workers against the downsides of TICTM. Most of the EU27 Member States, as well as Norway and the UK, regulate TICTM through legislation or collective agreement (or a combination of both). When looking at these provisions, it is important to consider them from the following perspectives.

**The extent to which provisions are binding and the level of coverage:** Legislation on this matter is generally binding (even where it must be implemented through other means such as collective or individual-level agreements). However, it can also lay down thresholds or limits in relation to company size or type of jobs. It is the same with collective agreements, but only for their respective sector or company and the signatories to the agreement (which may not be the entire sector, depending on the respective industrial relations system). These regulations or other initiatives can also include softer measures – like recommendations to develop policies regarding TICTM and work–life balance, for example at company level.

**The content of regulations:** Three different approaches can be identified in this regard. Provisions can specifically link TICTM with enhancing work–life balance or simply regulate the availability and modalities of remote and telework without focusing on work–life balance effects. They can also try to protect employees against the risks threatening the work–life balance, and the health and well-being of workers (as mentioned in Chapter 1).

The majority of Member States currently have **binding legislation** regulating the availability and at least some of the modalities of teleworking.<sup>3</sup> While a few of these regulatory frameworks make specific mention of the use of ICT in telework, most do not explicitly refer to this

link. However, even where ICT use is not specifically mentioned, it could be considered implicit given that the use of such technologies is essential to perform work tasks remotely in a modern working environment.

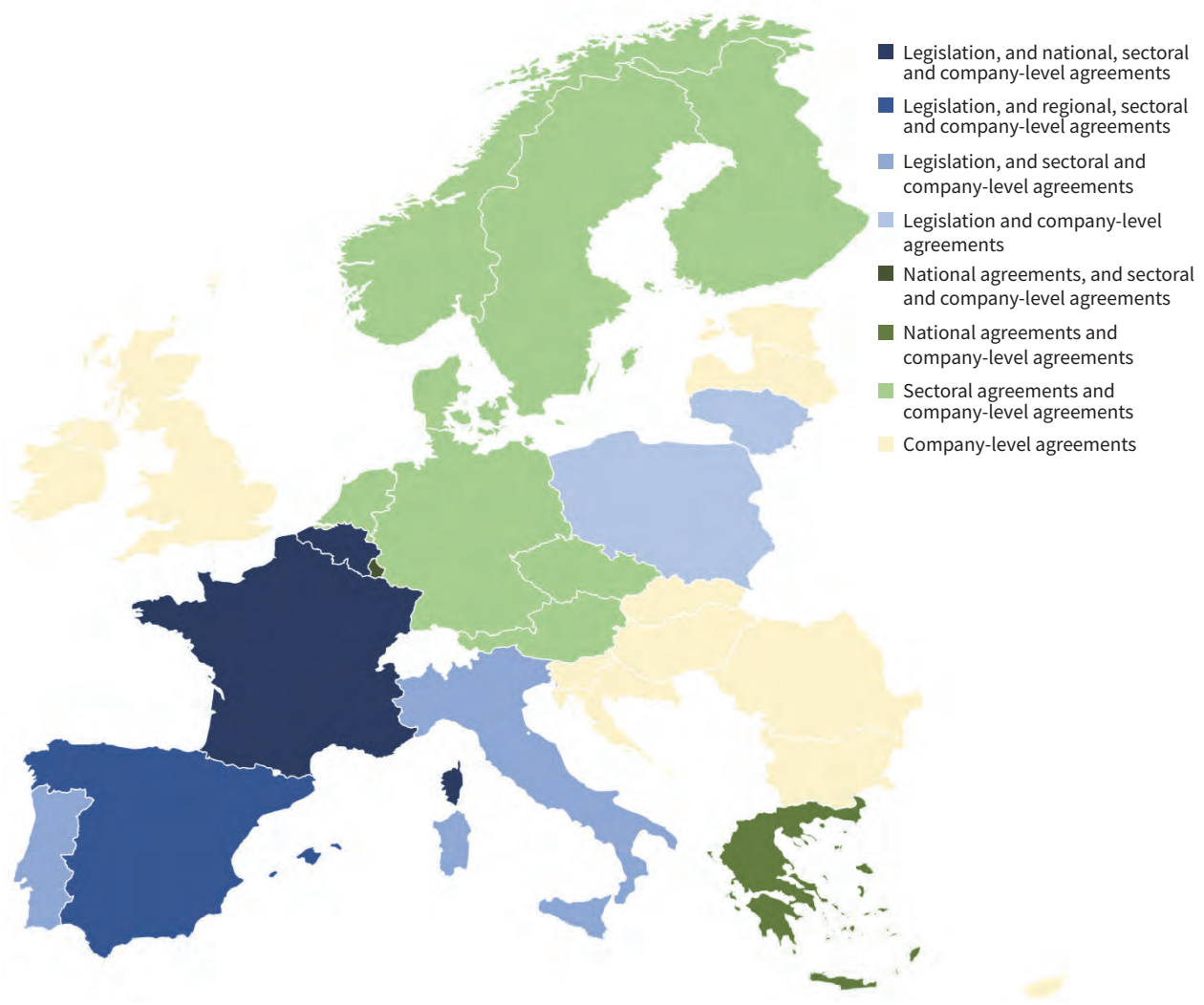
In some countries with legislation, there are collective agreements at sectoral or company level that regulate the modalities of telework. For countries without legislation, different situations exist. These can range from **collective agreements at national, sectoral and/or company level to softer measures** that also have a different impact on the coverage.

- In Luxembourg, a national collective agreement is in place and this is universally applicable.
- In Denmark, Finland, Sweden and Norway, collective agreements on the issue exist in several sectors that achieve a high level of coverage. However, bargaining at company level predominates when it comes to defining the details of working arrangements, and is relatively widespread with regard to TICTM and its link to an enhanced work–life balance.
- In Ireland, collective agreements promoting telework and the positive impact it can have on work–life balance exist in a wide range of sectors. These are often promoted through government circulars. These are not collective agreements as such but arise from a consensus approach and provide a high level of coverage.
- In Cyprus and Latvia there is no legislation and no national, regional or sectoral collective agreements. A limited number of company-level agreements exist.
- In the UK, joint guidance was formulated by the social partner organisations on teleworking following the EU cross-industry agreement. Specific agreements on this issue are generally negotiated at company level.

Figure 4 provides an overview of the highest level of regulations (or provisions) that make a connection between TICTM and work–life balance.

3 Countries with binding legislation include Austria, Belgium, Bulgaria, Czechia, Estonia, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

Figure 4: Legislation and agreements linking TICTM and work–life balance



Source: Authors' own compilation based on contributions from the Network of Eurofound Correspondents

In most countries where there is legislation, it is supplemented with collective bargaining at various levels and where there is sectoral bargaining, the provisions tend to be further developed at company level. In many cases, legislation requires more detailed provisions through lower levels of regulation (such as a sectoral or company-level agreement). This is particularly true in Belgium, France, Italy, Spain and, to some extent, Portugal. In these countries the legislation sets out the general conditions and the specific terms of the TICTM practice are detailed in collective agreements.

Sectoral and company agreements are prevalent in central Europe (Austria, Czechia, Germany and the Netherlands) and in Scandinavia (Denmark, Finland, Sweden and Norway).

Figure 4 also provides a reflection of different industrial relations systems, showing the countries where sectoral collective agreements are prevalent, those where legislation tends to be implemented with further detailed provisions, and those with only company-level agreements (for example, many central and eastern European countries and the UK).

## Legislation in the EU27, Norway and the UK

This section explores the different types of measures that have been introduced to promote work–life balance and protect workers against the downsides of TICTM.

### Types of legislation

ICT-based flexible work and its link to work–life balance can be regulated in different ways. Provisions in different countries can be classified as follows.

**Balanced promote–protect approach:** Countries with specific legislation that promotes the use of ICT to support flexible working and also seeks to protect workers from the potentially negative consequences of an ‘always on’ work culture. The legislation does this by including a provision for the ‘right to disconnect’ (Belgium, France, Italy and Spain).<sup>4</sup>

**Promoting-focused approach:** Countries with legislation on the use of telework or remote work that makes a direct link between the potential benefits of flexible forms of work for work–life balance, but without specifically dealing with any negative consequences (Germany, Lithuania, Malta, Poland, Portugal and Romania).

**General regulatory approach:** Countries that only have general legislation regulating the use of telework or remote working and its impact on work–life balance, without making a direct link between the two (Austria, Bulgaria, Croatia, Czechia, Estonia, Greece, Hungary, Malta, the Netherlands, Slovakia and Slovenia).

**No specific legislation:** Countries without specific legislation governing telework or remote working (Cyprus, Denmark, Finland, Ireland, Latvia, Luxembourg, Sweden, Norway and the UK).

As shown in Figure 5, most countries have some type of legislation regulating TICTM arrangements (of a specific type, such as home-based telework). There is a tendency in south-western European countries to take a balanced promoting–protecting legislative approach, including specific provisions regarding the right to disconnect. Such legislation was proposed in Portugal, but not adopted by parliament. Therefore Portugal (along with Germany, Lithuania, Malta, Poland and Romania) only includes the promoting approach in its legislation.

Most central and south-eastern countries, as well as Estonia, Luxembourg and the Netherlands, have a general regulatory approach that does not specifically mention work–life balance. Such provisions essentially follow the 2002 Framework Agreement on Telework and tend to cover only the basic modalities of telework (such as its voluntary nature, the equal treatment of teleworkers, and provisions for determining terms and conditions for teleworkers).

The lack of specific legislation in the Nordic countries reflects the precedence taken by collective bargaining. Nevertheless, only promotional measures (and not protecting ones) have been reported in sectoral agreements in these countries. This is a group of countries that has a long tradition of promoting flexible (including ICT-based) working in collective agreements, partly to meet the requirements of traditionally high female labour force participation. In the UK, legislation on the right to request flexible working is not included in these considerations as no direct link is made to telework or remote work.

### Legislation promoting and protecting employees with TICTM arrangements

As indicated above, the content of legislation relating to ICT-based flexible working can be distinguished between general, promoting, and balanced promoting–protecting provisions. This section discusses promoting and balanced promoting–protecting regulations in more detail, because of their direct link to work–life balance.

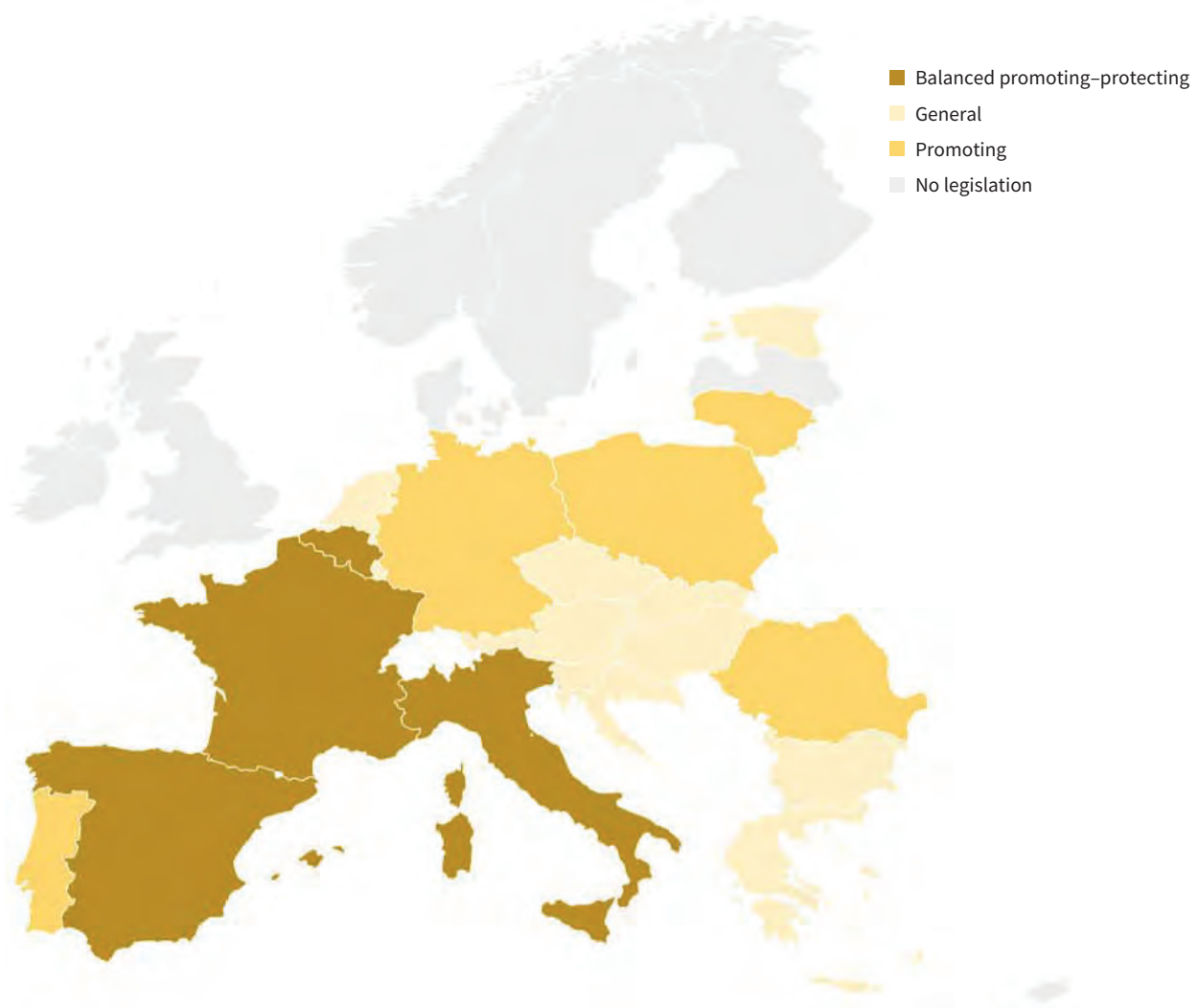
#### Promoting telework to balance work and family life

As shown in Figure 5, Germany, Lithuania, Malta, Poland, Portugal and Romania are countries with legislation that explicitly makes a link between the potential benefits of telework and an improved work–life balance, but do not have provisions related to the right to disconnect. The legislation is aligned with the recent provisions of the Work–Life Balance Directive.

This link between telework and work–life balance is made most explicit in the Lithuanian Labour Code. Article 52 (Part 2) states that unless the employer can prove that permitting telework would result in excessive costs, pregnant workers, new parents, parents of young children and single parents must be allowed to work at least one-fifth of their standard working hours remotely.

<sup>4</sup> Although the need to balance the negative and positive implications of TICTM is only specifically referenced in Italy’s legislation, all four countries effectively seek to achieve a balance between the two.

Figure 5: Presence and nature of legislation on TICTM and its link to work–life balance



Source: Authors’ own compilation based on contributions from the Network of Eurofound Correspondents

In Poland, a 2018 amendment to the labour code also provides enhanced access to telework for the parents of disabled children.

In Malta, Portugal and Romania, a more general link is made in legislation, indicating that telework can be used as one of the measures to improve the work–life balance.

In Germany, this link is specifically made in the federal equality law. This law regulates part-time employment, telework, mobile work and leave of absence in order to take care of family or care responsibilities for federal employees only. This means that the federal employer has to offer employees with care responsibilities the option to do teleworking, mobile working or another family- and care-friendly working time model. As shown in Box 2, there have been discussions around the need for additional legislation, but these have not yet progressed in the legislative process.

## Box 2: Germany – The evolving policy debate

In Germany, the national-level regulation does not include the right to disconnect. However, laws such as the Occupational Health and Safety Act and the Working Hours Act set certain legal limits with regard to the constant availability of employees. The primary goal of the Working Hours Act (which implements the European Working Time Directive) is to protect employees from health risks that arise from working beyond the limits.

In 2016, however, the Federal Ministry of Labour and Social Affairs provided the white paper Work 4.0. The paper sets out guidelines to balance the flexibility needs of companies and workers, while maintaining health and safety at work. In this context, the Minister of Labour and Social Affairs, companies, social partners, civil society and academia reached a broad consensus regarding the fact that working time must be organised in a way that more effectively takes differing time needs into account. The parties felt that the best way to address the issue was to negotiate collective agreements, make flexibility-related compromises and draft work agreements.

The parties also explored the idea of developing a Working Time Choice Act, which would contain provisions to protect workers against overwork, the dissolution of work boundaries and compromises regarding flexibility. Such an act would give employees more options regarding their working time and location. To some extent, it would also give them the opportunity to deviate from the applicable provisions of the Working Hours Act. However, no concrete legislative proposals have been approved to date.

Several high profile company-level agreements are already in place in relation to the right to disconnect. For example, a work agreement at BMW sets out that employees may agree with their superior on the fixed hours during which they are available, and mobile activities carried out during off-work time are credited to their working hours account. At the same time, employees have the right to be inaccessible during holidays, weekends and after work.

### Promoting telework and protecting workers

Since 2016, legislation covering the right to disconnect has been passed in Belgium, France, Italy and Spain. A proposal was also tabled in Portugal (although it was ultimately rejected in July 2019). In each case, the legislation requires social partners at sectoral or company level (or, as in Italy, the individual employment contract) to reach an agreement on how to implement this right.

The rights enshrined within these legislative initiatives are not always new but are based on pre-dating national social partner agreements (France) or company practice (Italy). Italy is unique in the sense that the

legislator has opted to assign the responsibility for reaching such agreements to individual employers and employees, which implies a different power balance between the parties.

The coverage and approach to implementation differs between the countries. In Italy, Law 81 does not cover all workers, but only workers defined as ‘smart workers’ (Box 3). These workers combine working from their office base with working remotely in order to balance work and family commitments (or for work-related reasons). As of mid-2019, there were an estimated 480,000 smart workers in Italy. Workers who are defined as ‘teleworkers’ in Italy are covered by separate legislation that does not include the right to disconnect.

## Box 3: Italy – Smart working

Flexible work practices that aim to enhance the reconciliation of work and family life through the use of ICT are referred to as ‘smart working’ (*lavoro agile*). Such practices were originally introduced at company level and were subsequently officially recognised by Law 81 of 22 May 2017.

The law stipulates that smart working is put in place by an individual agreement between the employer and the worker; it offers another way to perform ordinary work. Smart working is intended to improve competitiveness and facilitate the reconciliation between work and personal life. Work partly takes place on the company’s premises and partly outside, with no constraints in terms of place of work or working time (within the limits of maximum working time set by legislation and collective agreements). The law establishes that employers must give priority to requests made by mothers of small children or parents of disabled children. The individual agreement stipulated by the employer and the smart worker defines how the work must be performed, regulates rest periods, and specifies the technical and organisational measures that will ensure the worker can disconnect from work devices.

While the legislation defines smart working as an agreement to be reached between individual employers and employees, in some cases it is also regulated by collective agreements at sectoral and company levels. Such industry-wide agreements have been introduced in a number of sectors – agri-food (since 5 February 2016), energy and oil (25 January 2017), gas and water (18 May 2017) and waste management (25 July 2017).

Company agreements can be found at large enterprises such as Eni (energy and oil), Poste Italiane (post services), Italian State Railways, Enel (electricity), Barilla (agri-food) and Siemens (engineering). These agreements include more detailed and operational provisions to be applied in individual smart working contracts. Such provisions tend to relate to the frequency of teleworking, core and flexible hours, the right to disconnect, and health and safety training.

According to the Smart Working Observatory, which was established as part of the Digital Innovation Observatories of the School of Management of the Politecnico di Milano, there were some 480,000 smart workers in Italy in 2018. Currently, only around 5% of company agreements cover smart working arrangements.

In France, the right to disconnect must be implemented through agreements between employers and trade unions in all companies with more than 50 employees (Box 4). According to Eurostat estimates, this means that the legislation applies to less than 1% of employers

and 45–50% of the workforce. However, these legal provisions are further supplemented by universally applicable sectoral collective agreements, as well as company-level agreements, which can increase this level of coverage.

#### Box 4: France – 2016 revision of the labour code

Taking into account the position of social partners and their 2013 national collective agreement (Government of France, 2013), the legislator introduced a provision in the new labour code in 2016. This provision made it compulsory to include a discussion on the right to disconnect and work–life balance within the framework of annual collective bargaining on gender equality and quality of life at work (Government of France, 2016).

According to the labour code, the right to disconnect is intended to ensure compliance with rest and holiday periods, as well as the reconciliation of personal and family life. To this end, employers are required to put mechanisms in place to regulate the use of digital tools so that rest and holiday periods are respected. The procedures for exercising the right to disconnect are defined by company agreement or by a charter drawn up by the employer. This charter also needs to include training and awareness-raising actions for employees, management and executive staff on the reasonable use of digital tools.

The law has contributed to a significant increase in the number of sectoral collective agreements on the issues of telework (158 since March 2018), the right to disconnect (55 since March 2018) and quality of life at work (193 since March 2018) (Government of France, 2020b). One example is the agreement on psychological risks in financial companies, which was signed by the employer organisations in the sector on 21 January 2019 (ASF, 2019). See Box 7 for more information.

In addition, according to the 2017 Annual Assessment of Collective Bargaining (Government of France, 2017), the number of working conditions agreements at company level almost doubled between 2016 and 2017. About 1,231 agreements with the word ‘disconnect’ in their title have also been recorded in the compulsory database of company-level agreements since it was launched in March 2018 (Government of France, 2020b). These results can be seen as an impact of the legislation and, indirectly, of the national interprofessional agreement on quality of life at work (June 2013).

In terms of the practical tools used to implement the right to disconnect, the most common approaches are using software that indicates to the employer and the employee if applications and tools are used outside of standard working hours. This type of software can provide warnings and, in some cases, training to employees to emphasise the need for a good work–life balance in order to prevent burn out. Some organisations also use hard tools, such as switching off servers out of hours.

### Box 5: Belgium – Law on strengthening economic growth and social cohesion

The law gives employees the right to negotiate their use of digital communication tools and disconnection options (Federal Government of Belgium, 2018). The employer discusses these matters within the workplace health and safety committees with either trade union representatives (if present) or employees themselves.

While the law dictates that these negotiations must take place, it does not include a strict right to disconnect. It also does not set the frequency for such negotiations, as the requirements vary according to the needs of each company.

The law in Belgium covers all companies where health and safety committees are established (this is a legal requirement in companies with more than 50 employees) and precise provisions are negotiated within these committees (Box 5). As in France, a high number of universally applicable sectoral collective agreements and company agreements are also in place, extending coverage beyond the 47% of workers employed in companies with more than 50 employees.

The Spanish Organic Law also leaves the implementation of the right to disconnect to the collective bargaining parties at sector or company level (Box 6). As of mid-2019 (six months after the law was passed), the right to disconnect was only enshrined in sectoral collective agreements in the manufacturing sector and in a number of company-level collective agreements.

As the country-based examples show, the right to disconnect is being implemented through a variety of hard and soft measures. Hard disconnection tends to be implemented through connectivity shutdowns after a pre-defined hour or the blocking of incoming messages.

Softer measures include the delivery of pop-up messages reminding workers (and/or clients) that there is no requirement to reply to emails out of hours. This is often accompanied with training on the importance of achieving a good work–life balance.

Policy stakeholders at European and national level (where no legal right to disconnect is in place) are currently debating the necessity of implementing such provisions. For example, its introduction has been discussed in the European Parliament, and in Germany and Portugal. The issue has also been discussed in Ireland and Luxembourg against the backdrop of national court cases touching upon the matter.

In countries where provisions on the right to disconnect exist (in both countries with legislation and without legislation), policymakers have preferred to rely on collective bargaining or company policies to regulate the implementation of these provisions. However, using only collective bargaining can lead to inequalities between sectors and types of workers as some may not have strong representation at different levels. This is particularly true in countries without legislation.

### Box 6: Spain – Organic Law

In December 2018, Spain used its transposition of the European Data Protection Legislation (GDPR) to include new digital rights in labour law, including the right to disconnect, recognising the rights of employees to rest, leave, holidays, personal privacy and family privacy. The Organic Law for the Protection of Personal Data and the Guarantee of Digital Rights expressly states that the right to disconnect applies to the use of digital tools in cases of remote and home working.

The implementation of this right is the responsibility of collective bargaining (at sector or company level) or bilateral agreements between the company and worker representatives. After hearing from the worker representatives, the employer must draw up internal protocol addressed to workers (including management). This protocol must define the ways in which the right to disconnect will be exercised, and the training and awareness actions that will be provided to staff about how to avoid IT fatigue.

No information is yet available regarding the number of employees benefiting from the initiative or its actual impact on work–life balance and well-being. Six collective agreements already recognise the right to disconnect, but most were negotiated before the implementation of the Organic Law.

The benefit of a right to disconnect is also linked to enforcement, as it can be more challenging for an individual to enforce the right (and remain within their contractual working hours) than it is to ensure such rights in the context of a specific collective or individual agreement. In addition, the introduction of a right to disconnect raises broader awareness among employers and employees of existing rights and obligations. It also raises awareness of the potentially negative implications of TICTM and the impact that an ‘always on’ culture can have on worker health and well-being.

The broader issue of workload is another important consideration in relation to the right to disconnect. Arguably, such a right can only be meaningfully implemented when workload and working hours are sensibly aligned.

There is a notable lack of evidence-based evaluations on the effects of the right to disconnect on work–life balance and health and safety. Such evaluations could provide further input into possible discussions about the need to include these types of provisions in European-level legislation.

Legislation is not the only way to define rules on the use and application of TICTM and its links to work–life balance. This can also be achieved through sectoral and company-level agreements. Examples of such agreements are discussed in this section; a distinction is drawn between the balanced promote–protect approach and the promotional-only approach.

It is important to note that the information in this chapter is based on information provided by the Network of Eurofound Correspondents at the beginning of 2019 and does not represent an exhaustive compilation of agreements.

## Sectoral collective agreements

There are sectoral collective agreements relating to TICTM in most of the EU27, Norway and the UK, however; the number and content varies. They are most prevalent in France and Italy, and less frequent or non-existent in eastern Europe and Ireland.

### Balanced promoting–protective agreements

All countries with legislation promoting and protecting employees have some sectoral agreements containing provisions on TICTM and work–life balance. This is because the legislation requires some of the aspects of this work (including the right to disconnect) to be negotiated by the social partners at sectoral or company level.

France has a significant number of agreements enshrining provisions on this issue at sectoral and company level, largely due to the legislation on the right to disconnect that entered into force in January 2017 (Box 7). These tend to reiterate the content of the legislation and require an agreement to be reached at workplace level (or via an employer charter).

### Box 7: France – Agreements on the right to disconnect

In April 2014, the two main employer organisations in the engineering and consulting sector (Fédération Syntec and CINOV) and the two relevant trade unions in the sector (the French Confederation of Management – General Confederation of Executives (CFE-CGC) and the French Democratic Confederation of Labour (CFDT)) signed an amendment to the sectoral collective agreement, which covers 857,000 employees (Government of France, 2014). The agreement stipulates that the employee has an ‘obligation to switch off remote communication devices’ during the minimum rest periods of 11 hours a day and 35 hours per week. In order to achieve this, the employer must ensure that the employee is able to switch off.

An agreement on psychological risks in the finance sector was negotiated in January 2019 by the employer organisation of the sector (L’Association française des sociétés financières (ASF)) and the five representative trade unions (Fédération CFDT des Banques et Assurances (CFDT); Fédération CGT des Syndicats du Personnel de la Banque et de l’Assurance (FSPBA-CGT); la Fédération des Employés et Cadres (CGT-FO); Syndicat National de la Banque et du Crédit (SNB-CFE-CGC); and Union Nationale des Syndicats Autonomes (UNSA/Fédération Banques et Assurances)) (ASF, 2019).

According to Article 6.2, the right to disconnect is intended to ensure compliance with rest and holiday periods, as well as personal and family life. To this end, the employer shall ensure that mechanisms are in place to regulate the use of digital tools so that rest and holiday periods are respected. The procedures for exercising the right to disconnect are defined by company agreement or, failing that, by a charter drawn up by the employer. This charter also provides for the implementation of training and awareness-raising actions for employees and management and executive staff on the reasonable use of digital tools.



In Belgium, universally applicable national collective agreements have a role to play both in promoting telework and limiting working hours whilst teleworking. Sectoral-level agreements often reiterate the requirements set out in legislation and national collective agreements, whereas company-level agreements are used to determine how issues relating to TICTM and the right to disconnect apply to employees.

In Italy, sectoral collective agreements tend to include provisions related to promotional measures, but there are also examples that include provisions related to the right to disconnect. This is linked to the nature of legal provisions, which give a right to disconnect only to a specific group of workers and require this to be implemented through individual agreements between workers and employers.

Germany and Spain are countries where one or two sectoral agreements contain provisions related to the right to disconnect. In Austria, collective agreements are in place at sectoral level (as well as works agreements at company level). However, they tend to only include generic provisions relating to TICTM. In both Austria and Germany, the more specific provisions relating to TICTM and work–life balance tend to be set down during workplace-level bargaining.

### Promoting and general agreements

In Scandinavian countries, sectoral agreements are rather generic in relation to flexible work arrangements and there are few specific references to any link between spatial flexibility and work–life balance. However, the promotion of this type of measure is quite widespread at company level. In these countries, such agreements were in place even before the 2002 European Framework Agreement on Telework and flexible working had become common in the workplace.

The smooth implementation of these arrangements in Scandinavia may be a result of the ‘responsibility with freedom’ culture that is prevalent in these countries.

The situation is mixed in the central-eastern countries. Czechia, Lithuania, Romania, Slovakia and Slovenia have a small number of sectoral collective agreements, including either promoting or generic provisions on TICTM and work–life balance. In most of these countries, the number of agreements at company level containing relevant provisions is very small. At present, the share of workers undertaking TICTM is low and the limited collective bargaining at either sectoral or company level means that it is unlikely to develop significantly in the future.

Across all countries, the finance and public administration sectors are well represented among those that have negotiated relevant collective agreements. These sectors, along with ICT, are among those with the highest share of employees with TICTM arrangements. Other sectors where agreements promoting telework are relatively widespread include manufacturing (for administrative functions), and professional, scientific and technical activities. However, this information must be considered with care since there is a lack of publicly available databases on collective agreements in some countries. It is therefore difficult to estimate the extent to which TICTM and work–life balance are covered in such agreements.

Except for the countries where there is a legal right to disconnect, most sectoral and company-level agreements dealing with telework are general and set out the parameters under which telework can be agreed. Some of them also include other aspects of teleworking such as place of work, working hours, working tools, privacy, and modes of behaviour for the worker and the management (Box 9).

### Box 8: Romania – Sectoral agreement promoting telework

In Romania, there is a collective agreement at sectoral level for financial and insurance activities. The agreement was negotiated by the Employers' Federation of Financial Services in Romania and relevant trade unions in the sector and defines ‘telework’ as a voluntary form of organising work that is carried out in line with the law, with relevant collective agreements or with internal regulations (FINBan and FSAB, 2018). The work schedule of teleworkers will be established jointly, and teleworkers should meet superiors and colleagues at least once per month. The agreement stipulates that the employer has the right to control/supervise the employee’s workplace only during working time. However, in line with Article 47, and based on internal regulations, the employer may recall the employee to work at the company’s premises.

The collective agreement emphasises that any work carried out beyond a worker’s normal work schedule is to be considered as overtime. In line with the Labour Code, this includes the right of the employee to refuse to do overtime, as well as their right to be compensated for overtime with time off in lieu.

### Box 9: Germany – Regional agreement in the metal and electrical sector

The regional sectoral agreement between IG Metall and employer organisations in the southwest of Germany governs aspects of telework. These include the employee's presence at the place of work, the time window for work (core hours and flexible hours), working tools, privacy, performance and behaviour monitoring, and conflict resolution mechanisms. The specific determination of these rules is set by the employee and the responsible manager. Framework regulations set in the collective agreement include:

- compliance with the statutory and collectively agreed working time regulation
- that there is no obligation for employees to be reachable outside the previously agreed working time
- that, as part of mobile work, employees are insured through statutory accident insurance
- that the resting period between the end and the resumption of work can be reduced from 11 to 9 hours for employees who can choose their daily working time as part of mobile work

## Company-level agreements

It is important to bear in mind that such company-level agreements are examples of a formal approach to regulating TICTM. In practice, much of this work is done on an informal and occasional basis (Eurofound and the International Labour Office, 2017). The following discussion highlights examples of promoting and balanced promoting–protective agreements.

It appears to take some time for workplace and managerial culture to adapt to TICTM, as demonstrated by the fact that many of the examples presented here involve pilot projects or trial periods. However, such pilots and trials can provide workers with the opportunity to test whether remote working suits them. This is the case at a Budapest utility company (Box 10), which offered employees the chance to partially or fully

work from home during a trial period. Following this pilot, many employees selected the partial telework option as they found full telework contracts too isolating and were keen to combine telework with interaction with colleagues at the company's premises.

This example further demonstrates that another motivation for employers to offer teleworking relates to savings on office space and infrastructure, which can be particularly costly in some European capitals and larger cities.

It also touches on another issue that is highly relevant in the context of TICTM: the shift in some organisations from an emphasis on hours worked to one on work tasks delivered. This shows the importance of the link between working hours and the planning of deliverable work content.

### Box 10: Hungary – Utility company introduces flexible working

After a period of testing, Water Works Budapest officially introduced telework when the company moved to new headquarters in 2018. This helped them to rent more cost-effective office space, as well as retain key staff with family-related responsibilities.

The firm introduced teleworking gradually and teleworkers are treated identically to those working in the office. There are three kinds of teleworkers at the company.

- Full teleworkers: These employees only go to the office once a month (very rare).
- Split-time teleworkers: These employees telework on certain days of the week and work at the office for the rest of the time (the typical arrangement for the company).
- Occasional teleworkers: These employees do ad hoc and flexible teleworking.

Employees agree these arrangements with their immediate manager on an individual basis. Usually there is core time and flexible time within the teleworking framework.

The place of work is the employee's home. The workstation is set up by the company's technicians and regularly checked for its technical condition. The occupational safety group carries out a work safety risk assessment, while the company pays a modest daily fee towards utility bills.

The measurement and monitoring of performance varies by area (the software management tool JobCTRL is used for customer support staff). Working time is also an issue that is regulated in the agreement between the employee and their manager.

The reconciliation of family life and work is an important aspect of teleworking at any company. Teleworking can attract new workers and retain older ones who would not otherwise be able to work due to family commitments. Furthermore, employees can save commuting time, which means companies can employ workers who live further away. In this way, telework helps to increase the potential labour pool for companies.

### Promoting approach in company-level agreements

Many companies primarily, or only, offer spatial flexibility to certain groups of workers. These usually include parents (often of children below a certain age),

disabled workers and those with other health limitations. This recognises that certain worker groups require greater spatial (and temporal) flexibility in order to enhance their work–life balance. However, it also indicates that the concept of teleworking and its potential wider benefits for companies are not well established among all employers in the EU27, Norway and the UK.

In addition, TICTM is often restricted to workers carrying out specific types of responsibilities, including in occupations and sectors where women pre-dominate. Among the following examples, the Cyprus Telecommunication Authority is an exception as telework is taken up by an equal share of men and women (Box 11).

## Box 11: Telework for specific groups of workers

### Cyprus: Cyprus Telecommunication Authority (CYTA)

The CYTA offers teleworking to pregnant women, young parents, workers facing health issues that restrict their mobility and workers completing academic studies. Teleworking is considered suitable for tasks such as data analysis and data entry, report writing, telephony-based communications, web design, research and other ICT-related tasks.

At present, there are 40 workers regularly performing telework (an equal share of men and women) with additional workers able to carry out telework on an ad hoc basis.

### Czechia: Collective agreement for police and fire services

A collective agreement between the Czech Ministry of the Interior and the trade unions of the police and fire services allows workers in specific conditions to perform short-term telework. This means that individuals with caring responsibilities for young children or health problems are able to remain employed when they find it difficult to work at their regular workplace.

### Italy: Smart working at Eni Group

In 2017, a collective agreement was negotiated at Eni Group that allows workers with children under the age of two to perform smart work. This means that they can work from home for up to two days per week.

Following an initial pilot phase, this arrangement was confirmed for young parents in 2018. A commitment was also made to extend the arrangements to other segments of the workforce, after a survey found that the productivity of smart workers increased due to improved motivation, a better work–life balance, less commuting and better work organisation.

The agreement also expressly recognises the right to disconnect (as foreseen in the legislation on smart working).

### Portugal: Company agreement in charities sector

The Lisbon Holy House of Mercy (SCML), a charitable organisation that serves as the national lottery operator, signed an agreement with trade union Democratic Teachers' Union of Greater Lisbo (SDPGL). The agreement offers a telework arrangement for employees that are disabled, have a chronic illness, are responsible for children up to 12 years of age or care for a disabled or sick family member. Telework is initially offered for six months and can be extended to a maximum of five years.

Employees have the right to return to office work in the same or a similar function. The company has the right to perform home visits to control work activity and equipment during normal working hours, and after having given at least 24 hours' notice.

## Box 12: France – Orange implements right to disconnect

A company-level agreement at Orange was signed by the group and three trade unions – the French Democratic Confederation of Labour (CFDT), the General Confederation of Labour (CGT) and Workers' Force (FO).

The agreement stipulates that 'respect for private life and the right to switch off are considered to be fundamental rights at Orange'. It is a matter of protecting employees from 'intrusive practices' (such as email, SMS, or instant messaging services) 'at any time of the day or night, over the weekend, during days off or during training courses' originating from managers, but also from their colleagues or themselves.

In a previous agreement concluded on 5 March 2010, Orange's social partners explained that employees had no obligation to reply to such messages and recommended that employees made use of the 'send later' function.

This recommendation is upheld in the new agreement, which stipulates that automatic mechanisms (e.g. the stopping of servers) should be used to protect the private lives of employees. Orange advises staff not to use their email service or other communication tools during rest periods, or on days off. It says its management 'must ensure that this right is respected', while employees must realise that their own use of the digital tools may be inappropriate, and they must show respect for their colleagues in their use of digital technologies.

How and when digital tools should be switched on and off in the professional context 'must be reflected collectively, by taking the activity and service needs into account'. To avoid overwhelming staff with emails, managers will organise periods when employees will be encouraged to talk to each other. Employees are also invited to set aside periods when they will not use the electronic messaging service during the working day, for example during meetings or to facilitate concentration.

By way of preventive action, the agreement offers employees the opportunity to have a 'quantitative personal report on their digital use' sent to them each year. A collective report can also be given to a team to detect 'daily over-consumption' or abnormal use of digital tools in the evening or at weekends.

In many cases, regular telework is restricted to certain situations and/or a specific period, with such workers expected to return to more office-based activities at the end of this period. Telework is therefore used to enhance work–life balance during periods when care responsibilities are particularly significant, illness restricts mobility or the ability to work from home makes it easier to pursue normal work. As well as benefiting workers during such periods, telework arrangements can also be useful for employers that are keen to retain experienced workers.

### Balanced promoting–protecting approach in company-level agreements

Company-level agreements on the right to disconnect are most common in countries that provide a legislative framework for this right. For example, in Belgium and France (Box 12), companies with more than 50 employees are obliged to discuss possible agreements in relation to the right to disconnect. When there is no agreement, the company itself must establish a policy.

In Spain, the number of companies that include the right to disconnect is lower than in France. This is most likely because relevant legislation was only recently implemented in the country (Box 13).

## Box 13: Spain – Telework and the right to disconnect at AXA

The AXA Group was the first company in Spain to recognise the right to disconnect, signing an agreement on this subject and teleworking with the Workers' Commissions (CC.OO) in 2017. The content of the agreement was based on a French agreement that the AXA Group had previously negotiated.

Both the right to disconnect and teleworking are an important part of the catalogue of 85 measures developed by the company to improve the work–life balance of workers. Regarding the right to disconnect, the agreement establishes that workers are not obliged to respond to emails or professional messages outside their working hours, except in exceptional circumstances. The agreement does not regulate or specify this right any further.

Provisions on teleworking as a flexible form of working are more developed. The agreement establishes that teleworking must be voluntary and reversible, and teleworkers must benefit from equal rights as other employees. It specifies that telework is available to workers who can perform such work without it impacting on

the delivery of their services. The company determines the amount of time that can be spent teleworking. In cases of workers with health or mobility problems (or with close family members that require care due to poor health), the number of teleworking days can be increased.

The AXA Group has been implementing teleworking measures since 2013. The process began with a pilot project and by 2018, more than 1,000 employees benefited from the measure (around 40% of the workforce). The company plans for this number to increase each year.

The number of possible teleworking days per week has also increased in some cases (from one to two). A study of AXA employees conducted by the Másfamilia Foundation (2019) highlights that one of the main benefits of teleworking is the reduction in commuting time and the resulting improvement of work–life balance. In addition, productivity in administrative departments increases by 28% on telework days (quantifying the increase in the number of calls and activities managed).

However, the right to disconnect is not only implemented in companies in countries where legislation on this issue exists. This demonstrates that concern over the impact of ICT use on work–life balance is becoming more widespread. One country where this is taking place is Germany (Box 14).

In summary, sectoral collective agreements linking TICTM and work–life balance are more prevalent in specific sectors (finance, public administration, and information and communication). In terms of the right to disconnect, there is evidence that sectoral and company-level agreements on this issue are more likely in countries where there is also relevant legislation.

The company examples also suggest that, in general, formal TICTM is only available to certain groups of workers (for example, those with childcare responsibilities, ill health or caring-related responsibilities).

## Coverage of the regulations

The share of the workforce covered by existing regulations depends on a number of factors including the presence of legislation (and the setting of thresholds for the application of the laws) and collective agreements at different levels (and their coverage depending on different industrial relations systems). Figure 6 provides a tentative assessment of the breadth of coverage of such legislation and collective agreements. In this context, a very high level of coverage denotes legislation or collective agreements that are universally or almost universally applicable and – in the case of collective agreements – cover all or almost all sectors of the economy.

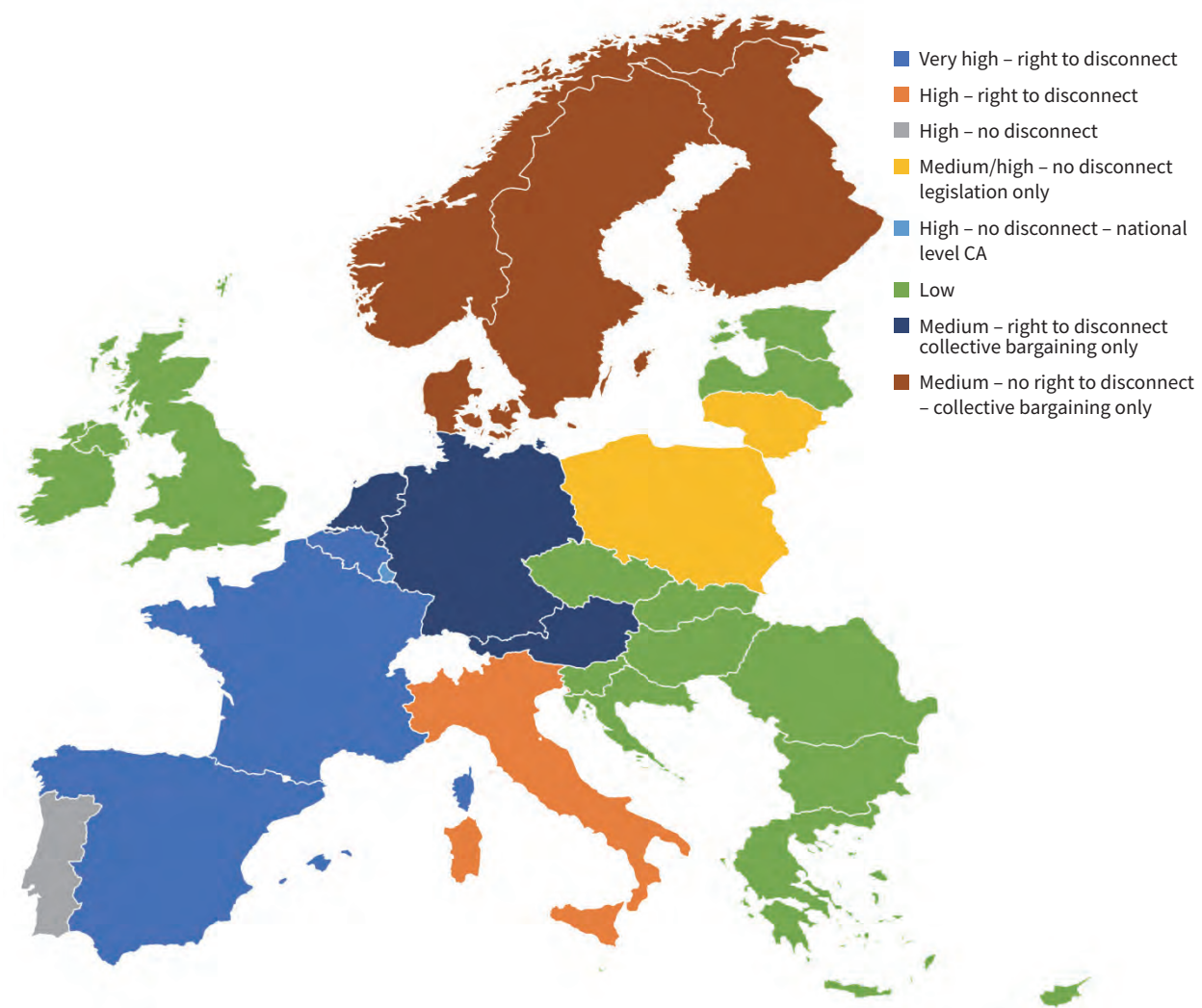
With regard to legislation, a distinction is made between the countries that include a right to disconnect in their legislation (Belgium, France, Italy and Spain) and the countries that make a specific link between TICTM and work–life balance, but do not include a right to disconnect (for example, Lithuania, Poland and Portugal).

### Box 14: Germany – Implementing the right to disconnect without legislation

Although Germany does not have any legislation on the right to disconnect, several German companies have implemented policies to this effect. In 2011, Volkswagen pioneered an approach that prevented emails from being sent to staff mobile phones between 18:00 and 07:00. In 2014, automobile company Daimler introduced the ‘mail on holiday’ scheme, which employees can use to avoid seeing incoming messages whilst on holiday.

Other companies such as Allianz, Bayer, Evonik, Henkel, IBM Germany and Telekom have introduced similar policies. Evonik uses an ‘email brake’, which is set out in a works agreement and applies to all employees of the company. Employees, together with their supervisors, define a period of availability and do not have to answer emails outside of this. However, the email servers are not turned off and emails are not blocked. IBM Germany blocks employees' emails between 20:00 and 06:00, while all employees at Henkel are not required to check their emails outside of official working hours.

Figure 6: Coverage of regulations that include TICTM (linked to work–life balance)



**Notes:** Despite the existence of the national agreement on telework in Greece, which transposes the European social partner agreement, Greece has been ranked as low. This is because the overall use of telework and the practical application of this agreement at company level are considered to be low.

**Source:** Authors’ own compilation based on contributions from the Network of Eurofound Correspondents

The existence of legislation explicitly linking TICTM and work–life balance in Lithuania and Poland is ranked as ‘medium/high – no right to disconnect’, as this legislation applies to all workers but does not include the right to disconnect. Portugal is ranked as ‘high – no right to disconnect’ due to the additional presence of several sectoral collective agreements that are extended to the whole workforce. This is not the case in Lithuania or Poland, where negotiations on promoting telework to improve work–life balance are limited to company level and are not widespread.

In Belgium and France, levels of coverage are considered to be ‘very high – right to disconnect’ because although the legislation only applies to companies with more than 50 employees, these legislative provisions are supplemented with collective

agreements in almost all sectors. These agreements are extended to most of the workforce (and in many cases include the right to disconnect).

Spain is also ranked as very high. While the share of sectors with relevant collective agreements (which are usually extended) is lower, the legislation requires all employers to draw up protocols on the right to disconnect in the absence of a company-level agreement.

In Italy, although the law requires an individual agreement on the right to disconnect to be established between employer and employee, this only applies in the case of workers who hold a specific contractual status (smart workers). In addition, sectoral and company-level collective agreements are in place, which tend to be extended.

Sectoral coverage of such agreements is relatively 'high – right to disconnect'. In Luxembourg, the high level of coverage arises from the fact that national agreements are universally binding.

A high level of coverage is present in countries where collective agreements cover at least half of the sectors, and where extensions of such agreements are widespread and/or legislation covers a significant share of the workforce (such as France and Italy). Medium levels of coverage denote countries where collective agreements cover less than half of all sectors and/or legislation regulates TICTM and work-life balance for a more limited share of the workforce (e.g. Germany and the Scandinavian countries). Finally, low levels of

coverage can be found in countries without legislation linking provisions on work-life balance and TICTM, and where collective agreements are limited to a few companies (most eastern European countries, Ireland and the UK).

Due to the lack of precise information from each country on the number of companies or sectors included in these provisions, the classifications shown in Figure 6 should be interpreted with caution and be considered as an approximation. However, it is evident that there are currently significant differences between countries in relation to the level of coverage of provisions related to promoting and protecting workers in flexible arrangements using ICT.





# 4 Regulation on recording, monitoring and controlling working time

TICTM arrangements pose some challenges when it comes to recording working time. This problem is accentuated due to the blurring of working time and non-working time for some employees. However, recording working time is important as it can help to prevent some of the disadvantages of certain TICTM arrangements, such as long working hours.

The challenges relating to recording, monitoring and controlling working time can intersect with rights to privacy and data protection. In order to understand the existing legal provisions in this area, it is important to explore the requirements set out in existing EU regulation.

## Relevant EU acquis

The Working Time Directive only refers to the recording of working time in relation to the use of the opt-out provisions. In situations where the opt-out is used, it requires employers to keep up-to-date records of all workers who carry out such work (exceeding the 48-hour working time limit) and for such records to be placed at the disposal of the competent authorities. This directive is based on provisions in the EU treaties relating to health and safety<sup>5</sup> and therefore various articles of the OSH Framework Directive (89/391/EEC) are also relevant.<sup>6</sup> In addition, the Charter of Fundamental Rights of the EU provides that ‘every worker has the right to limitation of maximum working hours, to daily and weekly rest period and to an annual period of paid leave’.

On 14 May 2019, the European Court of Justice ruled that employers must establish systems to record working hours, with Member States individually responsible for determining the specific arrangements for the implementation of such systems (CJEU, 2019). The subject of the case was whether Spanish national law, which requires employers to monitor overtime work (but not working time in its entirety), sufficiently implemented the provisions of the Working Time Directive and the Charter. Although the Working Time Directive does not contain any specific provisions or impose obligations on the measurement or recording of

all working time, the CJEU considered the fundamental right to constitute a sufficient basis to require the implementation of time recording systems.

*The effectiveness of this fundamental right requires employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured*

(CJEU, 2019, par. 60)

The CJEU ruled that the current Spanish regulation did not provide employees with an effective means of ensuring that maximum weekly working time is not exceeded or that minimum daily rest periods are observed in all circumstances. It is considered that in order to effectively ensure the protections granted under the directive, Member States must require employers to establish an objective, reliable and accessible system that measures the duration of time worked each day by each employee. The court dismissed the objections by some governments that setting up such systems would be costly, stating that the Working Time Directive does not allow for purely economic considerations to take precedence over the safety and health of workers.

Following the judgement, national legislators must decide whether changes to national legal provisions are required as a result of the judgement, which becomes part of the EU acquis with regard to the implementation of the Working Time Directive.

In this case, the CJEU did not address any issues surrounding the implications of gathering significant amounts of data about the working time of employees and making this available to public authorities (where required or requested). Zahn (2019) considers that – depending on the interpretation of the impact of the judgement in individual Member States – employers may be allowed (or required) to exercise greater control and surveillance over the working time and rest breaks of their employees, for example through the use of smart technologies. This could have particular implications for teleworkers and remote workers who perform either some or all of their work from outside the employers’ premises.

<sup>5</sup> At the time of the directive’s adoption, Article 137 of the Treaty establishing the European Community; now Article 153 of the Treaty on the Functioning of the European Union (TFEU).

<sup>6</sup> Articles 4(1), 11(3) and 16(3).

## Relevant national regulations

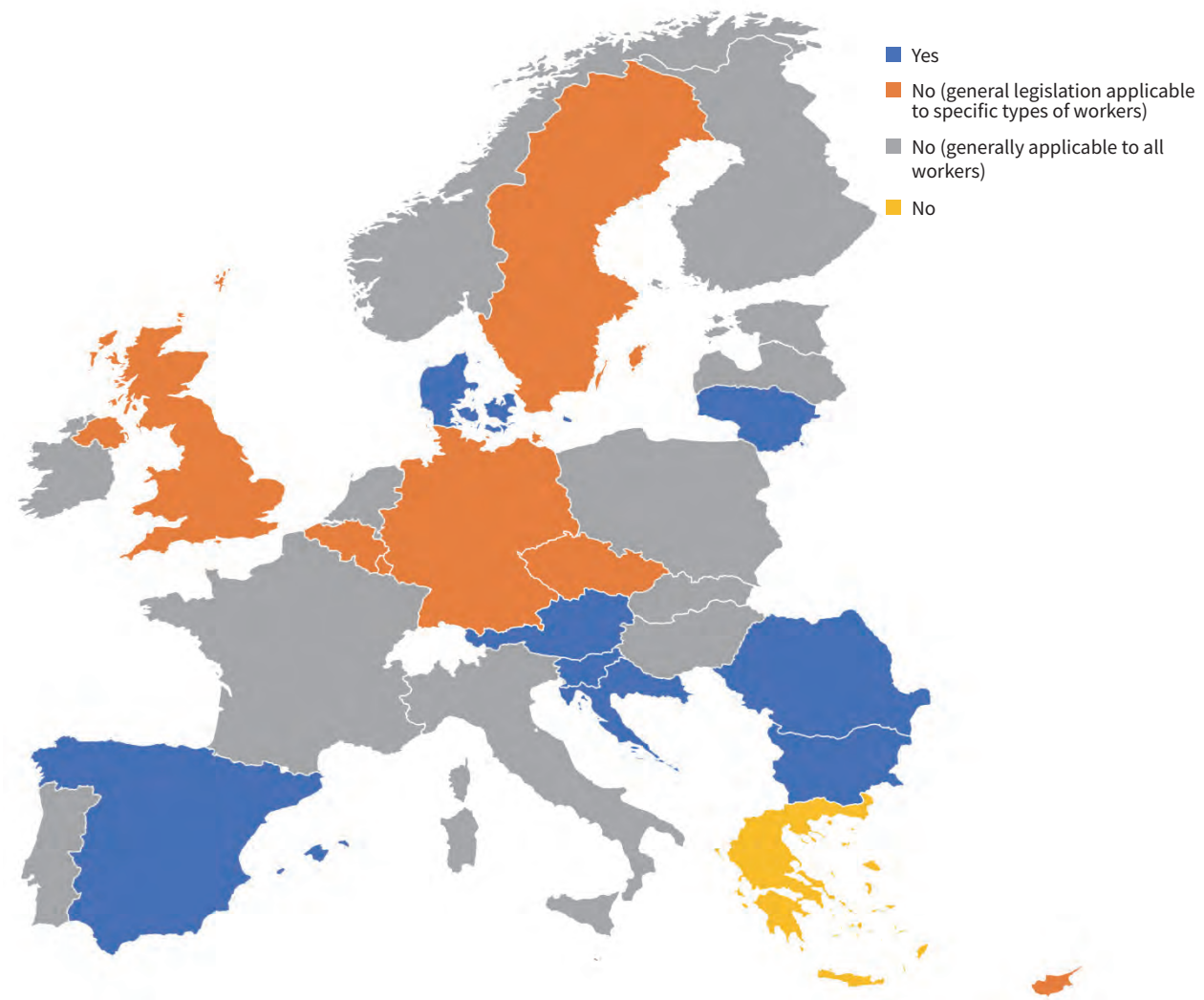
Figure 7 and Table 1 provide a brief overview of the legislation that is currently in place in the EU27, Norway and the UK to govern the recording, monitoring and controlling of working time for remote workers (as of 2019).

This demonstrates that at present, Greece is the only country without specific legislation that requires working time to be recorded. Seven countries have such legislation, but only for specific workers (Belgium, Cyprus, Czechia, Germany, Luxembourg, Sweden and the UK). A further 12 countries have legislation that applies to all workers, without making specific reference to teleworkers or remote workers (Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Slovakia and Norway).

In France, specific rules govern the working hours of teleworkers and remote workers. However, these rules do not include provisions on recording working hours. Instead, the working time of such employees can be calculated through the ‘forfeit-jours’ system, which uses the number of days worked per year rather than number of hours worked per day. The use of this system must be accompanied by provisions regarding the right to disconnect.

Only nine countries have specific provisions for recording the working hours of teleworkers and remote workers (Austria, Bulgaria, Croatia, Denmark, Lithuania, Malta, Romania, Slovenia and Spain). In Denmark, this is primarily through a cross-sectoral collective agreement, with additional legislation stipulating the application of data protection rules in such situations.

**Figure 7: Presence of legislation to record and monitor the working time of remote workers, 2019**



Source: Authors' own compilation based on contributions from the Network of Eurofound Correspondents

In Austria, Bulgaria and Romania, these provisions stipulate that the teleworker is responsible for recording their working time and submitting this information to the employer. In Austria, working time legislation allows such workers to record only the hours worked rather than precise start and end times. The Bulgarian legislation explicitly states that while it is the responsibility of the employee to record their working time, the employer needs to provide them with a relevant template format. It is generally up to each workplace to determine how this information should be transmitted.

This is also the normal practice in Croatia, while in Lithuania, remote workers usually record their hours on timesheets (like most office-based workers). Lithuanian legislation stipulates that such workers shall allocate their working time at their own discretion, without violating the maximum working hours and respecting minimum rest periods. The Slovenian Employment Relationships Act requires the employer to keep a record of the working time of remote workers. There are no specific provisions on how this is to be collected, with such systems usually determined at individual workplace level.

Spanish law requires an agreement to be in place between the remote worker and the employer, detailing rights and obligations about recording and monitoring working time. The law recognises the obligation of teleworkers to allow the employer to direct and organise their work, which may imply a possible violation of workers' right to privacy.

In Malta, the Telework National Standard Order allows the employer to put in place proportionate monitoring systems in line with the requirements of the Council directive regarding work with visual display units (90/270/EEC). What is considered to be proportionate is not defined further. Stipulations regarding the control of working time (and the suitability of the workplace) are also included in Romanian legislation, which states that the employer has the right to control working time, including through pre-announced visits to the employee's home.

In Denmark, the implementation of GDPR rules allows the employer to log who an employee communicates with and when (on ICT-based devices issued by the employer). Employers are also entitled to access GPS tracker data in a company car, which can provide information on the timing and location of journeys. Any messages that are sent on company devices and marked as 'private' cannot be accessed.

This section has shown the differences between countries discussed in terms of legislation on recording, monitoring and controlling the working time of remote workers. Unlike the patterns seen with the legislation on the right to disconnect, the existence – or otherwise – of provisions does not follow any specific clustering related to industrial relations traditions. Therefore, not only are there differences between countries in relation to the share of employees working remotely or in their free time, there are also differences in the provisions enforcing the recording of working time in national legislative frameworks. It is important to highlight that there is still a large number of countries without specific provisions on recording, monitoring and controlling working time while working remotely.

**Table 1: Legislation governing the recording of working time for teleworkers and remote workers**

Country	Specific legislation	Details
Austria	Yes	In the case of remote work, the Federal Act on the Organisation of Working Time (AZG) provides for the possibility that the remote worker only records the duration of their daily working hours instead of the exact start and end time of each working day.
Belgium	No (general legislation for specific types of workers)	Mainly for workers on flexible hours (with core and flexible hours) under the law on feasible and flexible work of 5 March 2017.
Bulgaria	Yes	Section VIIIb of the Labour Code provides additional conditions on remote work. Article 107h paragraph 8 of the Labour Code specifies that in the individual or collective agreement, or internal regulations, the employer may adopt rules to define the assignment and recording of remote work, as well as the nature, quantity, results and other features of the remote work, which are important for recording and reporting purposes. Article 107 paragraph 5 stipulates that the employee is obligated to record the hours they work and the employer is obligated to provide a document template for this purpose. The regulation does not specify frequency or method.
Croatia	Yes	Article 17 of the Labour Act (OG 93/14 and 127/17) defines the option to work in an alternative workplace (including telework). In addition, the ordinance on content and means for keeping records of workers (OG 73/17) specifies the recording of working hours.

Country	Specific legislation	Details
Cyprus	No	Article 7(4)(c) of the Organisation of Working Time Law (63(I)/2002). Only over 48 hours.
Czechia	No (general legislation for specific types of workers)	Section 96 of the Labour Code (Act No. 262/2006 Coll.) only applies to specific types of work (stand-by, night work, shift work, etc.).
Denmark	Yes	The GDPR applies in Denmark, which means that an employer can lawfully log who employees communicate with and when, as well as access GPS tracker data from a company car. However, if an email or SMS from a work phone is clearly marked as private then this cannot be monitored.
Estonia	No (generally applicable to all workers)	Section 28 of the Employment Contracts Act.
Finland	No (generally applicable to all workers)	Section 7, paragraph 37 of the Finnish Working Hours Act (605/1996).
France	No	Articles L2242-17 and L3121-56 of the Labour Code.
Germany	No (general legislation for specific types of workers)	Section 16(2) of the Working Time Act (if over eight hours per day).
Greece	No	
Hungary	No (generally applicable to all workers)	Section 134, sub-section 1 of Act I of 2012 on the Labour Code.
Ireland	No (generally applicable to all workers)	Statutory Instrument 473/2001, Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001.
Italy	No (generally applicable to all workers)	Article 39 of Law 133/2008.
Latvia	No (generally applicable to all workers)	Section 137 of the Labour Law.
Lithuania	Yes	According to Article 52 part 5 of the Labour Code of the Republic of Lithuania, 'in the case of remote work, the hours worked by the employee shall be calculated in accordance with the procedure established by the employer. The employee shall allocate working time at his or her own discretion, without violating the maximum working time and minimum rest period requirements'. Time sheets are usually used to record working time.
Luxembourg	No (general legislation applicable to specific types of workers)	Article L. 211-29 of the Labour Code. All hours exceeding the normal working time, hours worked on Sundays, hours worked on public holidays and night work.
Malta	Yes	Article 5(2) of the Telework National Standard Order (2008) indicates that 'the employer may only put in place any kind of monitoring system if (a) this is agreed to by both the employer and the teleworker in the written agreement on telework as provided in Article 3(5), and (b) such a monitoring system is proportionate to the objective and is introduced in accordance with Council Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment'.
Netherlands	No (generally applicable to all workers)	Article 4:3 of the Working Hours Act.
Poland	No (generally applicable to all workers)	Article 94 paragraph 9a of the Labour Code.
Portugal	No (generally applicable to all workers)	Article 202 of the Labour Code.
Romania	Yes	Law no. 88/2018. The employee is obliged to record the start time and the end time of the activity. The employer has the right to control working time, including through pre-announced visits to the employee's home.
Slovakia	No (generally applicable to all workers)	Article 99 of the Labour Code (Act No. 311/2001).
Slovenia	Yes	The Employment Relationships Act (ZDR-1). The employer must keep a record of working time on a daily basis for remote workers.
Spain	Yes	Royal Decree-Law 3/2012 does not regulate how to carry out the monitoring and control of remote workers or its limits regarding rights to privacy. Instead, the law suggests that there must be an agreement in each company so that the potential remote workers know what their exact obligations and rights are.

Country	Specific legislation	Details
Sweden	No (general legislation applicable to specific types of workers)	Paragraph 11 of the Working Time Act, relating to on-call and overtime work.
Norway	No (generally applicable to all workers)	Section 10-7 of the Working Environment Act obliges all employers to keep an account of the hours worked by each employee.
UK	No (general legislation applicable to specific types of workers)	Regulation 9 of the Working Time Regulations 2002/3128. Employees working more than 48 hours, doing night work, etc.

Source: Authors' own compilation based on contributions from the Network of Eurofound Correspondents



## 5 Measures implemented during the COVID-19 health crisis

As mentioned in Chapter 1, the prevalence of remote work arrangements and more specifically home-based telework has dramatically increased during a short period of time in all European countries. Different sources show that at least 30% of jobs in Europe can be done via telework (JRC, 2020). An estimated 37% of employees have started teleworking because of the COVID-19 pandemic (Eurofound, 2020a).

Some of the positive and negative effects of remote work arrangements have already been experienced by workers for whom telework has been possible. Among the negative effects are the risks associated with constant connectivity. Moreover, specific situations like school closures, perceptions of job insecurity and levels of anxiety related to the new work and life environment might play a role in the work–life balance and mental well-being of employees working remotely during the COVID-19 crisis.

During this crisis, governments and companies have encouraged workers to telework if it is possible. There are several motivations for this, which are not limited to business continuity and keeping economies running. Apart from health reasons (preventing the spread of the virus), telework helps facilitate work–life balance in times of school closures and allows employees to maintain their employment.

This sudden shift to home-based telework for such a large number of workers would not have been possible without the initiatives taken by governments to enforce and/or facilitate the implementation of this arrangement. Several countries have done this based on a state of emergency, which has modified legislation related to telework on a temporal basis. In a few countries these modifications have been accompanied by subsequent implications for health and safety or working-time measures. In countries where there have not been substantial legislation changes, telework has been recommended but not required.

In general, in response to the COVID-19 pandemic, teleworking measures have been implemented in two main ways: in some countries either the employee or employer can request a telework regime, while in other countries the decision rests completely with the employer. For most of these countries, working from home has been made possible without the need for a collective or individual agreement. In these cases, the voluntary principle, which is typical of flexible work arrangements (especially working from home), has disappeared for the first time.

As teleworking has increased, the right to disconnect has received renewed attention from governments and social partners, especially in countries where there were already legislative provisions or legislative proposals and debates on the topic.

Regardless of how measures have been implemented, the result has been similar in most countries: telework arrangements have expanded.

In relation to modifications in working time, in **Slovakia**, while the worker is operating from home, the employment relationship is not subject to the provisions on the schedule of weekly working hours, daily and weekly rest, and idle time. No wage supplements are paid to the employee for overtime and night work or for working on weekends, unless the employee and the employer agree otherwise. As for modifying health and safety while teleworking, in **Austria**, accidents at work include accidents that occur at the place of residence of the insured person (home office). The provisions make it clear that insurance coverage includes accidents that occur in temporal or causal connection with a work activity at a worker's place of residence. These provisions apply retroactively to all accidents that have occurred in home offices since 8 March 2020. Accidents on the way to or from the home office are also covered under these provisions. In **Spain**, the obligation to carry out a risk assessment is fulfilled through self-evaluations carried out voluntarily by the workers themselves. These modifications try to reinforce the protection of workers while teleworking and represent new initiatives in national contexts.

More closely linked to work–life balance is the new emphasis on the right to disconnect. In the four countries with this right spelled out in regulations, the governments and/or social partners have pointed to the importance of existing regulations. Moreover, the requirement of having a collective or individual agreement disappears and therefore workers 'obliged' to telework have the right to disconnect regardless of the existence of a previous agreement. This approach aims to improve the work–life balance of workers with caring responsibilities, enabling them to work at the same time.

Legislative proposals regarding the right to disconnect have also been tabled in the Netherlands and Portugal without further progress to date. The increase in telework resulting from the pandemic has brought the debate to the fore for example in Germany, where the Minister of Labour recently indicated an intention to publish legislation on remote working which might address the accessibility issue by the autumn of 2020.

Finally, in a number of countries (including Belgium, Denmark, Finland, France, Ireland, Latvia, Luxembourg, the Netherlands and Spain) it has been reported that

the government or social partners have issued guidelines and recommendations for implementing telework including the right to disconnect or addressing disconnection-related issues.

In summary, in the wake of the COVID-19 pandemic and the expansion of telework there has been a growing concern among governments and social partners (mainly trade unions) in some European countries about the way telework arrangements are implemented and to some extent the problems related to the right to disconnect.



## 6 Conclusions and discussion

The ability to work at anytime from anywhere using ICT tools has significantly enhanced flexibility for employers and employees. The trend towards more ICT-based flexible work is driven both by employees striving for a better work–life balance and by employers seeking greater flexibility. However, in the context of an ‘always on’ culture, the growing use of ICT in the workplace has contributed to a blurring of the boundaries between work and private life. If this is not explicitly addressed, it threatens to override the advantages that ICT-based flexible working brings to work–life balance. In this context, existing regulations should promote the benefits of TICTM (for example, a better work–life balance) while also protecting workers against its downsides (for example, through protective initiatives like the right to disconnect). In relation to this, some conclusions are discussed in this chapter.

### **Countries differ in how they promote and protect work–life balance**

Scandinavian countries have been addressing the flexibility of work and work–life balance for some time, mainly through collective agreements at sectoral and/or company level, and the issue does not seem to be high on the agenda at present. Countries in southern and western Europe (Belgium, France, Italy and Spain) have passed legislation with provisions including the right to disconnect, but the terms are defined by sectoral or company-level collective bargaining. In countries in central Europe (such as Germany), the issue is mainly discussed and regulated at sectoral level. In general, central-eastern European countries rely on legislation to regulate TICTM and work–life balance and only a small number of companies include specific agreements on this topic. The right to disconnect is generally not included in the regulations.

In conclusion, employees across Europe have different levels of access to flexible working arrangements and the right to disconnect. The proportion of the working population that is covered by regulations related to TICTM and work–life balance also varies. It can therefore be said that there is a regulatory divide across Europe in terms of the promotion of TICTM and the protection of workers against its downsides.

### **Companies’ reluctance to implement TICTM limits potential work–life balance benefits**

Despite the potential advantages of TICTM, companies in some countries continue to have reservations about the feasibility of using (specific forms of) telework. This is demonstrated primarily in the implementation of telework regulations at company level. Such regulations

have shown that formal telework options can remain limited to certain groups of workers. Even where feasible, access to telework is rarely an entitlement and is often set within specific parameters. Telework agreements or policies at company level often refer not only to the suitability of the job/task, but also of the individual for such arrangements.

### **Changes in European legislation could help to address challenges of work–life balance and health of remote workers**

Existing European-level provisions help to govern the working conditions of TICTM arrangements. For example, the Working Time Directive sets maximum limits for working time and requires fixed rest periods. The Work–Life Balance Directive is set to give specific groups of parents and carers the right to request remote working. The Transparent and Predictable Working Conditions Directive aims to provide greater certainty for workers regarding their assignments and working patterns. However, evidence shows that those provisions related to working hours, rest periods and recording working time are more difficult to implement in certain TICTM arrangements. Because of that, the work–life balance and health of some workers is negatively affected. The differences between the EU27, Norway and UK in terms of regulations to promote and protect remote workers is also a consideration. Therefore, further changes in relation to European-level provisions might be required in order to tackle the downsides of TICTM arrangements on a consistent basis across Europe.

### **Solutions to improve the work–life balance of remote workers must take account of different working environments**

The findings of this report suggest that there might be a need for provisions that offer employees the right to disconnect from their work-related digital devices. However, the tension between the benefits and drawbacks of TICTM for work–life balance is also reflected in the debate around the right to disconnect. Applying the same rules and processes to everyone could undermine the potential work–life balance benefits of ICT-enabled flexible working. In this regard, it should be noted that a ‘right to disconnect’ is different from ‘the obligation to disconnect’; such rights can be adapted to different individuals, organisational characteristics and sectoral characteristics. This is the case in France, where the terms of such rights are agreed at company level.

### **National legislation on the right to disconnect has some positive aspects**

Four Member States (Belgium, France, Italy and Spain) have chosen to protect ICT-based flexible workers with a right to disconnect, which needs to be implemented either through a collective or individual agreement. Such agreements have helped raise awareness of the impact that an ‘always on’ working environment can have on work–life balance and worker health and may ease the enforcement process. In addition, the adoption of such measures appears to have led to a growth in sectoral and company-level agreements on the issue, which improves the coverage of both promoting and protective approaches. In principle, this could be a positive move towards ensuring healthy working time and a good work–life balance for workers.

However, many of the regulations regarding the right to disconnect are relatively recent (the first was in France in 2017). It is therefore not surprising that there is a lack of evidence around both their implementation and their impact on work–life balance, and workers’ health and well-being. It is clear from this report that there is a need to assess the extent to which the right to disconnect enhances the work–life balance and health of employees with TICTM arrangements. This assessment should also take into account the fact that existing working time legislation already puts some limits on working time duration.

### **Recording remote working time can contribute to a good work–life balance, but it is only regulated in nine countries and issues persist about the difference between working and non-working time**

Effectively recording and monitoring working time can contribute to the enforcement of working time legislation; in turn, this can enhance the work–life balance and health of workers engaged in TICTM. Evidence shows that there are different situations in relation to the existing legislation, with some countries having specific provisions and others having generic provisions or none at all. Further discussion is therefore needed about what constitutes working time and rest periods in the context of TICTM. The issue of respecting worker privacy, when working time is being recorded and monitored, must also be addressed.

### **Workload must come to the forefront of debates and solutions related to the downsides of TICTM**

The spatial and temporal flexibility offered by ICT tools can lead to long hours in work environments and high workload levels. To balance the benefits and downsides of TICTM, a broader debate may be needed about the question of workload, what is achievable within the contractually prescribed (and/or legally available) working days, and unpaid overtime. The question of workload also needs to be considered in the context of

the right to disconnect, as it can be argued that measures to achieve disconnection are only beneficial for work–life balance and overall health and well-being if they are linked to an achievable workload. The main obstacles preventing European workers from having a good work–life balance are long working hours, unpredictable working conditions, and demanding and exhausting jobs.

### **Risks of not tackling the downsides of TICTM go beyond work–life balance and health**

TICTM arrangements can create situations in which some workers try to limit their working hours in order to protect their work–life balance and health, while others wish to work in their unpaid free time. Workers who limit their working hours could be seen as less productive, which could have a negative impact on their careers. They could also feel under pressure to work in their free time.

At company level, some companies strictly govern working time and rest periods by, for example, enforcing the right to disconnect. However, companies that do not have such a policy in place – and therefore do not address the issue of staff working in their free time – could have a competitive advantage. The same reasoning could apply at European level, as some countries implement the right to disconnect while others do not.

The expansion of telework during the COVID-19 crisis has led to growing concerns related to TICTM work environments.

For the first time in the history of Europe almost half of the population is working virtually in some countries. Virtual work has its benefits because it allows business continuity and work and life conciliation in some cases. However, there are also risks. It is likely that the number of workers with flexible work arrangements (such as working from home) will increase and remain higher than in the pre-COVID-19 era. The main reasons for this will be that after a period of adaptation, the cultural, technological and social barriers for further developing these arrangements will decrease. For example, in some cases employer resistance will disappear if it becomes clear that flexible work arrangements (especially if combined with some physical presence at the workplace) have a positive impact on productivity and work–life balance. Importantly, working conditions should be monitored and related issues tackled by policymakers.

With the expansion of remote working, the concerns raised about work–life balance, mental health and connectivity become more visible and governments and social partners have started to put more effort in addressing them.

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Developments in information and communication technology (ICT) have been among the key drivers of change in working life over the past two decades. Specifically, telework and ICT-based mobile work (TICTM) exemplifies how digital technology has led to more flexible workplace and working time practices. However, the ability to work anywhere and at any time can lead to greater work intensification, competition and work-on-demand. If this is not explicitly addressed, it threatens to override the advantages that ICT-based flexible working brings to work–life balance. As part of Eurofound’s extensive research into the impact of TICTM on working conditions and on work–life balance, this report aims to provide policymakers with ways to address new challenges in the world of work and to serve as a reference for future initiatives in relation to digitalisation, working time and work–life balance.

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