



Working conditions

Right to disconnect: Exploring company practices – Case studies

[Right to disconnect: Exploring company practices](#)

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Banking sector: Spain

Introduction: The banking sector

At present, the banking sector in Spain employs around 195,000 workers (51% women)¹. There are three sectoral collective agreements, one for each employers' organisation: the agreement with the National Bank Association (AEB) covers some 90,000 workers; that of the Spanish Confederation of (former) Saving Banks² (CECA) 80,000 and the National Union of Credit Cooperatives (Unacc) some 15,000 workers³. In Spain, collective agreements have automatic legal effect and apply to all companies and workers of the sector, not only those affiliated to the signatory trade unions and employers' representatives. The most representative trade unions are Comisiones Obreras (CCOO), Unión General de Trabajadores (UGT) and Federación Fuerza Independencia Empleo (FINE), which make to 82.9% of workers' representation in the sector. Together with the mentioned employers' representatives, they are the Parties in the agreements.

The sector has experienced a noticeable downturn after the financial crisis in 2008, where it employed 270,000 workers. Moreover, at present, the transformation driven by digitalisation, coupled with low interest rates, low profitability and the Covid-19 crisis, are prompting cost saving measures, bank mergers and collective dismissals: 21,000 redundancies are expected in 2021. This has resulted in increased efficiency, so that the Spanish bank sector is, according to the European Bank Association, the sixth more efficient in the EU in 2020⁴. This may also have resulted, according to trade unions, in increased labour intensity, stress and insecurity. According to a one-off survey among banks and saving banks on "Conciliation, climate and labour security"⁵ conducted by the trade union FINE on 1,465 bank workers, work overload had caused 84% of employees in the sector to occasionally suffer sleep disorders, anxiety or stress. For 42.7% of workers, the number of hours worked would not allow them to balance work and family properly. This survey was conducted in 2018, thus before the agreement on registration of working hours (see next section), This data could not be contrasted with official data on sick prevalence or leaves for the sector.

Before the Covid-19 crisis, only 5% of workers in the sector worked remotely or from home, which increased to 70-80% within only a few days at the onset of the pandemic crisis as part of protection measures among central services. However, bank branch offices, less prone to remote work due to the presential relationship with clients, have remained closed to a some extent, since bank services are considered essential services. The general assessment of the massive remote work experience provoked by Covid-19 is positive, in terms of the attitude and commitment of employees although

¹ Data by sex based on LFS data (4Q2020) for the activity Financial services (64 NACE) provided by the National Statistics Institute.

² Following the financial crisis, almost all former saving banks were transformed into Banks, but they are still grouped in the CECA.

³ Data provided by UGT interviewee.

⁴ Efficiency is measured as the difference between costs and revenues (in %). As reported in https://cincodias.elpais.com/cincodias/2020/12/11/companias/1607714169_289185.html

⁵ Survey "*Conciliación clima y seguridad laboral*", conducted online in the period 1 to 25 February 2018; the responses were anonymous. It was made among workers from banks and saving banks: Abanca, EspañaDuro, Unicaja, Banco Sabadell, Liberbank, Banco Santander, BBVA, Ibercaja, Ceca, CaixaBank, Caixa Ontinyent, Bankia, Banco Castilla La Mancha, Evo Banco, Novanca, Banco Pichincha and ING. More at https://www.federacionfine.es/recursos/secciones/FINE/documentos/ENCUESTA_GRAFICOS.pdf.

with increased stress; trade unions claim moreover that closure of bank offices has contributed to reduced costs.

The R2D in Spain and in the banking sector: a brief overview

In Spain, the R2D was first introduced in Organic Law OL 3/2018, of 3 December, for personal data protection and guarantee of digital rights, in its article 88. This article contains a generic reference to collective bargaining (or agreement between employer-workers' representation) and states that it should be used to implement the R2D. Thus, the employer should design an internal policy defining the R2D and the measures adopted to implement it. Later, following declarations made in January 2019 by the General Attorney of the European Union on the need of Spain to set up a record of working hours to comply with Directive 2003/88 on Working Time, Royal decree Law 8/2019, of 8 March, with urgent measures for social protection and the fight against labour precariousness, included the obligation of companies to record working time of their employees with the aim of avoiding unpaid overtime. In May 2019, the EU High Court ratified it. This RDL 8/2019 has modified article 34.9 of Workers' Charter. More recently, RDL 28/2020, of 22 September, on remote work, completes Spain's legislative approach to the R2D. RDL 28/2020 regulates distance work as the work done remotely during at least 30% of working time and it states that it shall be based on a reversible voluntary written agreement for both the worker and the company. Article 18 refers to the R2D specifically in the context of partial or total remote/homeworking making use of digital devices, and refers to collective agreements to set up the conditions that guarantee the R2D.

Workers in the banks represented by the Spanish Bank Association (AEB) are governed by a new collective agreement signed the 29 January 2021 and valid for the period 2019-2023⁶. It has been updated two years after the former collective agreement expired, which reveals the difficulties of negotiators in the above-mentioned context. This new collective agreement includes a partial agreement (as opposed to the global collective agreement) that had been reached earlier in January 2020 on the recording of working time for the banking subsector, responding to the obligation stated in RDL 8/2019, which includes also the R2D. The new agreement regulates also remote/home-based telework, as required by RDL 28/2020 on remote work.⁷

The representation of (former) saving banks, CECA, has signed the renewed collective agreement for 2019-2023 in November 2020 (with almost two years delay, as the former agreement expired the 31 December 2018). This new collective agreement includes also a partial agreement on the recording of working time reached in October 2019, which includes the R2D as well; the new agreement also regulates remote/home-base telework.

⁶ At the time of closing this report (end February), the text of the signed banking sector collective agreement was not yet available, but some information has been communicated by the signatory trade unions (see <https://www.ugtbankosantander.es/2021/01/hemos-firmado-el-xxiv-convenio-colectivo-de-banca/> and <https://www.ccoo-servicios.es/html/50853.html>). It is due to be published in the Official Gazette withing the next weeks.

⁷ In the credit cooperatives subsector, the collective agreement, due to expire in December 2018, has been postponed and no new agreement has been yet reached, but a partial one on the recording of working time and the R2D.

Rationale for introducing the R2D in the banking sector

The introduction of the R2D in the banking sector has been motivated mainly by national legislation described above. While the 2018 organic law for personal data protection, containing art 88 on the R2D, did not prompt any specific agreement in the sector, the RDL 8/2019 of March 2019 on the recording of working time did. Indeed, the two employers' associations (banks and saving banks) and trade unions have reached partial agreements on the recording of working time in 2019 and 2020. Moreover, the recent RDL on remote work has also led to the inclusion of a specific article 14 on remote work in the collective agreement of the savings bank subsector and of a specific part in the new collective agreement of the banking subsector. Indeed, the R2D is essentially intertwined with remote/homework and the recording of working time.

Presenteeism is traditional in the banking sector, and it adds to increased workload pressure since the 2008 financial crisis and the reduction of employees that followed. Trade unions claim that it was common practice for meetings or compulsory training to be organised outside normal working time, as was receiving calls or messages asking for action after the end of the working day. The Agreement on the recording of working time signed in the banking subsector (AEB) aims at “promoting a working culture based on efficiency and results of employees, avoiding presenteeism and permanence at work beyond the established working time”. Indeed, although diminishing, unpaid overtime is frequent in the sector, according to trade unions. The need to sensitise and empower workers on their right to disconnect, including staff with responsibilities over employees, is also behind the inclusion of the R2D in the agreements reached.

The pandemic crisis has served as a stress test of massive remote/home-based work that has showed that it is effective. It has contributed to prove that employees are able to self-organise their working time and that they are committed. Nevertheless, it has also shown that an effective implementation of the R2D is needed, since communication and work outside normal hours has been frequent during the lockdown, particularly in the initial moments. This was so, because the decision to work from home had to be adopted very quickly, without much time for adopting adequate guidelines, which resulted in initial confusion.

Concerns about the impact of overconnectivity on worker health, through technological fatigue and stress, on work quality and environment are behind the inclusion of the R2D both in the banking and saving banks subsectors. As argued above, some studies suggest that stress is prevalent in the sector. Additionally, the R2D is seen as necessary for adequate balance between labour and personal life.

Negotiating process and coverage

The negotiation processes on the R2D in the sector have been complex, not so much because of the difficulties to reach agreements specifically on the implementation of the R2D, but rather because the deteriorated environment following the 2008 financial crisis and the current expectation of 21,000 redundancies during 2021. Both in the saving banks and banking subsectors, the respective collective agreements have been renovated only recently (November 2020 and January 2021), and with a delay of two years.

Given these general difficulties, in the two cases, partial agreements on recording working time were negotiated in 2019 which include the R2D. The two agreements are almost identical. No major difficulties have been encountered in the negotiation on the R2D, although trade unions would have

preferred the R2D to be an obligation, not only a right. Some frictions did emerge as regards the recording of working time: while trade unions wanted the recording of working time be automatic during the time the employee is logged in the system, the employers' side wanted the employee to actively register the entry and exit time. This latter option, the one eventually adopted, places pressure on the employees, since working overtime needs to be authorised by a superior, as the two agreements state (see different implementation ways in different banks in next section); this means that reaching objectives may mean that the employee works longer without it having been authorised, according to trade unions. Even if these hours are recorded, they would not be paid or compensated for with rest time, unless the worker reports it to the justice. The conversations between workers and their superiors about the authorisation of overtime are heavily conditioned by the bank's general objectives, that are fixed at the highest level, which may put pressure on the whole staff structure (employees, line, medium, high managers); conversations are also conditioned by the exceptionality nature of overtime⁸.

Another contentious element refers to employees often working remotely, such as inspectors, who need to travel and stay overnight in other cities. The record of their working time whilst on mission is adjusted to their theoretical working schedule, with a note stating "business trip"; travel time and overtime (frequent in these situations according to trade unions) is usually not recorded.

Content and implementation of the agreements

As mentioned above, the R2D is embedded, in the two cases -the banking and saving banks subsectors- in the respective partial agreements on the recording of working time signed in both cases at the end of 2019.⁹ The content of the two agreements on the recording of working time and the R2D is very similar¹⁰.

Thus, a system must be set up for all workers to compulsorily register daily the beginning and end of their working day, but higher management staff are excluded from this obligation, as explicitly allowed in the two partial agreements¹¹. IT tools or *apps* have been developed, so that employees

⁸ Additionally, article 35.2 of Workers' Charter states the limit of 80 hours a year of paid overtime. It does not set a limit for the number of hours compensated for with rest time within the next four months.

⁹ While in the case of the bank subsector, the R2D is developed in detail in this agreement, in the case of the saving banks subsector, only a generic definition of the R2D is included and a commitment to include a detailed development in the collective agreement. In this latter case, the R2D is adopted as an additional disposition to the agreement on the record of working time signed in October 2019. The R2D is further developed in art 15 of the Collective Agreement signed shortly after, in November 2019.

¹⁰ In the bank subsector, the wording used is "the right to digital and labour disconnection" (*derecho a la desconexión digital y laboral*) while in the saving banks subsector it is "the right to digital disconnection in the labour context" (*derecho a la desconexión digital en el ámbito laboral*). While these different wordings would suggest different approaches (i.e. a right also to labour disconnection not related to digitalisation in the first case, but only related to digitalisation in the second case), the fact is that the development is almost identical in the two cases.

¹¹ In the bank sector agreement, high management staff is General Director, Managing Director of the Company, Deputy Director General, Inspector General, Secretary General and others of a similar nature. These persons are usually excluded from working time regulations. The saving banks' agreement does not specify what high management staff is. In the specific case of Bank of Sabadell, its agreement excludes: the General Management, the Corporate Management, the TOP Directors and those workers' representatives who are in a situation of union release, it being understood that their working day has been completed for the purposes of the recording of working hours.

can register their daily working time by themselves in any of the digital devices the company has made available to them. Companies would elaborate guides to help workers to properly record their working time and, in the case of the banking subsector, companies should implement in parallel measures that guarantee the R2D. Companies are to regulate in each case how to treat registered overtime or undertime, i.e. in which cases and conditions overtime is paid or compensated for with rest time.

The companies in the two subsectors should make available monthly to trade unions or workers' representation the information on the recording of working time (in an excel spreadsheet or similar). A parity monitoring commission should meet at least twice a year. A specific parity Sector Observatory is included in the collective agreement signed in the saving banks subsector, which shall analyse and monitor the agreement and, among others, best practices regarding flexible working day or digital developments.

In both cases, the approach to the R2D is a "soft" one and the onus to disconnect largely lies on employees: employees have the right not to respond to messages sent through all digital devices made available to them by the company outside their working hours and rest times, apart from in exceptional circumstances. These exceptional circumstances must be justified and relate to situations that can seriously harm the company or some persons and that require immediate action. The R2D cannot lead to sanctions and cannot harm the professional career of the employees. The following measures are recommended (as good practices in the saving banks subsector): i) program of automatic replies during leave periods, communicating the time and replacement person; avoid meetings and training outside the normal working time of the employee; ii) call for meetings with sufficient notice (48 hours anticipation in the saving banks subsector), with beginning and end time and with content of the meeting with the aim to allow due preparation and to avoid longer than needed meetings; iii) promote the setting of the option of delayed sending of mails if this takes place after the end of the working day; iv) promote the use of video and audio calls that reduce unnecessary displacement during the working day; v) it is considered that, in general, meetings shall not end after 7 pm.

Further, companies should develop information, training and awareness raising measures on the R2D and on the adequate use of digital devices (in particular for line management in charge of teams, in the case of the banking subsector).

Banks and (former) saving banks are well aware of the current legislation of the R2D and on the record of working time. The agreements reached have been disseminated among the respective companies in the two subsectors through the usual communication channels of employers' representatives; they have also been published in the state official gazette, as all such agreements are. The record of working time has been adopted by all companies in the banking sector, as it is compulsory following RDL 8/2019.

The AEB or CECA have not prepared any specific training material for the companies in the sector, but the Ministry for Employment has published one for the whole economy¹². However, at company level, at requested in the RDL 8/2019, companies have elaborated guides to inform workers about the contents of the specific company agreements (when such an agreement has been reached), about the mechanisms to record their working time with IT or app devices made available or about

¹² Available at <http://www.mites.gob.es/ficheros/ministerio/GuiaRegistroJornada.pdf>

the treatment of overtime or undertime. Trade unions, on their side, have used their own communication platforms, as well as the spaces in the companies' intranets made available for these purposes, both at sectoral and at company level. They have included FAQ sections on their web pages to answer questions raised by employees¹³.

At company level, the most contentious element of the agreements regards the recording of working time and specifically the treatment of overtime or undertime (made both presently or remotely): since overtime needs to be explicitly authorised, when this is the case, the employee and the manager need to agree whether this overtime is paid¹⁴ or compensated for with free time; when, on the contrary, the overtime has not been authorised, then it is usually registered as “non-requested and non-authorised working time”. In the case of Caixabank, for example, in the saving banks subsector, the Human Resources (HR) department would check whether overtime occurred because of deficient time management or because of work overload. Conversations of HR staff with the employee and the superior would be held to clarify this and to decide whether the registered overtime would count as working time and would need to be compensated or whether other actions (organisational issues) need to be adopted¹⁵. In the case of Sabadell Bank, in the banking subsector, recorded occasional overtime (less than a complete workday) can be compensated for with undertime within the next days; the compensation for authorised overtime needs to be agreed upon by the employees and manager and compensated for with rest time up to four months later.

As mentioned above, the conversations between Human Resources staff, workers and their superiors about overtime are heavily conditioned by the banks' objectives, that are fixed at the highest level, which puts pressure on the whole staff structure (employees, line, medium, high managers); these conversations may also be conditioned by the -at least theoretical- extraordinary nature of overtime.

In some cases (Bank Sabadell or Bank Santander), a specific mailbox has been made available, jointly managed by the bank and trade unions, for employees wishing to report bad practices or pressures¹⁶. In this context, the main challenge, according to trade unions, is to both make employees aware and empower them, including line managers, on the need to avoid working longer hours, either in presence or remotely.

Provisions on the recording of working time and the R2D are very similar in the company agreements, although with some variations. Caixabank, for instance, has included the R2D, with a content almost identical to the one included in the sectoral agreement, in its Gender Equality Plan¹⁷.

¹³ See as examples <https://www.ugtbancosantander.es/2020/06/registro-de-jornada-dudas-sobre-el-primer-mes-de-su-aplicacion/>, <https://secbcaixabank.info/hojas/qr-guia-registro-horario/> <https://www.ccoocaixabank.net/www/aspnet/document.aspx?id=9849&sec=88031>

¹⁴ Only in very exceptional cases and with the limit of 80 hours a year, as set in article 35.2 of Workers' Charter.

¹⁵ As clarified by the SECB trade union in <https://secbcaixabank.info/hojas/qr-guia-registro-horario/>

¹⁶ MiJornada@bancsabadell.com, as included in the company agreement on the record of working time and the R2D of 27 February, available at https://www.ccoo-servicios.es/archivos/bs/AcuerdoRegistroHorario_sf.pdf

¹⁷ “First Agreement on labour digital disconnection and on the efficient use of working time”, included in the II Gender Equality Plan, signed on 24 January 2020.

Impact of the R2D

There has not been sufficient time for the R2D to be implemented “normally”, since shortly after the sectoral agreements were signed at the end of 2019, the lock-down started. Moreover, the systems which are to monitor its implementation (parity commissions, monthly communication of recorded working time to workers’ representatives) have not yet been fully developed, also due to the Covid-19.

One important issue is the link of the obligation to record working hours with the R2D, thus the link of overtime with the overconnectivity enabled by digital devices. This may have distorted to some extent the understanding of the very nature of the R2D and its implementation, since the focus has been put on the recording of working time to avoid unpaid overtime and not so much on the risk of over connectivity caused by digital devices. However, it has also contributed to the debate and has allowed its implementation, so that in the banking sector working time is recorded.

In this context, the culture of presenteeism is changing quickly, both among managers and among employees. And certainly, the recommendations related to the R2D may have had an impact, for example, on a reduced number of emails sent and of the persons addressed in the emails, the postponement of mails sent outside normal working hours until the next workday, calls for meetings or training outside working hours, etc. This has not been quantified or assessed yet at banking sector level, but has been reported in some specific bank cases.

The experience of massive home working during the months of confinement has revealed that, after some initial difficulties, the majority of employees are well capable of organising their working time, that they are committed, and that the activity has worked well. However, it has also shown that in some cases it has meant higher work intensity and longer hours, suggesting that the soft approach to the R2D may be insufficient, in a sector with high work pressure and conflict due to past and future dismissals. These difficulties are also, to a certain extent, behind the current difficulties in reaching agreements regarding home working in the banking sector.

Banco de Santander

Introduction

Banco de Santander (the Bank henceforth) is the largest Spanish bank and the fifth largest in Europe by total assets¹⁸. It is a global bank present in ten countries with 196,000 workers (55% women) in Europe, North and Latin America, almost 20,000 more in 2019 than in 2013. In Spain, in 2019 the number of employees was 29,000 (48% women)¹⁹, after an acquisition by Banco de Santander in 2018 of two Spanish banks: Banco Pastor and Banco Popular. In fact, the merger involved the dismissal of almost 5,000 employees and an additional 3,500 further redundancies are expected to take place in 2021²⁰. More than half of employees (about 70%) work in the Commercial Network in the Bank's branches with direct contact with clients with the remainder working in so called corporate and central services. The R2D is more relevant for this latter group of workers, since the former's working conditions and working hours are shaped by direct client contact in the Bank's branches and often these employees are not digitally connected for the purposes of their work performance, since they do not have corporate digital devices. Yet, this may be changing, in line with accelerating digitalisation and increasing possibilities of getting in contact with clients also remotely with more corporate digital devices.

The R2D in Spain and in Banco de Santander: a brief overview

In Spain, the R2D was first introduced in the Organic Law OL 3/2018, of 3 December, for personal data protection and guarantee of digital rights, in its article 88. This article contains a generic reference to collective bargaining (or agreement between employer-workers' representation) and states that it should be used to implement the R2D. Thus, the employer should design an internal policy defining the R2D and the measures adopted to implement it. Later, following declarations made in January 2019 by the General Attorney of the European Union on the need of Spain to set up a record of working hours to comply with Directive 2003/88 on Working Time, Royal decree Law 8/2019, of 8 March, with urgent measures for social protection and the fight against precarious work, included the obligation for companies to record working time of their employees with the aim of avoiding unpaid overtime. In May 2019, the EU High Court ratified it. This RDL 8/2019 has modified article 34.9 of the Workers' Charter. More recently, the RDL 28/2020, of 22 September, on remote work, completes Spain's legislative approach regarding the R2D. RDL 28/2020 regulates distance work as work done remotely during at least 30% of working time and it states that it shall be based on a reversible voluntary written agreement for both the worker and the company. Article 18 refers to the R2D specifically in the context of partial or total remote/homework making use of digital devices and refers to collective agreements to set up the conditions that guarantee the R2D.

Banco de Santander is part of the Spanish Bank Association (AEB) and is not governed by its own company agreement, but by the banking sector collective agreement. For specific issues not included

¹⁸ Source: Spanish Central Bank and S&P Global Market Intelligence (2018)

¹⁹ Banco de Santander (2020), "Anual Report 2019"

²⁰ Source: Banco de Santander, Institutional presentation, available at <https://www.santander.com/en/shareholders-and-investors/general-information#institutional-presentation> and El País, https://elpais.com/economia/2019/11/22/actualidad/1574451912_204287.html

in the sectoral agreement, partial agreements are negotiated devoted to these specific issues, either at sectoral or company level. The current sectoral collective agreement for the period 2019-2023 has been only recently signed (January 2021)²¹, two years after the former one expired originally the 31 December 2018, which needed to be extended several times. This delay in signing the current sectoral collective agreement reveals the difficult negotiations in a context of massive lay-offs in the sector.²² The trade unions that have negotiated and signed the sectoral collective agreement are Comisiones Obreras (CCOO), Unión General de Trabajadores (UGT) and Federación Fuerza Independencia Empleo (FINE), which make close to 85% of workers' representation in the sector.

Following the acquisition by Banco de Santander of two other Spanish banks (Banco Popular and Banco Pastor) in June 2018, an agreement called "Alignment of labour conditions" for the three groups of workers was reached with the representative trade unions. It is worth noting that this occurred before the Organic Law on personal data protection and was motivated in part by its immediate approval in December 2018. An annex was added to this agreement called "criteria for a rational organisation of working time" with the right not to respond to mails or other messages outside the normal working time, apart from in exceptional circumstances. Additionally, Banco de Santander has adopted the banking sector partial agreement on the recording of working time, which was signed in January 2020 in response of the obligation stated in RDL 8/2019, which includes the R2D. The recently signed (January 2021) banking sector collective agreement 2019-2023 includes the issue of remote/home-base telework, but this has been developed in the internal policy of Banco de Santander since 2015, as shown below.

Rationale for introducing the R2D in Banco de Santander

Banco de Santander initiated in 2015 a worldwide "flexiworking policy" initially aimed at organising the working day flexibly both in terms of time and place of work; nowadays this policy considers also other dimensions such as digitalisation, cybersecurity, smart spaces, remote leadership, talent or new relationships with clients²³. Its ultimate aim is to increase productivity, combat the presenteeism culture through a results-oriented policy, while at the same time promoting workers' wellbeing, health and possibilities of achieving a right balance between working and personal life. The R2D, -adopted, as mentioned above, in 2018 following the alignment of labour conditions in the three banks-, is embedded in this flexiworking policy, specifically as one of the "criteria for a rational organisation of working time" (see content in next section).

Remote/home-based telework, especially for the employees working in corporate and central services, has been an essential part of this flexiworking policy worldwide since 2015 and its importance is growing. Before the Spanish regulation on remote work in September 2020, which

²¹ At the time of closing this report (end February), the text of the signed banking sector collective agreement was not yet available, but some information has been communicated by the signatory trade unions (see <https://www.ugtbanco Santander.es/2021/01/hemos-firmado-el-xxiv-convenio-colectivo-de-banca/> and <https://www.ccoo-servicios.es/html/50853.html>). It is due to be published in the Official Gazette withing the next weeks.

²² See case study about the bank sector in Spain.

²³ Banco de Santander (September 2020), Flexiworking policy. Corporate Centre (*Política de Flexiworking. Centro Corporativo*). Internal document provided by the interviewee representative of Banco de Santander. Information about this Flexiworking policy is also available at <https://www.santander.com/en/stories/flexibility-and-efficiency--our-way-of-working>

defines distance work as the work done remotely during at least 30% of working time, “non-preponderant homework” was allowed in the Bank, and employees in corporate and central services could work up to 49% of their working time remotely. Those wishing to perform a higher share of their working time remotely (called telework) need to sign an addendum to their contracts. Before the Covid-19 crisis, “preponderant work” was well accepted by employees and managers in corporate and central services (not so much the telework option). Workers in the commercial branch network do not have such easy access to remote/home-based telework as the emphasis is on being client facing.

As reported by trade unions representatives, high workload, stress and overtime are frequent (see last section for data from employees’ satisfaction surveys), in part due to demanding objectives set for the whole Bank and also due to reduced workforce following the merger with the other two banks and the subsequent dismissals. The partial banking sector agreement on recording working time reached by trade unions and the AEB aims at “promoting a working culture based on efficiency and results of employees, avoiding presenteeism and working longer than the established working time”, indirectly recognising both the presenteeism culture and the existence of overtime.

An additional objective of the flexiworking policy is to attain a more diverse team, including more women in high responsibility or in tech positions²⁴. Also, an opportunity to optimise the use of spaces and to reduce costs is highlighted.

Concerns about the impact of overconnectivity on worker health, through technological fatigue and stress, work quality and environment are further factors behind the inclusion of the R2D in the agreement.

Banco de Santander aspires to be one of the three best financial institutions to work for in the ten countries where it is based, thereby impacting on its reputation.

Negotiating process and coverage

The negotiation process in which the R2D was first adopted in 2018 in the Banco de Santander, in the context of the merger with two other banks, was long and difficult, but not because of the difficulties to reach agreement on the R2D. As mentioned in section 1, the agreements reached at sector level (the collective agreement 2019-2023 and the sector partial agreement on the recording of working time of 2020) apply to Banco de Santander, and no further specific company agreements have been negotiated with trade unions on the R2D, on the recording of working time or on remote/home-based telework.

Trade unions would have preferred that a “harder” approach towards a guarantee of the R2D and the recording of working time had been adopted, in order to actually reduce overtime. Indeed, the CGT trade union did not sign the sector partial agreement on the recording of working time, because it relies on the employee registering in a platform or app the beginning and end working time, and CGT fears that the employee can feel pressured not to record overtime.

²⁴ <https://www.santander.com/en/stories/women-in-tech-santanders-initiative-on-gender-diversity-in-technology>

More in general, it should be bore in mind that the context of continuous reduction in the number of employees since the merger of the three banks in 2018 has made negotiations on any issue more difficult.

Content and implementation of the R2D

The mentioned “criteria for a rational organisation of working time”, included in the agreement on the alignment of working conditions of the three banks, refer to good practices that should not be detrimental to productivity, the output of the Bank and the work-life balance of employees, thus:

- Guarantee that the agreed annual number of hours is reached and longer working hours or overtime are avoided, unless strictly necessary and justified (peak workloads, unpostponable deadlines, etc);
- Promotion of a new culture based more on the achievement of goals, results, improvement of productivity and clients’ satisfaction than on presenteeism, while complying with the agreed annual number of hours. This involves the promotion of autonomy, responsibility, flexibility and self-organisation as values that contribute to the achievement of the above goals;
- Promotion of a rational organisation of working time in a flexible manner, adapted locally in each country, with the help of technologies and planning tools:
 - Meetings should be called well in advance to allow attendants to prepare them and never after 18:00 hours, apart from in exceptional cases; whenever possible, the possibility of attending the meetings remotely through technological means should be used;
 - E-mail should be used in an efficient and rational way and Guidelines and recommendations have been issued, so that no excessive or unnecessary use of mails is made, in particular outside normal working hours, unless strictly necessary and justified, if a serious risk for persons or for the company is at stake;
 - With the aim of guaranteeing the R2D and of avoiding technological fatigue, employees have the right not to respond emails or other messages outside their usual working hours or during rest time, apart from in exceptional circumstances. These exceptions relate to situations that can seriously harm the company or some persons and that require immediate action, as stated in the sectoral partial agreement on the recording of working time, that applies also to Banco de Santander. These exceptional circumstances have not been further negotiated with trade unions and are not detailed.

The approach to implementing the R2D is a “soft” one, based on intense communication both among employees and managers while closely monitoring the flexiworking policy through employees’ surveys, focus groups and interviews. An internal document called “Flexiworking policy”²⁵ is targeted to all managers in all countries where Banco de Santander is based²⁶. It calls on managers to make the best use of technology to manage flexiworking (for example, using videoconferencing platforms), while ensuring that nobody is left behind digitally; it also makes an explicit demand to respect the R2D of subordinates, when calling meetings or sending emails. It

²⁵ The document was provided by the representative of the company interviewed for this case study.

²⁶ Banco de Santander (2020), *ibid.*

includes recommended behaviours in line with the companies' values of "Simple, Personal and Fair" such as: "I am respectful of face to face and remote meetings (punctuality, call in advance...)", "I am respectful of digital disconnection and make a rational use of email, phone, meetings"; "I am an example of flexiworking: my own work-life balance gives me the energy I convey". This document contains a catalogue of all possible flexibility measures applicable to corporate and central services: employees can work remotely up to 49% of their working time; sign a specific addendum on telework if this is more than 50%; two hours flexible start and leaving time, with the possibility of adapting it in each team. Occasional overtime (done in the workplace or at home) may be compensated for with free time within one month, in agreement with the manager and subject to the Bank's activity needs; authorised extra hours can be compensated for with rest time within four months. While paid overtime is limited to 80 hours per year (article 35.2 of Workers' Charter), there is no limit as to the number of overtime hours that can be compensated with rest time.

Interestingly, this document outlines the conditions of remote work: jobs that need physical contact with clients cannot be done remotely²⁷; employees need to fulfil some professional and personal conditions, among which sufficient knowledge of the job, sufficient digital skills, ability to self-manage, discipline and motivation; the work-station at home needs to be adequate, in terms of technical requirements, security and occupational health, and an assessment is made to ensure this; finally, the remote employee is obliged to record his/her effective working time in the same way as he/she does when working in presence (see below more on the recording of working time).

Two annexes added to this document, called "Recommendations on flexiworking" and "Guidelines for digital disconnection", are targeted at employees. Among these recommendations, planning, coordination with the manager and the rest of the team and respect for other's R2D are included, in particular:

- not to send mails or messages between 7 p.m. and 8 a.m. or on holidays or weekends,
- not to call meetings before 10 a.m. or after 6 p.m. (3 p.m. on Fridays),
- not to make anybody work outside his/her normal working time, unless strictly necessary.

Moreover, when an email is sent outside working hours, Outlook automatically sends a warning to the sender with a recommendation to delay the sending and a link to the Policy on the R2D. When a meeting is called outside the established normal time and/or when the duration planned is longer than 45', a recommendation pops up suggesting doing it in another timeframe and/or shorten the duration. At the same time, a link to the internal policy on Efficient Meetings is provided²⁸. While these recommendations are appropriate and effective for the employees who work in the mentioned time frames, they do not seem adapted to the usual time schedules of employees in the commercial network, whose usual finishing time is 3 p.m. (the share of employees in the commercial field in Spain is about 70%).

²⁷ During the interview, however, the representative of Banco de Santander acknowledged that this may change in the near future, as the experience due to Covid-19 is showing that the relationship with clients can also be done to a certain extent remotely (a growing, but not yet known extent). This would entail both closure of offices and more remote/homework.

²⁸ Pilots were implemented at the start of confinement in Spain to ensure smooth use of Outlook warnings. In November and December 2020, the use of Outlook warnings was extended worldwide through a similar pilot.

All employees regardless of their workplace are obliged to record the beginning and end of their work time daily. Thus, a guide on the “Recording of working time. Guide for managers” has been prepared to inform Spanish managers about the obligation on all employees to record effective working time, following RD 8/2020, from 1st June 2020²⁹. A corporate platform “My working day” (*Mi jornada*) and an app have been prepared to this aim. When excess of worked hours is recorded (i.e. beyond contractual working hours), it is recommended that managers talk with the person/s affected to re-organise work and/or compensate for the additional working time with rest time. Managers are warned that the R2D means that their mails or messages sent outside normal working time may not be answered and are advised to lead by example, not sending or answering mails or messages outside normal working hours. As mentioned above, overtime may be compensated with rest time within one or four months, in agreement with the respective manager. In some cases where overtime is repeatedly recorded or if there are complaints by workers or trade unions about the overtime or the lack of agreement with the manager on the compensatory rest, Human Resources department would intervene to address the situation. However, no “hard” measures are foreseen, such as sanctions or digital shut-downs.

Following the banking sector partial agreement on recording working time, the Bank should make available monthly to trade unions the information on the recording of working time (in an excel spreadsheet or similar). A parity monitoring commission should meet at least twice a year. However, since the register was implemented in June 2020 in a complex Covid19 context, not enough time has passed, so the parity monitoring commission has not yet met. The Bank has recently shared information about the hours recorded with trade unions, but, according to the interviewed trade unionist, they have not been able yet to analyse it. According to the Bank, the working time recorded does not point to excessive overtime.

Frequent emails are sent by the company to employees worldwide stressing the link between adequate flexiworking and digital disconnection, in particular between remote work and good work-life balance during the confinement periods caused by Covid-19. Following a survey to employees on the impact of Covid-19 and of massive increase in remote work in April 2020, it was detected that “*a significant number of you (40%) have revealed that digital disconnection should be ensured to a greater extent*”³⁰. This was linked, according to the survey, with the need to learn how to manage remote work and (self) organise working time and also with longer working hours required, at least in the first weeks of confinement and remote work.

Finally, an “open channel” (*canal abierto*) has been set up for any worker who wishes to report (anonymously or not, always confidentially) violations of the Bank’s code of conduct, corporate behaviour and internal governance. Besides issues related to money laundering, fraud, inappropriate accounting or auditing practices, among many others, irregular labour practices may be reported through this open channel. Two years ago, the typology of cases was enhanced to practices incompatible with corporate behaviour, values and governance, which includes failure to respect the R2D, although this specific case has not been registered so far. A procedure has been defined to deal

²⁹ This was two months later than initially agreed with trade unions (1st April), due to Covid-19.

³⁰ This is the wording used in one mail sent on 14 May 2020 to all employees.

with all cases in a maximum period of two months.³¹ This channel is supported by the highest management level, since the president has collaborated in a corporate video to promote its use worldwide.

Monitoring of the implementation of the R2D is mainly done through frequent employee surveys, some of which are focused on Spain, others are worldwide. A first survey to employees was conducted in April 2020 on the impact of Covid-19 and of massive increase of remote work, addressing a large variety of issues, structured in three blocks: Prevention of health risks; Culture and Wellbeing; and physical health. The implementation of the R2D is embedded in the block Culture and wellbeing (see some results in next section). Other similar surveys have followed in 2020, to monitor the implementation of remote work, as a response to confinement due to Covid-19.

Trade unions have also communicated with employees about the R2D, often complaining about the lack of compliance with the law and denouncing a lack of willingness by the company to negotiate its detailed implementation. In their view, the approach of the Banco relies heavily on employees actually not responding to emails or messages outside working hours and on employees not working (remotely or in presence) longer hours. Yet, in a context of massive lay-offs, employees may not feel empowered to do so.

Impact of the R2D

According to a satisfaction survey carried out in April 2020 on remote work due to Covid-19³², while 85% of employees were satisfied with remote work, 57% of surveyed employees considered that the R2D was being respected and 22.7% stated that it was not being respected (the rest was neutral) and 61% declared enjoying a reasonable work-life balance (15.6% do not, the rest was neutral). A more recent survey (October 2020) on the “New normality after Covid-19”, highlights that the share of those considering that the R2D was being respected has diminished to 43%, but that the share of those happy with their work-life balance has increased to 66%³³. Indeed, in the survey conducted in October 2020, the R2D and the insufficient work-life balance were highlighted as the two main fields for improvement.

In this context, it should be noted that all employees in the Bank by now know about the R2D, since this is included as a specific issue in the surveys. Intense communication and recommendations made in the framework of the flexiworking policy directed both to managers and employees has undoubtedly contributed in a soft way to raise awareness and to support its implementation. Yet, a difference seems to exist between employees in corporate and central services (about 30% of employees in Spain) and employees in the commercial network (70%) both as regards their awareness and empowerment about the actual implementation of the R2D and the effectiveness of

³¹ Banco de Santander (2020), “Open Channel. Policy. Santander Group”. Visit also <https://www.santander.com/en/stories/introducing-canal-abierto-our-right-to-be-heard> and <https://secure.ethicspoint.eu/domain/media/en/gui/105329/index.html>

³² The survey was conducted with 9870 employees (out of 25000), in April 2020. At that time, 80% of surveyed persons were working at home.

³³ The comparison of data obtained in very different situations regarding the impact of Covid-19 in April 2020 (only shortly after the outburst of Covid-19 and the urgent need to work remotely with only few days to organise it) and in October 2020 should be made cautiously, since many factors may explain the differences observed.

the recommendations. As mentioned above, the recommendation not to send emails later than 6 p.m. is not effective for this share of employees, whose working day usually ends at 3:30 p.m. Thus, corporate and central services may send an email to a branch employee at 16:00, which is outside the branch employee's time. Yet, this is not particularly relevant, since, as explained above, branch employees are not obliged to respond mails they receive outside their working time. In addition, many of them do not have digital devices provided by the Bank.

The impact of the obligation to record working time (RDL 8/2019) is considered to be positive in the context of the flexiworking policy and the R2D and vice versa. This is to say the implementation of the R2D through, among other tools, the above mentioned IT tool and app to record working time, may be helping with the reorganisation of working time, reducing undue overtime and, when this occurs, compensating it with rest time. Also, expectations of being contactable and performing work outside of working hours may be changing both among employees and managers. In this same vein, the R2D is contributing to change the presenteeism culture, since the remote work experience has revealed that it is feasible without affecting productivity (although the R2D is not yet fully implemented, as the satisfaction surveys show). Finally, the recommendations for the implementation of the R2D have, for sure, contributed to reducing the number of mails or messages sent and meetings called outside working hours, although this issue has not been monitored. In fact, monitoring of overtime and of the number of hours compensated with rest time has not yet been properly monitored by trade unions, but the Bank declares that excess of hours worked is not very significant.

The Covid-19 crisis has increased the share of remote workers in the Bank from about 5% before the outburst of Covid-19 to 50-60% at present in corporate and central services. In commercial offices, the possibilities of working remotely or from home are less frequent, due to the need to attend clients in person, so that many offices have been kept closed during months³⁴. Thus, the R2D may be less relevant for employees in the commercial network, since many of them are not digitally connected (they do not have corporate devices, such as phone or computer) outside working hours, but this may change in the near future, if the relationship with clients evolves also, as it seems, towards digital channels to some extent.

In the future after the Covid-19 pandemic, a hybrid work model is expected, with employees in central services working on average 2-3 days remotely and 2-3 days in the premises of the Bank. 100% remote work is not desired, since personal contact is considered necessary to avoid digital fatigue, loneliness feeling and disconnection, suboptimal productivity. For this to happen, the R2D and work-life balance need to be achieved.

³⁴ At the time when the first interview with the Bank representative was conducted (November 2020), out of a net of 3,000 commercial offices, 700 were closed.

BMW

Introduction to the BMW company

BMW is one of the main premium segment car manufacturing companies in Germany and globally. In 2019, the company employed 133,778 workers worldwide, an increase of nearly 10% from 122,244 in 2015.³⁵ The main segments of the company are Automotive, Motorcycles and Financial services, with the following workforce distribution, concentrated in the Automotive segment:

Figure 1: BMW workforce, by main segment

| | 31.12.2019 | 31.12.2018 | Change in % |
|--------------------|----------------|----------------|-------------|
| Automotive | 121,208 | 121,994 | -0.6 |
| Motorcycles | 3,658 | 3,709 | -1.4 |
| Financial Services | 8,798 | 8,860 | -0.7 |
| Other | 114 | 119 | -4.2 |
| Group | 133,778 | 134,682 | -0.7 |

Spending on employee training and development totalled EUR 370 million in 2019 and therefore remained at a similar level to the previous year (2018: €373 million; – 0.8%). The employee attrition rate was 2-3 % since 2015, and the company has been listed as the most attractive car employer in several industry rankings worldwide, most recently in 2018 and 2019. The key workforce development and welfare aspects are as follows.

Table 1: Employee welfare indicators, BMW

| | BMW | | |
|-----------------------------------------------------------------------------------------------------|------|------------|------------|
| | 2019 | 2018 | 2017 |
| Attrition rate as % of all employees | 3.4 | 2.8 | 2.6 |
| Employee satisfaction | 82% | 87% (2017) | 88% (2015) |
| Average days of further training per employee | 3.3 | 3.4 | 3.4 |
| Accident frequency in number of accidents with at least one day absent per one million hours worked | 3.5 | 3.5 | 3.6 |
| Sickness rate at BMW AG in % | 5.0 | 4.9 | 4.6 |

³⁵ Data in this section is taken from BMW Group Annual Report 2019, [Power of Choice, Annual Report 2019 \(bmwgroup.com\)](https://www.bmwgroup.com)

Source: BMW Sustainable Value Report 2019³⁶.

The group steadily recorded a net profit over the last years, with a small decline in 2019 compared to 2018, and a decline in 2020³⁷.

The company is headquartered in Munich, Germany. In addition, there are major German plants in Berlin, Dingolfing, Eisenach, Regensburg, Landshut, Leipzig and Wackersdorf. Around two-thirds the BMW Group's workforce are employed in Germany (around 90,000 workers), followed by the USA with 9.5% and the UK with 5.6% of the workforce. All of BMW's workforce in Germany is covered by the collective agreements negotiated between the company and BMW's works council.

BMW is bound by the sectoral collective agreements (negotiated between the sector employers' federations and the trade union IG Metall) for the metal working industry. These collective agreements contain provisions on the regular working hours per week. The distribution of such working hours is laid down in the works council agreements (i.e. the agreement between BMW and its works council).

Key documentation was analysed³⁸ and two interviews were conducted online for the elaboration of the present case study, one with the representative of the BMW works council and a group interview with the representatives of management side in the company.

The right to disconnect in Germany

There is currently no legislation in Germany specifically regulating the R2D. National legislation limits working hours with maximum of 10 working hours per day and mandatory rest periods of 11 hours.

If they wish, companies can regulate the R2D through existing social dialogue structures at the company level, concluding company agreements.

Discussions on the need to regulate for a R2D have taken place since 2012, also in the context of the Work 4.0 initiative. This initiative was taken by the authorities at the federal level with the discussion conclusion reached at the time for no necessity for a legislation on R2D (White Book Work 4.0,³⁹ page 118).⁴⁰ Discussions on the increasing flexibilisation of the organisation of working time were also important. The latest initiative from the federal ministry of labour put forward in October 2020 proposed a right to work outside the business premises 24 days per year (the proposal did not include a reference to R2D).⁴¹ The proposal was blocked by the chancellor's office on the grounds that such a right to home office was not foreseen in the coalition agreement. In the context of combatting the COVID-19 pandemic, the employers are encouraged to enable home office as far as possible.

³⁶ [Sustainable Value Report 2019 \(bmwgroup.com\)](#)

³⁷ [Financial Reports \(bmwgroup.com\)](#)

³⁸ Annual reports 2019, 2018, 2017, Sustainable value reports 2019, 2018, 2017.

³⁹ [Weißbuch Arbeiten 4.0 \(bmas.de\)](#)

⁴⁰ [BMAS - Informationen zum Thema Arbeiten 4.0](#)

⁴¹ [BMAS - Homeoffice](#)

Rationale for introducing the R2D

The R2D in BMW is approached in the context of an overall company policy linked to mobile working⁴². The company has worked with the concepts of mobile working since early 1990s. In 2013, a pilot project was undertaken to test the feasibility of the approach to mobile working, and in 2014 a company collective agreement on mobile working covering BMW's workforce in Germany was negotiated.

The agreement was triggered by the increased need to give employees a greater flexibility in organising where they work and the hours they work, enabling international collaboration across borders and time zones and for the employee side also driven by the need for work-life balance. It was recognised in the company that allowing flexible working can drive improved employee engagement, job satisfaction and productivity – and so ultimately the efficiency and profitability of the organisation. To support responsible use of modern forms of communication in the age of mobile devices, the issue of availability and the ability to disconnect were taken into consideration and addressed at a company level. As mentioned at the above, no national legislation or sectoral agreements were in place covering the R2D and the time and this remains the case in 2021. The existing legislative framework was important in a sense that the works council was entitled to negotiate and regulate the use of all technical equipment required for carrying out work duties⁴³. At the time, BMW was one of the first companies in setting market standards on introducing mobile working.

The interviewees agreed that the initial push to introduce such an agreement come equally from both the works council and the management side. Hence, there were no negative reactions at either of the side and no significant disagreements on how to best ensure the R2D (e.g. the specific modalities of disconnection).

For both sides, it was becoming evident that clear and flexible rules needed to be put in place for workers who had access to a new generation of digital devices such as smartphones. The previous agreement regulating telework dating back to the 1990s was considered to be no longer in step with the new realities of mobile devices. These bring the challenge on how to define individual availability and ensure sufficient time for rest. From the company's management perspective, there has been no evidence/indication that employees using mobile work are extending their working hours. In contrast, the observation is that employees who participate in mobile working have less overtime due to a more flexible distribution of their working time across the day whilst complying with the mandatory rest times. During mobile work, employees record the final volume of performed work, being flexible in distributing this volume over the day.

It was clear to both sides that managers and employees have to be empowered to define their own individual availability and communicate it to their corresponding points of contacts in order to prevent the escalation of potential detrimental effects. The ambition was to achieve an agreement which would be applicable for the foreseeable future without the need for constant updating, as well as to support honest behaviour in terms of recording of overtime working time as it is actually

⁴² In this context, mobile working covers all work related activities which are undertaken online or offline outside the office/plant (for example, with computer, telephone or paper based media).

⁴³ The so-called Betriebsverfassungsgesetz or the Works Constitution Act, regulating the legal basis for the work between the works council and the employer, see [BetrVG - Betriebsverfassungsgesetz \(gesetze-im-internet.de\)](https://www.gesetze-im-internet.de/betrVG)

worked for both employees and managers. The right to disconnect as well as the need to provide for flexible hours to meet the wishes of employees to better reconcile work and private life were seen as critical areas for negotiation, also building on the experiences of teleworking in the company to date. Guiding principle was that there is no blanket solution which fits for all teams and business areas. Solutions can only be found in dialogue between employees, managers and social partners.

Negotiating process and coverage

The R2D was negotiated as part of the broader company level agreement regulating mobile working in 2014. Negotiations took place between the works council and HR representatives in 2013. There was no involvement from the trade union side as according to the national German law the works council is predominantly responsible for this topic and not the union. All negotiating parties approved and signed the agreement. The 2014 agreement has not been reviewed or modified since and interview partners did not express a view that this would be necessary in the near future. In the words of one interviewee “we negotiated the agreement so flexibly that it can remain valid for the next 30 years”. The agreement does not include a review clause. A review of the agreement was not necessary so far because it offers very flexible solutions to managers and employees being applicable in different business contexts. However, the usage and development of mobile working is monitored by the BMW centre of competence and in case any issues would be identified this would be addressed.

The agreement applies to BMW workers in Germany and those workers whose tasks permit remote working using digital devices (as well as paper based media) can request remote work and thus benefit from the right to disconnect.

Although the agreement does not apply to BMW workers outside Germany, the principle has been built into an international company policy on mobile working which applies at all BMW Group locations worldwide. Its implementation is supported by head quarter functions and reviewed.

Due to the agreement on mobile work, the BMW works council received a recognition in the form of a golden award amongst German works councils in 2014.

Content and implementation

The 2014 agreement established that in principle, all BMW employees in Germany can work in a flexible manner using mobile working where the contents of their tasks permit so (usually indicated by the use of digital devices such as laptops). In principle everyone is entitled to work mobile if the nature of their work allows it. Every minute of working time spent performing mobile working is counted as working time. This makes mobile working in principle also applicable to future workplaces where the work organisation is likely to be different, also for the car production sites. In practice, mobile working can be used by those whose tasks permit such work, with the typical differentiator being the use of a laptop/smartphone.

Interviewees confirmed that this therefore mostly relates to the office-based workers, in the management or development /R&D related tasks, rather than workers working at the assembly line.

In 2014, at the start of the implementation it was estimated that around half of BMW Germany workers could be accessing such rights (see section 5 on the current statistics of usage).⁴⁴

The company agreement allows working hours to be split flexibly between different places of work and times of the day and enables mobile working to be combined freely and flexibly with classical office-based work. The usual work hours of the respective team serve as a reference point for availability, but deviation from this is possible at the request of the employee. Outside the agreed times of availability, the employee has the right not to be available, in the interest of rest and recuperation. Unless required by the respective work-time model, this generally includes time in the evenings and mornings, as well as Saturdays, Sundays and public holidays. No employee is required to be available outside the agreed times of availability unless required by the respective working model. This is equally valid for employees working from BMW office/plant business premises or the place they chose to work in mobile working.

A further aspect regulated in the agreement is the appropriate reaction time, which is often forgotten in such agreements. Reaction time refers to the time when the employee is available during mobile working but can be asked to undertake a task which would affect their hours of unavailability (the hypothetical example mentioned was a manager calling a teleworker at 9pm when they are still available and asking them to undertake a task by following morning). To prevent this, the agreement foresees that the reaction time expected from employees working mobile should be appropriate and proportionate to the work organisation. This topic is also covered in the training and awareness raising measures described below thus providing guidance and advice on how to implement this in practice.

Working time which is spent outside the business premises is fully counted as working time and registered accordingly. Potential overtime is also recorded and can be taken as leave hours/being compensated during other days. Employees in a trust-based working time model are not required to record their work time below eight hours per day, neither if they work in the office premises nor while working mobile, in compliance with the European and German law. These employees receive a fully paid compensation and value the flexibility of working time sovereignty based on mutual trust.

The R2D is not implemented through a 'hard shut down' (e.g. stopping the delivery of messages after a certain time, or a server shutdown) but rather through a 'soft' approach. The introduction and implementation of the agreement was accompanied by training and awareness raising amongst BMW managers and staff.

To ensure a successful implementation of the company agreement an escalation process is foreseen where the employee can raise their concerns over unavailability with the works council and/or HR.

Any particular issues or concerns over the R2D would be communicated by the worker either directly or via the works council to HR. The works council plays an important role in terms of monitoring compliance as it acts as a conduit for workers who might be uncomfortable raising concerns over the R2D directly with their manager. The works council would then communicate such concerns and follow them up with HR to ensure the particular challenges are resolved. As described in section 5, the works council received very few such complaints linked to the R2D every year.

⁴⁴ [BMW-Mitarbeiter haben Recht auf Unerreichbarkeit | Wirtschaft \(merkur.de\)](#)

One key point in the appraisals of the management level employees is the outcome of the performance. In that context it is taken into account how the manager and his employees organise the work and working time in order to ensure performance from a long-term perspective.

Initially, the main challenge in the implementation of the agreement was raising awareness and training workers on how they could request mobile working. The company has developed a “mobile working driving licence” where the employees are trained to understand the concepts of telework, availability and non-availability and how to apply this in practice, to agree working hours, and hours of non-availability. It also empowers the employees to turn off the devices. The challenge is to sensitise them in terms of using devices such as smartphones responsibly. According to the BMW company policy, it is not allowed to divert business emails to private mobile phones/ laptops hence the issues do not arise from workers diverting work related emails to private phones/having access to their accounts on private phones.

The training is also focussed on strengthening the self-awareness and responsibility of employees (including the managers) to ensure that the rules of mobile working are followed. All employees regardless of their status and tasks have to take the “mobile working driving licence”. All managers also receive special training on how leadership and management interacts with mobile working. They are also trained to understand and support the implementation of connection and disconnection during the mobile working and how to implement this in practice. Managers are also encouraged to review the volume of working time registered by workers, and identify those who work over the time agreed and make themselves overtly available. The monitoring of working time accounts is a helpful instrument to identify issues with workload. Works council representatives (by law) and line managers (to fulfil their managerial duties) are entitled to access the working time accounts information.

Impact of the agreement

Quantitative evidence specifically measuring the impact of R2D is not available. Still, some relevant evidence is available.

In 2019, over 36,000 employees, or around 70% of those working outside the direct production areas, chose to take at least one partial or full remote-working day in a year (in 2018, this was 66%). This represents a renewed increase compared to 2018 and has been growing from around 25,000 workers in 2015. Typically, such employees would also agree the hours outside which they are not available for work. Before the COVID-19 crisis, a typical mobile working arrangement would be additional to office-based work which remained the main form of work for the teleworker, usually using mobile work 1-2 days a week (for several hours or as a full mobile working day).

Figure 2: BMW employees making use of flexible forms of employment, 2015-2019

| Number of employees | 2015 | 2016 | 2017 | 2018 | 2019 |
|------------------------------------------------|--------|--------|--------|--------|--------|
| Part-time workers ² | 3,943 | 4,294 | 4,572 | 5,000 | 5,630 |
| in % of total number of employees | 5.1 | 5.0 | 5.2 | 5.6 | 6.4 |
| Teleworking positions ³ | 25,072 | 28,088 | 31,754 | 34,339 | 36,066 |
| in % of total number of employees | 53.0 | 59.4 | 63.3 | 66.1 | 69.4 |
| Number of employees who use "Vollzeit Select" | 3,592 | 3,998 | 4,690 | 5,508 | 5,500 |
| in % of total number of employees ⁴ | 4.7 | 5.1 | 5.3 | 6.1 | 6.2 |
| Sabbaticals | 462 | 598 | 567 | 648 | 764 |
| in % of total number of employees | 0.6 | 0.7 | 0.6 | 0.7 | 0.9 |
| Parental leave | 2,535 | 3,028 | 3,389 | 3,675 | 4,096 |
| in % of total number of employees | 3.3 | 3.5 | 3.9 | 4.1 | 4.6 |

¹ Figures refer to employees with permanent and part-time contracts.

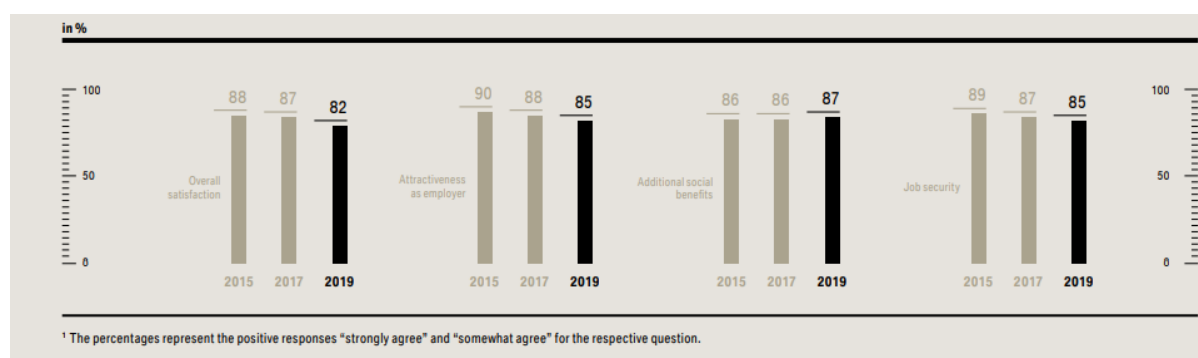
² Of which 3,649 were female (65%). For systemic reasons, this number is only calculated for BMW AG.

³ Only workers in administrative positions who engaged in teleworking.

⁴ Statistical population not including apprentices, interns, thesis students working at the company and doctoral candidates.

Source: BMW Sustainable Value Report 2019⁴⁵.

Another source of information is the biennial employee satisfaction survey. Satisfaction with remote work or the R2D is not measured directly in such surveys (see Figure 3). The closest indicator is likely to be the satisfaction with additional social benefits (which are listed in the employee questionnaire and accessible on BMW Intranet), which has remained consistently high at 86-87%. The overall employee satisfaction rating for the company remains high at 82%, although that has decreased from 88% in 2015.

Figure 3: The overview of latest employee satisfaction surveys (BMW Group)

Source: BMW Sustainable Value Report 2019⁴⁶.

The final piece of relevant available data is the number of concerns /complaints over R2D or remote /mobile work received from the workers by the works council. Since the introduction in 2014, the number of such complaints has remained low. Typically, the works council would receive 2-3 cases per year where employees were not satisfied with the decision of their manager whether or not to allow them to telework. The works council would also be contacted several times per year by workers who have concerns on how to ensure disconnection in practice. The works council would in such cases provide support and clarifications on how to apply the rules in practice. It is also likely that the works council would ask HR to follow up and check how the concern is being addressed.

The interviewees therefore described the impacts of the agreement in more qualitative terms.

Since 2014, there was no need to amend the agreement, which demonstrates that its flexibility and coverage is appropriate to cover the needs of employees which have emerged over the years. The

⁴⁵ [Sustainable Value Report 2019 \(bmwgroup.com\)](https://www.bmwgroup.com/sustainable-value-report-2019)

⁴⁶ [Sustainable Value Report 2019 \(bmwgroup.com\)](https://www.bmwgroup.com/sustainable-value-report-2019)

agreement offers flexibility for both sides. Every employee whose tasks enable them to mobile working decide on the hours when they are unavailable. It gives those employees where mobile working is applicable greater flexibility in organising where they work and the hours they work. It is also important to note that mobile working is based on mutual trust and voluntary participation from both sides.

The agreement about mobile working has also sent an important signal in terms of company culture, indicating that a greater flexibility in organizing work is possible and should not be associated with a permanent 24/7 availability of employees just because they are potentially available. This has supported a company culture where a mechanism of social control against the permanent availability has appeared, also amongst the managers. It places greater emphasis on the importance of managers acting as role models of the implementation of the R2D in practice. The agreement has helped to instil such a company culture by explicitly stating the main principles and escalation mechanisms, accompanied by training and awareness raising.

Addressing issues of availability and the ability to disconnect also supports the health and productivity of employees and to prevent burnouts and over working. Employees awareness on the importance of rest and recuperation also during mobile working is being raised through training. Managers are also encouraged to accept and respect mobile working as a form of work, where employees are also not available permanently and be sensitive to the situations where the boundaries are overstepped. This approach for both sides is important to ensure the health and safety of workers who are working mobile.

The agreement also demonstrated its benefits in the context of the company responding to the COVID-19 crisis, as it meant that the framework conditions supporting the extensive use of mobile working were in place and had been tried over the years. This enabled those workers who can telework to swiftly take advantage of the existing conditions . This translated into a much higher number of hours worked through telework. However, the number of people working telework remained relatively stable, as this number was already high pre-2020.

Conclusions

This case study has explored the definition and implementation of the R2D at BMW in Germany. The R2D is framed as a critical part of the telework / mobile work company level agreement dating back to 2014.

The experience demonstrates that with regard to the applicability of mobile working there is no one-size-fits all solution. A dialogue between employees, managers and social partners is crucial to find the right balance between business requirements and greater flexibility in working place and time, including handling the issue of availability and the concept of the reaction time. Also, continuous measures to train and sensitise workers and managers are important.

As well as formal limits to the hours of work and connection, it appears essential to support managers in organising work in a way that is efficient and respectful of the times of employees when they are not available. At the same time, it is critical to ensure a high degree of awareness among the workforce, developing strategies that continuously train and keep the issue in the minds of employees and managers.

Looking forward it appears clear that new working modalities, balancing remote and office based work will emerge once the pandemic is passed as it drives improved employee engagement, job satisfaction and productivity. Rest and recuperation are an important part of ensuring the sustainability of these new models.

ENEL

Introduction and methodology

Enel S.p.A is a global energy company, headquartered in Italy and active in several countries⁴⁷. This case study analyses the development and implementation of the Right to Disconnect (R2D) in Italian companies of the Enel group, which we will refer to as Enel Italia.

As of 2020, Enel S.p.A employed nearly 67,000 people globally, of which nearly 30,000 in Italy (with a proportion of females of 21,5%). Enel Italia was selected due to its early engagement with remote working (and thereby R2D), having explicitly addressed it in 2016 through a pilot exercise, before the topic was regulated at the national level.⁴⁸

The case study is based on the review of key documents as well as two interviews with management and representatives of a trade union.

Needless to say, the debate on R2D in Enel, and across the world, is closely linked to the Covid-19 Pandemic of 2020/2021, which has accelerated the adoption of remote working practices and therefore the need to understand the R2D⁴⁹.

The document is organised as follows: section 2 provides a quick overview of the Right to Disconnect in Italy, section 3 describes how the Right to Disconnect is addressed in Enel Italia; section 4 explores the implementation of the R2D looking into: the logic underpinning it, the monitoring approach, the tools adopted and the role of managerial and organisational culture; section 5 explores the impact of R2D and the challenges ahead, whilst section 6 concludes.

The Right to Disconnect in Italy⁵⁰

In Italy the R2D falls within the remit of Law no.81/2017⁵¹, which covers only the so-called “Smart Workers”, i.e. employees that can work remotely following an individual written agreement with the employer.⁵²

The R2D is not explicitly mentioned by Law no.81/2017, rather, the latter provides a soft regulatory framework confirming the general rules on working time, leaving it to the individual agreement to

⁴⁷ Enel is present globally in 32 countries, as shown here: <https://www.enel.com/company/about-us/where-we-are>

⁴⁸ The Enel approach to remote working has been recently highlighted as a good practice in the XXII report of the Italian National Council of Work and the Economy (CNEL)

⁴⁹ As shall be clarified later, previous to the pandemic only one day a week of remote working was allowed.

⁵⁰ The paragraph is based largely on Vargas Llave, O., Weber, T., Avofaro, M. (2019) Right to disconnect in the 27 EU Member States. Eurofound Report.

<https://www.eurofound.europa.eu/sites/default/files/wpef20019.pdf>

⁵¹ [Law No. 81 of May 22, 2017, Measures for the Protection of Non-Entrepreneurial Autonomous Work and Measures to Encourage Flexible Adaptation as to Times and Places of Subordinate \[i.e., Non-Autonomous\] Work.](#)

⁵² In the Italian legal framework Teleworking and Smart Working have different meaning. “Teleworking” is a permanent modality of work conducted in a fixed space outside the company, with fixed timings. In “Smart working” employees can chose where they work from and when (so long as an agreement is reached). Smart working is not necessarily permanent.

define actual working time and the modalities to exercise, beyond those time limits, the R2D (Di Meo, 2017⁵³; Tiraboschi, 2017⁵⁴; Zucaro, 2019⁵⁵).

In particular, the law states that smart working shall take place ‘within the limits of maximum duration of the daily and weekly working time, as established by law and collective bargaining’ (Article 18, par. 1). The individual agreements between the employee and the employer ‘shall include the worker’s rest times as well as the necessary technical and organisational measures to ensure the worker’s disconnection from the work technological instruments’ (Article 19, par. 1).

Since the Covid-19 pandemic the share of remote workers has increased dramatically and the government has established a simplified procedure for Smart Working by Decree⁵⁶ (D.P.C.M. 1 March 2020), which does not require the aforementioned individual agreement. Such approach, originally foreseen up until the end of January 2021, will be valid until the end of the health emergency.

The Right to Disconnect in Enel Italia

Enel Italia regulated Smart Working (and implicitly the R2D) after a pilot exercise launched in 2016, signing an agreement with trade unions on April 4, 2017 (i.e. before the entry into force of law no. 81/2017).

The Covid-19 Pandemic, which expanded the use of smart working, required sustained dialogue with trade unions, which ultimately generated a new agreement, signed on the 9th of June 2020, covering smart working during the health emergency.

Both agreements have introduced "soft" rules, principles and objectives rather than detailed provisions and **do not explicitly use the term “Right to Disconnect”**. In particular, whilst no mention of disconnection is made in the 2017 agreement, the 2020 refers to *organisational measures to be applied by managers and employees, to ensure disconnection from the equipment outside the normal working hours work technologies*.⁵⁷

In what follows, we will use the term R2D for consistency and brevity, being aware of the fact that the latter is not mentioned as such in any agreement.

⁵³ Di Meo, R. (2017), ‘Il diritto alla disconnessione nella prospettiva italiana e comparata’, Labour & Law Issues, Vol. 3, No. 2.

⁵⁴ Tiraboschi, M. (2017), ‘Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro’, WP CSDLE “Massimo D’Antona”.IT, No. 335.

⁵⁵ Zucaro, R. (2019), ‘Il diritto alla disconnessione tra interesse collettivo e individuale. Possibili profili di tutela’, Labour & Law Issues, Vol. 5, No. 2, pp. 216-233.

⁵⁶ D.P.C.M. 1 marzo 2020 (1). Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da CO-VID-19. <https://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2020/DPCM-del-01032020-lavoro-agile.pdf>

⁵⁷ In their communication about the agreement, unions do use the term Right to Disconnect, as shown here. [200609 comunicatoenel_regolamentatoloswinemergenza-dirirttoalladisconnessione.pdf \(filctemlazio.it\)](https://www.comunicatoenel.it/documenti-e-norme/normative/Documents/2020/DPCM-del-01032020-lavoro-agile.pdf)

The first approach to R2D: the piloting exercise and the 2017 agreement with the unions⁵⁸

The Enel Italia piloted a Smart Working scheme from June 2016, starting with approximately 500 workers in different organizational fields. The idea was to test how remote working would function in practice, before attempting to regulate it. The pilot scheme provided the of the agreement on Smart Working signed on the 4th of April 2017.

The agreement indicates that the 1 day per week Smart Working will be implemented gradually (for those organisational units in which remote working is deemed feasible). Access to smart working will occur on a voluntary basis and will be formalised through a written agreement between the individual and the company, which can be revoked from both sides.

The agreement signed on the 4th of April 2017 protects disconnection by stressing that the smart-working day is to be equated to a normal working day and preserving the same rights to flexibility in entry and exit than a presential day. During smart working day no-overtime is required.

The smart working days are scheduled in agreement with the manager, with advance notice consistent with the company's organizational needs, taking into account all the needs related to the work team's activity. The schedule may be modified, in the event of any supervening needs.

The agreement was signed by all trade unions organizations entitled to second-level bargaining, namely FLAEI FILCTEM UILTEC.⁵⁹

The 2020 “Emergency smart working”: more attention to the right to disconnect.

With the onset of the 2020 pandemic, Enel Italia and the unions engaged in sustained and continuous dialogue, reaching a further agreement on Smart Working.⁶⁰

The 2020 agreement introduces new measures related to disconnection and work-life balance.

These measures are contained in *point f* on work-life balance and in *point G* on organisational measures.

Point F stresses that, during the health emergency, particular attention must be paid to respecting the healthy boundaries between working hours and free time. The article points to the key responsibility of managers in organising the work in an inclusive and flexible fashion, taking into account the caring responsibilities of employees. It states the principle that the workload is to be organised in a logic of compensation (meaning that, in exceptional circumstances, extra hours worked one day can be recovered in the next days) and flexibility.

⁵⁸ <https://www.studiocerbone.com/ccnl-elettrici-enel-accordo-sulle-modalita-svolgimento-del-lavoro-agile-del-04-aprile-2017/>

⁵⁹In line with the provisions of the collective agreement for the electricity sector and the interconfederal agreements on contractual structures and union representation referred to therein.

⁶⁰ The regulatory references, also in relation to the emergency smart working methods, remain the provisions contained in law no. 81/2017 and in the national trade union agreement of 4 April 2017, except for the specificities related to the exceptional nature of the situation and the need to contain the contagion governed by the national trade union agreement of 9 June 2020.

Point G, on the other hand, describes organisational measures that underpin to ensure, outside the normal working hours, disconnection from the technological work tools. In particular, the agreements states that:

- Work activities such as (videoconferences, telephone calls, etc.) are to be organised within the normal working hours;
- The lunch break needs to be respected avoiding meetings between 12:30 and 14:30;
- Emails are to be sent during the normal working day, avoiding the evening / night, the weekend and public holidays (the agreement explicitly invites to use the "Delayed Delivery" option);
- It is recommended to alternate moments of sedentary lifestyle with moments dedicated to small motor activities and/or relaxation (thereby recognising the importance of temporary digital disconnection).

Interestingly, the agreement also underlines the importance of both digital and soft skills, implying that a successful implementation of remote working (and with it the right to disconnect), requires specific abilities from the workforce related to digital tools, time management as well as soft skills and the ability to disconnect.

The agreement has not been subject to further amendments and is intended to regulate smart working for the entire duration of the emergency period.

Designing and implementing the R2D in Enel Italia.

The logic of R2D in Enel Italia: disconnection as work-life balance

The R2D in Enel Italia is strongly linked to the work-life balance approach of the company and to its objective of being a high-quality employer. The evolution between the two agreements highlights a more articulated understanding of how to manage connection and disconnection.

Whilst in the first agreement, the right to disconnect was implied as a consequence of respecting normal hours, in the second one, the concept is more broadly articulated and includes attention to management conduct, the use of digital device, physical health (with the invitation to physically move away from the working station) as well as training.

In other words, the Right to Disconnect is not only a technical or a behavioural matter (in which tools and rules ensure that employees' space is preserved) but it also depends on how the work is distributed and organised. The agreement mentions the need to respect healthy boundaries between working hours and non-working ones.

A smooth negotiation process

The negotiation process of the 2020 agreement was carried out in a collaborative and constructive way, with both parties aiming at identifying how to best manage the risks of isolation or the excessive overlapping between work and family life. The union representative interviewed stressed that for them it was crucially important to regulate disconnection times.

With the 2020 agreement, the flexibility inherent in smart working was enhanced, through the possibility of coping with family or care needs in a logic of compensation and flexibility, as well as the ability to compensate for any exceptional extensions of activities that may occur in the following days.

According to the union representative, the aspect that has been considered, relatively speaking, more complex to discuss is the ability to compensate extra hours worked in one day with subsequent rest.

The agreement was reached in a short time (less than a month) and was signed by the company with all the trade unions entitled to second-level bargaining⁶¹. The agreement also makes space for further moments of analysis and discussion between the company and trade unions, through the Bilateral Committee on Equal Opportunities and the Bilateral Committee on Health and Safety, Training and Employability, as explained in the monitoring section below.

Implementing R2D: cultural and organisational guidance on IT tools, working practices and free time.

The quick shift from presential to remote working has required some adaptation in managerial and organisational practices.

To encourage and promote responsible behaviour in the use of corporate digital tools in compliance with the daily, weekly and annual rest periods, Enel Italia launched an awareness-raising campaign on work-life balance in remote working grounded on mutual respect and organisational “bon ton”. The campaign includes “video pills”, prize quizzes and infographics, in which, with a light and informal tone, people were invited to reflect and respect some simple rules, including:

- work activities that also involve others, such as calls and video conferences, are to be planned during the usual working hours;
- before calling a meeting it is essential to make sure that the participants are available;
- meetings should not be arranged next to each other

The agreement also suggests to alternate sedentary moments with breaks of physical activities or relaxation, as part of the measures to support disconnection.

Furthermore, in order to support the professional and personal well-being of employees who work remotely, Enel Italia has made available on the company intranet a set of online courses, training programs and interactive webinars under the hashtag #lavorodacasa (#Iworkfromhome). These cover, de facto, the three underpinning elements of remote working and the RD2: the use of digital device (providing guidance on IT tools), guidelines on how to work individually and in teams (remote team management, time management, problem solving, coaching, trust building) and suggestions for physical and recreational activities.⁶²

Last but not least, the company has introduced a psychological support-service available 24/7 via phone.

The agreement, as mentioned above, gives general principles and does not provide details for the implementation. The latter depends largely on trust within the teams and between workers and their managers.

⁶¹ This was done in accordance with the provisions of the collective agreement for the electricity sector and the interconfederal agreements on the contractual arrangements and on the union representation referred to therein.

⁶² Previous to the emergency period, Enel Italia s.p.a. had already investing significantly on an e-learning infrastructure. Such previous investment has offered the opportunity to enhance the training supply during the pandemic.

Monitoring: a key tool for implementation

A set of different measures are in place to follow the implementation of remote working and implicitly the right to disconnect:

- surveys exploring training needs and any critical issues encountered in the new working condition are conducted regularly;
- access to training and support service is also closely monitored (and reveals that the most attended courses are those related to trust, coaching and responsibility, followed by those on how to use software and IT tools to work from home);
- the unions collect information on the topic from their members through spontaneous reports.

There are, however, no specific indicators or KPI related to the R2D or Smart Working. However, issues related to the R2D may arise in the afore-mentioned Bilateral Committees, which are tasked, under the 2020 agreement, with monitoring smart working (as well as to discuss training initiatives and the enhancement of best practices). Interviews report a positive and collaborative environment.

Last but not least, it is important to stress that during the Smart working day, there is no need to digitally record the remote performance of work. The relationship with the employee in smart working is based on trust and smart working is accompanied by a new managerial vision with expansion of flexibility and autonomy and greater trust and accountability on results. In this context, the recognition of the performance is less and less measured in terms of "presence" but in terms of the achievement of objectives.

Impacts and future challenges of R2D

The emergency smart working agreement applies to all employees in Enel in Italy who perform remotely operated activities (about 17,000 people)

The data on smart work and R2D implementation is still limited, however according to the union representative interviewed there appear to be an increase in productivity, as well as greater effectiveness, participation and punctuality in online meetings, which are now shorter in time. The absenteeism rates have also decreased. More generally, as stressed by company representatives, the KPIs have not suffered during the pandemic and the implementation of remote working.

The emergency phase has not yet ended and it will take time to appreciate the effects of this new way of working and to evaluate any necessary corrections.

Conclusion

This case study has explored the definition and implementation of the Right to Disconnect in Enel Italia. In the firm, the R2D, or more precisely *the organisational measures to guarantee disconnection from work technological devices outside working time*, is framed as a critical part of work-life balance and remote-working. The approach followed by ENEL Italia appears to be working according to both unions and management.

The Covid-19 pandemic has fast-tracked the implementation of remote working, generating the opportunity to stress test the implementation of R2D and raising questions on the future of the organisation of work. Indeed, Enel has launched a global survey to understand how to address work and remote working in the post-pandemic future. The survey aims at having a baseline of the situation

and the impressions of the employees in order to have a sound basis upon which to define future approaches.

The case study allows to draw some more general reflections on the management of disconnection and the key issues at stake. It seems essential to support managers in organising work in a way that is efficient in the new context and respectful of the resting times of employees as well as their caring responsibilities. At the same time, it is critical to ensure a high degree of awareness among the workforce, developing broad monitoring strategies that comprise surveys as well as relevant administrative records. More over, it is essential to preserve the mental health of workers, promoting activities for online socialisations, whilst waiting for a return to normality.

Evonik

Introduction to the Evonik Industries AG

Evonik is one of the leading chemicals manufacturers in Germany and on a global level. In 2019, the company employed around 32,000 workers worldwide, of which around 19,000 are in Germany (see Figure 1). The reduction in the number of employees from 36,000 in 2018 resulted from the sale of a part of the business. In 2020, the company was restructured into four divisions: Specialty additives, Nutrition and care, Smart materials and Performance materials. Evonik has production facilities in 26 countries.

Figure 1: Evonik workforce, by main segment

| Employees by segment | T28 | |
|------------------------------|---------------|---------------|
| | Dec. 31, 2018 | Dec. 31, 2019 |
| Nutrition & Care | 8,218 | 8,090 |
| Resource Efficiency | 10,270 | 10,153 |
| Performance Materials | 1,539 | 1,622 |
| Services | 12,091 | 12,037 |
| Other operations | 505 | 521 |
| Continuing operations | 32,623 | 32,423 |
| Discontinued operations | 3,420 | – |
| Evonik | 36,043 | 32,423 |

Prior-year figures restated.

Source: Annual report 2019.⁶³

The company has been listed as the most attractive chemicals sector employer in several worldwide industry rankings in 2018 and 2019⁶⁴. Data reported in the company's annual report demonstrates low staff turnover and a culture of working for Evonik for a relatively long period of time. The indicators compare favourably with other German companies in the chemicals sector.

Table 1: Employee welfare indicators, Evonik and large chemical sector companies in Germany

| | Evonik | | BASF ⁶⁵ | Bayer ⁶⁶ |
|------------------------------------|--------|------|--------------------|---------------------|
| | 2018 | 2019 | | |
| Employee turnover in % | 6.7 | 5.6 | n/a | 6.6% |
| Early employee turnover in % | 0.9 | 0.9 | 1.4% | n/a |
| Average length of service in years | 14.5 | 14.8 | n/a | 10.2 years |

⁶³ [Evonik Financial Report 2019](#)

⁶⁴ Ibid.

⁶⁵ [BASF Online Report 2019 - Welcome](#)

⁶⁶ [Bayer AG - Annual Report 2019](#)

| | | | | |
|----------------------------------|------|------|------------------------------------------------------------------------------------------------|------|
| Accident frequency ⁶⁷ | 1.18 | 0.87 | In 2019, 0.3 work-related accidents per 200,000 working hours occurred at BASF sites worldwide | 0.46 |
|----------------------------------|------|------|------------------------------------------------------------------------------------------------|------|

Source: Annual report 2019.

The company steadily recorded a net profit over the last years. In 2019, it invested around EUR 16 million in training (around EUR 500 per employee).

Evonik is headquartered in Essen, Germany. In addition, Germany also has major plants in Hanau-Wolfgang, Marl, Wesseling and Rheinfelden. Around 19,000 of the company's total workforce are employed in Germany, across 21 sites⁶⁸. All of Evonik's workforce in Germany is covered by the central works agreements/central company agreements negotiated between the company and Evonik's general works council. The overall company agreements (GBV) always refer to the sector collective agreements as well as German laws and regulate their implementation in everyday work. GBVs cannot override collective agreements and laws. GBVs can shape additional elements beyond collective agreements, such as the benefit allowances, which are not included in the collective agreements.

Key documentation was analysed⁶⁹ and two interviews were conducted online for the elaboration of the present case study, one with the representative of the Evonik general works council and a group interview with the representative of management side in the company.

Rationale for introducing the R2D

The company level agreement regulating the nature and implementation of the R2D in Evonik was introduced in 2013 and has been in operation since unchanged. The agreement was concluded in the context of the promotion of flexible work and home-based telework in the company. Both the management and general works council saw the need to establish a framework regulating such work, including availability requirements and employees' entitlement to disconnection. The arrangement for flexible/home based mobile work could be established after individual consultation between the employee and their supervisor. Telework can be proposed by both sides. Experience shows that the proposal mostly comes from the employee. Employees are not obliged to do teleworking. So if the employee decides against it again, you can inform the employer and work in the office again. If the manager does not approve telework, he/she must justify it. For information, teleworking = working time > 50% from home or in consultation with superior home office < 50% at home (here it is sufficient oral consultation).

At the same time, both sides also considered it necessary to regulate telework work outside the agreed working hours and emerging expectations about continuous availability of employees outside their core working hours. Evonik is a global company and works across time zones to ensure smooth production and workflows. This also means that emails and communications can be set outside

⁶⁷ Number of accidents per 1 million hours worked.

⁶⁸ [Locations - Evonik Industries](#)

⁶⁹ Evonik annual reports 2019, 2018, 2017, Sustainability Reports 2019, 2018 ,2017.

workers' agreed working hours. Some of this communication takes place in the evenings and at weekends (reflecting also that some workers are working shifts in German plants). The evening / weekend communication is not necessarily due to different time zones, there could also be issues with managers/colleagues within Germany contacting workers with communications outside of working hours (possibly also to the increased flexibility provided in working hours).

Thus, both sides were motivated by company internal developments to introduce rules regulating availability after the end of working hours and address the negative effects of constant accessibility through new digital devices such as smartphones or laptops. This included the desire to reduce negative effects on the work life balance and health of employees, as well as making employees and managers more conscious of how to handle the new mobile devices for the purposes of work.

The interviewees agreed that the initial push to introduce such an agreement came equally from both the general works council and the management side. Hence, there were no negative reactions to the negotiations of the agreement at either of the sides. There were no disagreements on how to best ensure the R2D (e.g. the specific modalities of disconnection).

As there is no specific legislative framework on the R2D in Germany, this did not play a role in developing the agreement. The public debate about the dangers of digital burnouts and over-availability of employees around the clock had a supporting role in developing an agreement as it also indicated that the company had to act in this area. The motivation mainly to position the company as a good employer ensuring rights in this area. The consideration as to whether the existing legislative framework (for example on working time), as well as existing collective agreements were sufficient (or not) to ensure the R2D were not the major motivating factors.

Negotiating process and coverage

R2D was negotiated as part of the broader company level agreement regulating remote /telework / mobile work in 2013 by the general works council (without involvement of the trade union) and HR representatives in 2013. All negotiating parties have approved and signed the agreement. The agreement has not been reviewed or modified since and interview partners did not express a view that it has to be modified in the future. The agreement does not include a review clause. Criteria to assess its impact are not prescribed. Working hours are regularly screened and if negative developments were to emerge, follow up and further action would be developed.

The agreement applies to the company's workforce in Germany. Teleworking can be requested by those employees who can work remotely using digital devices. This is estimated to be possible for around 6,000 of the company's 21,000 workers who are issued with digital devices and thus in principle could benefit from the telework in Germany.

Content and implementation

The R2D is not implemented through a 'hard shut down' (e.g. stopping the delivery of messages after a certain time, or a server shutdown) but rather through a 'soft' approach. The agreement does not provide rigid specifications for disconnection but sets a framework which can be directly designed by and individual employee and their supervisor. The framework can thus in principle be different for individual employees, although the most frequent pattern is to disconnect after the main working hours and the weekends. The compliance is monitored at several levels (see below)

aimed to ensure that significant differences do not arise in how this is addressed by different line managers (potentially leading to unequal protection).

Employee can request to telework through an individual consultation and assessment with their line manager. At the same time, the so-called “E-mail brake” is agreed on handling emails after the end of the agreed telework hours and at the weekend. The implementation of the e-mail brake is binding for all employees in the company, including executives and the board of directors. All employees set the main working time corridor and an accessibility interval in discussion with their line manager. This also takes into account the working hours of their teams and overall working time corridor operated in the company (which is mostly from 07:00 until 20:00). The company agreement stipulates that emails should not be processed outside the agreed working hours corridor. Employees can be contacted by telephone in pre-determined emergency situations, for example in the event of a plant downtime in production. The differences between teleworkers and other workers that the working time corridor for home working is specifically agreed with their line manager, whereas other workers are only expected to respond to communications during their presence at the workplace.

Technical shutdowns (hard disconnection where mail servers are turned off or emails blocked) were considered not be practicable as the company is active in different timezones worldwide and hence disconnecting German workers after a certain time was not practicable. Furthermore, around 4,000 workers are working in a continuous shift patterns and the hard technical solution would not work for them.

In order to ensure data protection and security in the context of using digital devices and mobile access to work, VPN access to company servers is used. The evaluation of the e-mail traffic of the employees is carried out anonymously and aggregated levels, monitoring the times the emails are sent and responded.

Compliance with the email-break is monitored at several levels.

The main technical tool to monitor compliance is the IT monitoring tool which tracks, in an anonymous and team-aggregated way, the email traffic of all employees. Statistics are then provided to the managers and works council on a half-yearly and yearly basis on the flow of email traffic inside and outside the main working time corridor and at weekends. It monitors emails received and sent. In this way, team leaders have access to the overview of email traffic in their teams and can track when patterns of email traffic outside working hours emerge. This ensures monitoring of availability and email access is available and used to review the availability patterns and take action if needed. Where patterns of communication outside of working hours emerge, this is discussed in team meetings to assess the reasons behind this and how it can be addressed. Thus team leaders can intervene and take corrective action if the email traffic outside the normal working hours increases. Teams typically consist of around 50 people. It is important that technical data is used in the management conversations, and the topic is seen not as a technical issue but an integral part of overall management and working culture in the company. Team level rather than individual level monitoring is considered to work well as it reflects the working realities of people working in teams, and enables management discussions about the deviations from the agreed corridors. To ensure individual’s agreed working hours are respected, there is a general agreement on working time. The approach is to ensure that expectations are clearly communicated. For example, if a manager sends

an email on Sunday, his expectation is: My employee will answer me from Monday. And that's how it's communicated.

Email traffic and data from the monitoring tool is also part of the driver of a KPI and thus managers can compare how their team fares in contrast to the average and other teams. This creates a sort of peer pressure whereby managers cannot excuse high volumes of email traffic outside the main times for a long period of time. Following the working time regulations, working hours are recorded by the employees themselves. Supervisors regularly look into the time recording system and retroactively check with employees whether the employee has complied with the law (if not, works council members would be informed – automatically – and you go directly into conversation with the employee and manager)

The main challenge in the implementation of the agreement initially was to raise awareness and understanding of what the agreement means in practice, both for managers and employees. A proactive approach was taken starting from senior managers to communicate the information to their respective teams to ensure they share the same understanding of how to ensure availability and non-availability outside the main working hours.

Impact of the agreement

The impact of the agreement has been in the reduced volume of internal email traffic. In the first year, the volume of emails sent over the weekend has been halved. The declining trend and low volumes of the weekend email traffic has remained since. The amount of emails sent after the end of the main working time corridor at 20.00 hours has decreased from 13% to 6%, and the amount of emails sent over the weekend diminished from 2% to 1%. Employee satisfaction surveys after 2013 do not specifically assess the issue, but their results did not highlight that permanent availability was a major concern for employees. The key concern highlighted related to desire for more flexibility in arranging working time. The company has the core working hours from 7 a.m. to 8 p.m. in which all employees are supposed to operate, so desirability is expressed to arrange the working time both within and outside this core working time.

It is interesting to note that the figures show that of the 1% of all emails are sent over the weekend, 50% were answered, and of the 6% of all emails sent after 20.00 hours similarly half were answered.

More qualitative impacts noted by interviewees related to positive effects on the work-life balance of employees. An important area of impact is also identified in relation to a higher awareness of how to manage more flexible work organisation while at the same time being aware of the risks of constant connection and the need to disconnect to separate work and private life. This approach supports the development of self-initiative and self-responsibility among employees to avoid circumventing working time rules and better reconcile work and private life. The management responsibility is to monitor the results of email traffic at the team level and take corrective action where patterns of availability outside the agreed times emerge (see above on compliance).

Company management and general works council is very satisfied with the implementation of agreement. By avoiding rigid requirements or hard technical shutdown solutions, a dialogue between employees and managers can be initiated, offering flexibility for both sides but also the possibility to reflect the individual needs of the employees.

The e-mail brake and the use of monitoring tools in broader team discussions have become an ingrained part of the company culture and enjoys a high level of acceptance. The practice has helped to change the company mindset and culture away from a fully presence-based culture. Over time, including through work with the senior managers and awareness raising among the whole workforce, expectations were changed regarding the availability of workers outside of core working hours. The agreement helped to signal that home office and remote working is possible and should not be associated with a permanent 24/7 availability of employees just because they are working from home. This has supported a company culture where a mechanism of social control against the permanent availability has appeared, including amongst the managers. From a cultural perspective, the soft approach rather than a hard shutdown option was more acceptable to the company where a presence culture was previously strong. This changing of company culture is also seen as a positive part of employer branding and making the company more appealing to new employees as a modern and attractive employer.

The current rules also need to be seen in the context where the company is implementing a “smart work” concept and pilot projects, aimed at testing further models of hybrid work and flexibilization in the way the company organises its workflows. This relates to the company further exploring the optimal organisation of working time, compatibility of telework and office based work and thus also further exploring the issues of availability and disconnection.

Since 2014, there has been no perceived need to amend the agreement, which demonstrates that its flexibility and coverage is considered appropriate to cover the needs of employees and the company which have emerged over the years. This is because the agreement offers flexibility for both sides. Employees using digital devices for work can work through telework and make use of the email brake.

The aim of the R2D was also to ensure that telework work also supports the health and productivity of employees, and prevent burnout and overworking. Employees are being trained to disconnect from work also in telework situations and with technical devices which tend to encourage constant connection. Managers are also encouraged to accept and respect the home office as a way of organising and delivering work, where employees are also not available permanently and be sensitive to the situations where boundaries are overstepped. Managers are also monitoring the compliance with the email brake through regular monitoring reports and team level follow ups. This approach for both sides is important to ensure the proper work-life balance and health and safety of workers who are working from home.

The COVID-19 crisis has highlighted the need for more teleworking in the company, and demonstrated that it can work successfully. This has also further supported the acceptance of non-presence based working and the right not to be available outside the normal working hours. At the same time, concerns over ensuring that home office workplaces meet health and safety requirements, including from an ergonomic perspective and workers do not work extremely long hours also due to challenges of home schooling have also emerged.

Conclusions

This case study has explored the definition and implementation of the R2D in Evonik, a German chemicals company. The R2D is framed as a critical part of the company’s agreement on flexible work and telework dating back to 2013.

The experience demonstrates the importance of the company agreement and its main principles remaining flexible for both sides, including establishing the principle of being unavailable outside the main working time corridors. The method of monitoring the email traffic through a specific IT tool offers also interesting lessons to reflect.

As well as formal limits to the available hours for work, it appears essential to support managers in organising work in a way that is efficient in the telework context and respectful of the times of employees when they are not available. At the same time, it is critical to ensure a high degree of awareness among the workforce, developing strategies that continuously keep the issue in the minds of employees and managers.

Looking forward it appears clear that new working modalities, balancing remote and office based work will emerge once the pandemic is passed. The R2D will be crucial in ensuring the sustainability of these new models.

Groupe JLO Societe Anonyme (SAS)

R2D in France

In France, law No 2016-1088 of 8 August 2016⁷⁰ (known as the El Khomri law), effective on 31 December 2017, introduced the right to disconnect (R2D). The R2D can be implemented either via a company agreement negotiated every year, or in the absence of an agreement, by a Charter, proposed by the employer and discussed with employee representatives. The agreements or Charter are non-binding and there are no sanctions foreseen for breaching them.

The company

Groupe JLO Societe Anonyme (SAS) (www.groupe-jlo.com) is a French company offering consultancy services in the integration of people with disabilities in the workplace, ergonomics, training, and quality of working life. Groupe JLO was created by Jean Luc Odeyer in 2005, at first as a consultancy supporting initially the integration of people with disabilities into employment and subsequently developing consultancy activities in the area of Health and Safety at work, the needs of employees in long term sick leave, equality and diversity in the workplace and general quality of working life.

The company employs a total of 125 employees at the head office and in 12 offices throughout France (the company does not have a presence outside France). During the COVID-19 pandemic, all employees are working remotely.

Rationale for introducing the R2D

As the company works in the field of 'responsible Human Resources' and 'Quality of Life at Work', it was one of the first companies to implement R2D in its daily work practices.

Given that the Groupe JLO's core business is to support other organisations to improve working conditions and to experiment with good practices, a key motivation for introducing R2D practices was the need to sensitise clients and external interlocutors, to be an example for their clients and to legitimise their advice, showing them how this could be done, and lead by example that the staff are not accessible 24/7.

The company's staff are mainly consultants working at the premises of other client companies. Before the introduction of the R2D in 2015, it was thus usual practice for consultants to check emails when they returned home after a day at a client's offices so staff tended to work longer hours in the evenings. Management mentioned that employees did not raise this as an issue but wanted to be proactive and felt it was important to sensitise staff, clients, suppliers, to remedy this. Concern for the impact of continuous connection on the health of employees was also a motivation, as the company is aware of numerous studies that show that continuous connection causes deterioration in health and mental health. It had been difficult to measure exactly how long consultants might work for after returning from an assignment and it was exactly this grey area that the R2D provisions aimed to address.

⁷⁰ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032983213/>

The company felt they had to test an R2D approach internally before they could suggest it to their clients. They were innovative in experimenting with server shut downs during evenings and weekends but eventually had to choose a more flexible, softer approach.

Negotiating process and coverage

There is no company level agreement on R2D. However, the company discussed this with the Works Council (French term: Economic and Social Committee) internally and introduced R2D measures in 2015, before the French legislation on R2D came into force in 2016. In this case, the initiative came from management rather than from the employee side, exactly due to core business of Groupe JLO which is to offer consultancy services on quality of working life.

This decision was taken for all the teams and also concerned the members of the Management Committee and regulated all work messages, for both internal and external communication in this way.

There is currently no company level agreement on teleworking at Groupe JLO but the company is in the process of negotiating an agreement on telework, in light of the national level Interprofessional Agreement on Telework⁷¹ in France, concluded on 26 November 2020. The interprofessional agreement is not binding, but aims to offer a framework for negotiations to the social partners. The agreement⁷² is intended to encourage sector level and company level negotiations in the field of telework, by specifying rules regarding the definition of telework positions, the principle of double volunteering, the motivation for the refusal of telework by the employer, the payment of professional expenses, use of equipment and digital tools, the employee's period of adaptation to telework. It also takes into account new issues: adapting managerial practices to teleworking, training of managers, the need to maintain social ties and the prevention of isolation, as well as possibilities for using telework to support employees in their family/ caregiver role. Finally, the agreement includes provisions for anticipating measures of business continuity, channels for social dialogue and employee information, and issues around practical organization and equipment needed.

Content and implementation

From 2015 until 2019, Groupe JLO implemented a server shut down from 8pm to 7am on weekdays, and over the weekend, not allowing any emails to be sent or received during those times. An automatic message was being sent out to reassure senders that the email would be transferred the next morning. On weekends, the server was put on standby. Only a helpline that the Groupe operates for psycho-social risk that employees of client enterprises facing stress can resort to remained in operation also during evenings and weekends. Staff who operate this helpline are paid for working such shifts.

The secretary general explained that the main implementation challenge was to obtain the support of all staff for the initiative. Groupe JLO consultants initially had difficulty accepting and adapting to

⁷¹ Text of the agreement available at: https://www.cadrescdfd.fr/sites/default/files/inline-files-two/ANI%20T%C3%A9l%C3%A9travail%20-%2026%2011%202020_non_sign%C3%A9.pdf

⁷² From the Ministry of Employment press release <https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/teletravail-la-ministre-salue-l-accord-entre-partenaires-sociaux> [accessed on 20 Feb 2021]

the server shut down, and a process of sensitisations was necessary to explain how to set limits so that work does not bleed into personal time. There was initial reticence about losing flexibility, and there was communication with staff representatives and informed staff before the implementation.

In 2019, the company moved to a 'softer' approach renewing recommendations for not sending and replying to emails during evenings and weekend. This required more self-regulation on the part of employees. Since then, all staff use the following statement in their email signature:

“En lien avec sa démarche QVT⁷³, le Groupe JLO promeut le droit à la déconnexion sur les plages horaires suivantes: en semaine de 20h à 7h et le week-end du vendredi 20h au lundi 7h.” (EN translation: In light of its quality of working life approach, the JLO Group promotes the right to disconnect during the following time slots: weekdays 8pm to 7am and weekends from 8pm on Friday to 7am on Monday.)

The R2D is now implemented through continuous information and sensitisation of both staff and clients, of making this part of induction sessions for new employees, and inviting all managers to take note of R2D for their teams, not to send emails outside the set hours. Managers are also asked to examine and assess whether the R2D is respected and report to higher levels of management, if it is not.

Both management side interviews noted that it was the employees who held the post of consultants (100 out of 125 staff, the remaining 25 being admin support staff) that asked for a relaxation of the policy.

Impact

There is no hard evidence on the impact of the R2D measures but all three interviewees for this case study described that R2D contributes to personal and professional development and to wellbeing at work, all of which support the company's objective to be more efficient and have socially responsible performance. “We disconnect to connect to our life, to focus on other interests and this enriches us as individuals and as workers”.

The interviewees pointed out that the strict system was working well and helped put in place a culture of respecting the evenings and weekends of personnel. As a consultancy, prior to 2015, receiving client requests on a Friday evening before the weekend was a common occurrence. The clients are by now sensitised not to expect responses during evenings and weekends.

The employee representative interviewee mentioned that a quality of worklife survey (QVT survey) was carried out in mid-2019 whereby employees are asked to assess different aspects of quality of worklife policy. That included questions on R2D and did not bring up any issues around the implementation of R2D in the company. The company indicated that in response to the question ‘Do the new working practices (co-working, open space, telework) seem suitable to you in your company?’, 74% of respondents thought that they were sufficiently (53%) or completely (21%) suitable, and just 26% thought that they were not very or not at all suitable.

There is also a monthly questionnaire (barometer) with one key question circulated to staff. This has never included specific questions on R2D so far, but the barometer offers the option to add

⁷³ La qualité de vie au travail (QVT)

comments on problems faced anonymously, and so far, there haven't been any complaints related to lack of respect for the R2D.

In a 2018 interview⁷⁴, the founder and president of the group, Jean-Luc Odeyer, gave some positive feedback on the impact of the R2D measures: "We realized that our specific approach has turned into educational value for our clients. We are strengthening our positioning as a developer of quality of life at work. No customer has reported any dissatisfaction related to the inability to reach our consultants between 8pm and 7am, even though the cut-off system has been in place for over a year." In the same article, Clarisse Pugno, occupational psychologist and employee of the JLO Group added: "The experience has enabled the notions of urgency and importance to be put back in their proper place, also having repercussions in the management of requests during the day."

The softer system implemented since 2019 through email signatures and email reminders signalling the R2D, is also described as working well, as it is a constant reminder to both employees and clients of company policy on R2D.

The change into a softer approach was necessitated by two reasons: a need for more flexibility and some technical issues from migrating to a new server in 2019.

The management representatives stated that this change of company policy was necessitated by the fact that the server shut down measure was too constraining. The modification had to be made because while for certain positions, such as for admin support staff there was no difficulty to subscribe to the strict server shut down, some consultants let management know that for some projects and for specific circumstances there needed to be more flexibility.

The employee representative stated that the change was prompted by a change of server provider, and that in the new environment there were some constraints to such server shut downs. This made it necessary for the company to renew its commitment to the R2D by asking employees to not respond if they receive an email outside of working hours.

Hence, the decision was made to move to a more flexible format, where all employees are invited to disconnect. The journey was seen as an interesting experimentation, as they are able to accompany other companies in implementing R2D in different ways.

All interviewees agreed that even this new softer system is well-respected and staff have not reverted into old bad habits from before 2015. Staff now receive very few emails outside working hours (both from colleagues and clients). Management are confident that these provisions are currently sufficiently embedded in the practices of all employees to allow their transfer to new staff and clients alike.

As one of the interviewees for this case study described in a recent newspaper article⁷⁵ "The lighter system works well now. It gives us flexibility. But I think that's only because we sent the message first with the stricter policy and changed the workplace culture – that was very important."

⁷⁴ DROIT À LA DÉCONNEXION: LES BONNES PRATIQUES, Change the Work, 22 May 2018, available at <https://changethework.com/droit-a-la-deconnexion-bonnes-pratiques/>

⁷⁵ <https://www.theguardian.com/world/2021/feb/10/if-you-switch-off-people-think-youre-lazy-demands-grow-for-a-right-to-disconnect-from-work>

Impact of COVID-19

Usual work implies Groupe JLO consultants work at client premises, in face to face contact with their clients. During the lockdown, the company consultants had to move to 100% telework and had to move all their work to distance work via a screen, which is a different way of working. At this moment in time, the R2D is even more important, as employees are finding themselves much more connected and dependent on digital tools.

Telework has become the norm during the lockdowns (March 2020 and January 2021) but also after the first lockdown, since the French government strongly recommended teleworking which is considered “as a necessary adaptation of the job,...”, in the event of exceptional circumstances such as the Covid-19 epidemic, in application of art. L1222-11 of the French Labour Code⁷⁶.

During telework, Groupe JLO advised its employees to maintain a normal rhythm of work as far as possible and to not extend the working day, knowing that when someone works from home, the barrier between work and personal life can easily disappear.

The company’s current⁷⁷ barometer questionnaire focuses on questions around the difficulties of lockdown and of working from home and how are employees adapting their working conditions post-lockdown.

The management representative believes that the impact of COVID-19 on R2D will be difficult to assess and for Groupe JLO is a moot point anyway, as the company’s activity was greatly reduced as a result of COVID-19 restrictions, so there has been no real danger to overuse emails outside working hours. On the other hand, the employee representative mentioned that the company have some issues with workload, as some staff members were furloughed during the lockdowns.

Regarding remote work and disconnection during the public health crisis, the management representative is of the view that “In teleworking, the physical boundaries (which could be determined by travel time, place of work, social environment, equipment, etc.) between professional and personal life are blurring. It is therefore more difficult to articulate our different periods of life, to preserve our private sphere while respecting occupational health obligations. This situation upsets the balance between constraints faced and the resources available to overcome the constraints and can generate a state of stress.”

Conclusions

The company had a strict, technical solution in place for 4 years (2015-2019), shutting down its server from 7pm until 7am on weekdays and over the weekend. In 2019, it moved to a softer approach, at the request of consultants employed by the company, who asked for a more flexible implementation of the R2D.

But interviewees on both sides agree that the culture had already been established in the company to respect personal time and the clients had been sensitised not to expect responses during

⁷⁶ TÉLÉTRAVAIL ET DÉCONNEXION À L’HEURE DE LA CRISE SANITAIRE, by Jérôme Bouchet, Jan 2021
<https://www.groupe-jlo.com/teletravail-et-deconnexion-a-lheure-de-la-crise-sanitaire/>

⁷⁷ This was in December 2020, a 6pm curfew came into effect in France on 16 Jan 2021 which continues to date.

evenings and weekends. So far, there has been no relapse into previous habits of not respecting evenings and weekends.

The R2D is now implemented through training and by appearing in email signatures and email reminders.

More generally, as the company's core business is to support other companies to implement improvements in the quality of working life, the persons interviewed for this case study stated that there is no noted increase in the number of companies that wish to implement R2D in France. There is a definite trend on increased negotiations on telework but the R2D is perceived by French companies as very complicated to implement so the R2D has not been implemented in the majority of companies in France. The health crisis and the intensification of teleworking it has brought about may well make a difference to the implementation of R2D going forward.

Solvay

R2D in Belgium

Belgium's law on R2D (Act of 26 March 2018) provides that employers need to consult with the committee for prevention and protection at work with regard to disconnection from work and the use of digital communication tools, at regular intervals and whenever employee representatives ask them to do so. As such, there is only an obligation to discuss at company level what would be the best solution for each company's specific situation. This consultation is to take place "at regular intervals", but the Act does not specify exactly how often this should be. Neither does the Act provide what measures can be taken following the consultation within the committee of prevention and protection at work. Hence, in this regard, companies are entirely free to decide if and what measures shall be taken, e.g. a clear policy on what is considered a "reasonable" timeframe for answering calls or e-mails, formalizing an out of office system including the appointment of a replacement if the employee is absent because of illness or vacation, a stand-by service for calls that need to be taken care of outside normal working hours, etc.⁷⁸

The company

Solvay is a global chemicals company, established in 1863, with Head Quarters in Brussels, Belgium and presence in 65 countries.

Solvay has 24500 employees globally (in 2018), with 1000 workers in Belgium. 900 of these (900 of the 1000) work at the Brussels HQ. Of these, 2/3 are managerial staff (cadres) or administrators and 1/3 are workers in laboratories.

Regarding Telework, before the COVID-19 pandemic, 20-25% of the managerial staff in Belgium were teleworking 1-2 days per week⁷⁹. During the first lockdown in Belgium (March 2020), as the chemicals sector is an essential sector, 50-100 of the 900 HQ staff had to work onsite, while all the rest immediately moved to 100% telework (5 days a week). This has not really changed after the first lockdown ended, with just 125 staff now working onsite and the rest teleworking from home. The share of male and female workers is approximately 40% female, 60% male and this proportion is the same for telework.

Solvay has had a European Works Council since 1995, when 90% of employees were based in Europe, as well as a global works council (Solvay Global Forum) since 2015. The Solvay Global Forum became necessary, after changes in the company structure and globalisation, which meant that just 35% of Solvay employees are now based in Europe, and 65% outside Europe.

Rationale for introducing the R2D

Solvay states that it is committed to sustainability and the wellbeing of its employees as part of its corporate social responsibility (CSR) strategy⁸⁰. This was reiterated by the interviewees who said that

⁷⁸ <https://www.dlapiper.com/en/belgium/insights/publications/2018/04/be-aware-april-2018/#2>

⁷⁹ This information was provided by the employer representative. The employee representative said that before the pandemic, employees teleworked 1-4 days a week, depending on what was possible in each case.

⁸⁰ <https://www.solvay.com/en/sustainability/our-approach-solvay-way>

Solvay had to sensitise not only its clients and partners, but also society and that promoting the R2D is part of their CSR priorities and annual sustainability report in the social domain.

It was group policy to introduce a Charter on Guiding Principles on Employee Work Life Balance in 2017. Even before that, the R2D notion was first discussed in 2016, some time before the introduction of the Belgian legislation in 2018. In the Charter, the R2D is expressed in terms of respect of employees' working hours, respect for their free time between the working days, during weekends, holidays and time off.

Solvay chose to introduce R2D in the form of a Charter due to the development of telework and because sustainability is an overall objective of the company and part of the mindset that they want to promote. In relation to sustainability, as Brussels is a congested city, it is not ideal to have all employees come to the HQ, telework could help reduce commuting somewhat and the R2D is linked to telework.

Another key motivation for introducing the R2D was concern about the impact of constant connectivity on work-life balance and on worker mental health and wellbeing. From anecdotal evidence, it appeared that managers were susceptible to stress and burnout prior to the Guide to Wellbeing at work, of which R2D is part.

Negotiating process and coverage

Solvay do not have a separate company agreement on the R2D but they have a Charter entitled 'Guiding Principles on Employees Worklife Balance'⁸¹ which incorporates the R2D. The Charter covers all Solvay employees worldwide.

The company had the will to implement a soft approach, and discussed it with high level representatives of the personnel globally through the Solvay Global Forum. There was never discussion of having an agreement, but the approach followed was to introduce a Charter.

The employee representative confirmed that they never discussed the need to have a separate agreement on the R2D or saw the need for a stricter approach, as they also felt that for a global company, closing down the servers would not be manageable, and that people would still find ways to connect. They agreed with the employer side that there is no need for a separate or stricter R2D policy as the company operates in the chemical industry and has many sites all over the world. Most employees work on a production site with no connection to a PC, so this is not an issue for the majority of employees. R2D is only an issue for some 10-15% of employees, mainly those that work at the company's HQ or in business support services.

The R2D is also part of the agreement on digitalisation, at the end of which there is a link to the guideline on R2D.

In a 2019 newspaper interview⁸², the employer representative stated his opposition to any form of constraint in the establishment of a right to disconnect, whether that comes from management or government. "I don't believe in coercive measures, it's very simplistic. We are already working at the international level so with the time differences, it's complicated. But on top of that, it's very

⁸¹ Charter provided by interviewees

⁸² Le Soir, 26 June 2019, available at <https://www.lesoir.be/280261/article/2019-06-26/un-droit-la-deconnexion-ou-presque>

paternalistic. You are not able to manage on your own so we will do it for you. And thirdly, for a lot of people, especially in the younger generation, that's not necessarily what they want. They want a balanced distribution between work and private life, but not necessarily the same for everyone.”

Content and implementation

The Solvay charter of February 2016 insists on the proper use of electronic messaging. In the absence of a strict framework for a right to disconnect, it advises employees on what it considers to be good use of email. To do this, you must not let yourself be overwhelmed by the instantaneous and impersonal nature of the messaging system, but on the contrary manage your priorities, set yourself time slots to respond. This would allow greater efficiency at work and a better work-life balance. The charter thus leaves most of the responsibility for the implementation of the R2D on employees⁸³.

The Solvay Charter lists the good practices to be observed in terms of management giving the good example in respecting the balance between professional activity and personal life, and rules for the optimization of meetings and good use of electronic communication – the R2D is mentioned here, as follows: ‘Do not expect people to respond on leisure time, on public holidays and vacation time. In the event of a crisis or emergency, use the telephone.’

“The Charter is a reference document. The fact that the charter is made public makes it a benchmark that the employee can show to their manager” Patrick Marichal said during a 2019 newspaper interview on the R2D⁸⁴.

During the interview for this case study, he noted the difficulty that Solvay operates in 65 countries, so time schedules are a problem, employees have to try to find common time frames, and limit meetings across timezones. They do not however have a way of preventing emails after a certain time. The company do advise to postpone sending an email outside working hours but needs to be able to continue to work throughout the world. More importantly, ‘we take our employees as adults, responsible for managing their own work’.

The Charter does not foresee any sanctions for not respecting R2D.

It includes several chapters, on how to animate teams, and how R2D and WLB more broadly is linked to the capacity of managers to be autonomous on the one hand, and to manage their work in a way that sets a good example for other staff.

On R2D, the recommendations include to respect working hours, to not have excessive volumes of emails, to not send emails at the weekend and not expect a response at the weekend, to prefer oral and face to face communication over email communication.

The philosophy is for employees to have the autonomy to deal with COVID-related difficulties and adapt their work flexibly.

In terms of implementation, the company refer to the Charter and state that they have not needed to revise it yet. If it was revised nowadays, the Charter would not be on work-life balance but rather

⁸³ Paul Brudel, Memoire sur le Droit a la deconnexion

⁸⁴ Le Soir, 26 June 2019, available at <https://www.lesoir.be/280261/article/2019-06-26/un-droit-la-deconnexion-ou-presque>

on work-life integration. Work-life integration is understood as the flexibility for personal and family moments throughout the week, instead of respect to strict timetables.

The actions taken to implement the Charter include:

- A focus on training and sensitisation, including training and reminder trainings of all managers via an external training institute on quality of life and work organisation, how to organise yourself at home, the importance of disconnection.
- Establishing processes to address excessive connection and work overload with managers: the company insists tremendously on asking managers to fix priorities for the staff in their responsibility. The overload often comes because of things we should do less of or stop doing, otherwise the overload continues, and managers should determine what tasks each employee should stop.

R2D is part of Solvay's processes for wellbeing at work, which include⁸⁵:

- Deploying a Burn-out Observatory since 2016. The observatory focuses on prevention and is based on the belief that it is current intense life rhythms that create burnout, rather than the company or sector. This entails a Vigilance Network of volunteers across the company (not just managers) who have been sensitised to recognise signs of burnout. The observatory also entails a support hotline and personnel on prevention, including a psycho-social counsellor for staff to reach out to. The counsellor who carries out confidential interviews with staff. A self-evaluation questionnaire covering irritability, sleep patterns, stress levels etc. is also available. Thresholds have been set for responses to the questionnaire, with a score of above a certain threshold indicating that there may be a problem or risk of burnout.

As reported in the 2019 report, Solvay's Wellbeing at work (WBAW) program 2017-2020 has five pillars:

- executive Committee sponsorship: WBAW is a key priority for Solvay;
- includes Mental health as part of the Safety communication to Executive Committee (burn-out observatory);
- provides toolboxes and initiates WBAW supportive network. On site, "Local support for WBAW" teams have been appointed (site HR, HSE, and medical professionals);
- develop Group deployment on WBAW training: this includes training of Executive Committee and Leadership Council (70 senior leaders), training of managers (898 managers trained through November 2019, with excellent feedback from participants who appreciated the concrete actionable examples), training of "Local support for WBAW" (few sessions held in 2019, needed to be promoted in 2020), and raising awareness of all Solvay employees via e-learning.

In terms of assessing impact, Solvay carries out an annual People Engagement Survey which examines several elements that impact on wellbeing at work and the impact that the high rate of adaptation of the enterprise is having on employees. The company has undergone many transformations over time and especially over the past 12 years (since 2008), it has gone through important acquisitions,

⁸⁵ <https://annualreports.solvay.com/2019/en/extra-financial-statements/human-capital/employee-engagement-and-well-being.html#accordion2>

factors which cause uncertainty which weighs on employees. Employees have also had to adapt to an increased rhythm of work in a VUCA (volatility, uncertainty, complexity, ambiguity) environment, all of which is linked to a need for disconnection.

“During COVID we had managers in some countries who were very reticent to telework as not to lose control of their teams. In reality, they realised that this was not a problem, people worked even more intensively at home, with many back to back meetings. So R2D is very important as well as the capacity of employees to self-regulate and use digital tools correctly. Company management sees the individual’s capacity to structure their day themselves and to set time slots for tasks etc.”

The employee representative interviewee sees the wellbeing at work policy, of which R2D is part, as necessary to combat mental health risks among employees who may otherwise be overworked. Sensitisation of management is key in the implementation. Solvay managers receive a lot of training on wellbeing at work, so that they give the good example as managers, but so they can also be sensitive in identifying if their employees are struggling.

The guide on wellbeing at work is complemented by the following agreements:

- The Global Framework Agreement on Digital Transformation⁸⁶ signed in April 2020, has worldwide coverage and covers cases where Solvay may wish to implement digital tools which have an influence on the daily life of the employees, or on people being made redundant. The agreement foresees that the employees concerned receive the right training to move to other jobs, and article 6 of the agreement on OSH risks and WLB, reiterates the guidance for good worklife balance and “Solvay actively Supports the right to disconnect outside of working hours”. The agreement is like a handbook, that managers have to know how to act to implement and links to the R2D as a footnote. Article 7 of the agreement is entitled “Ethical aspects of privacy and data protection” sets out what Solvay do regarding employee monitoring data and foresees that: “Any proposed new technology should as a minimum comply with the following Employees should receive timely and clear advice on any monitoring or surveillance features of the new technology And that any employee related data gathered by digital transformation will be clearly stated and will not be used for any other purposes.”
- Global Agreement about minimum social standards – Solvay monitors this through a physical mission in each country, composed of both management and employee representatives.
- Telework on country level, depending on what the legislation foresees in each country (DE, FR, NL, and BE have signed agreements on telework) and R2D is included in these, as well as the right not to work longer than 10 hour days.

Impact

Solvay is not monitoring the impact of the R2D provision per se, but monitors the mental health of its employees mainly through the burnout observatory, as an indicator of whether the broader wellbeing at work measures are having an impact and in order to monitor the company situation on

⁸⁶ Agreement available at: <http://www.ewcdb.eu/docs/11037>

whether employees are overloaded, in danger of burn out or if their work life balance or health is suffering.

The employee representative interviewee corroborated the view of the management that the impact of wellbeing measures is monitored via the number of mental health issues reported by employees, although he acknowledged that not all employees declare the mental health challenges they may be facing. Medical staff in each country record cases of overload, burn out or other problems, they provide the data to the Medical coordinator of Solvay.

He also noted that Solvay so far have not had a complaint that R2D has not been respected. Solvay top management, have recently reiterated that people should never answer or send emails on a Sunday. Good practices start from the top. Having said this, the same interviewee noted once receiving a call from the Solvay CEO for a meeting on a Saturday. He was of the view that if there was no mention of the R2D and related provisions for wellbeing at work at Solvay, there would have been an even greater tendency for employees to get overloaded. Especially in times of crisis like during the COVID-19 pandemic, companies look to cut the headcount, and in response to this, employees may have more of a tendency to overload themselves. In the absence of the right tools for wellbeing at work, people suffer more mental health issues.

He added that the Solvay CEO is really engaged in reducing mental health risks among staff and admitted that it is really difficult but that they are working on reducing them, noting that the risk for managers is higher and difficult to admit to (especially for men who often see such admission as a weakness). It is a real issue in the company, but the company is willing to discuss it openly and are working on it.

Impact of COVID-19

The employee representative noted that if the company wrote the Charter on WLB today, they would not be talking about work-life balance (WLB) but rather about work-life integration. Solvay was already thinking along these lines before COVID-19, because WLB is not just about having the weekend free: there are some moments during the week that contribute to WLB, such as having a free afternoon with the children during the week and the flexibility to decide this, is more important than respect to strict timetables.

More significantly, the company had to put staff on furlough so remaining staff had to focus on what was important, something which will have added to stress and possibly overload. According to the interviewees, being extremely connected is a symptom, not a cause. Solvay tries to ensure that they have employees that feel comfortable, more performing, more engaged, more motivated, but not being led to burn out.

Already before the pandemic, there was a wish from employees for more flexibility in relation to working time, with the exception of the trade union of manual workers who did not want it. The pandemic has reinforced this trend. This requires vigilance so that employees can organise this flexibility without becoming completely entangled in their work.

Conclusions

Solvay are implementing a 'light touch' approach to R2D, included in the guidelines of a broader Charter on Employee Wellbeing at work. The employer side promotes the concept of autonomy and

self-regulation of connectivity, arguing that a stricter, more directional approach would be too paternalistic and not suited to the fact that Solvay is a global company and employees work across different timezones. The employee side appears to share this outlook. From the employee representative interview, it appears that employees are on board with this light touch approach to R2D, even though there are concerns about work overload and mental health issues that the company is aware of and working on addressing. In this context, Solvay has set up an Observatory on Burnout that works to alleviate the effects of overload on the mental and physical health of staff.

In the view of the employee representative, if Solvay continue to handle the issue as they currently do, they see no need to bring R2D up for reassessment or another discussion in the near future. They do point out however, that if EU-level legislation requires it, then they will take the opportunity to reopen the discussion, not only for employees in the EU but also throughout the company worldwide.

Telefonica

Introduction: The company

Telefónica Group is a global company with headquarters in Spain and operates in Europe (Spain, Germany and UK) and Latin America. It has 114,000 workers worldwide (38% women)⁸⁷, out of which nearly 29,000 are located in Spain. In Spain, Telefónica Group is made up of over 20 companies, out of which three large companies (*Telefónica de España* -devoted to the traditional phone business-, *Telefónica Móviles España* -mobile- and *Telefónica Soluciones* -linked to development and systems) are linked by the same collective agreement⁸⁸ that affects nearly 18,000 workers in Spain. The collective agreement of these three companies is a leading reference for the rest of companies of the Telefónica Group, and also for other telecom companies, that would aim to reach the same labour and wage conditions.

The R2D in Spain and in Telefónica: a brief overview

In Spain, the R2D was first introduced in the Organic Law OL 3/2018, of 3 December, for personal data protection and guarantee of digital rights, in its article 88. This article contains a generic reference to collective bargaining (or agreement between employer-workers' representation) and states that it should be used to implement the R2D. Thus, the employer should design an internal policy defining the R2D and the measures adopted to implement it. Later, following declarations made in January 2019 by the General Attorney of the European Union on the need of Spain to set up a record of working hours to comply with Directive 2003/88 on Working Time, Royal decree Law 8/2019, of 8 March, with urgent measures for social protection and the fight against precarious work, included the obligation for companies to record working time of their employees with the aim of avoiding unpaid overtime. In May 2019, the EU High Court ratified it. This RDL 8/2019 has modified article 34.9 of the Workers' Charter. More recently, RDL 28/2020, of 22 September, on remote work, completes the legislative approach of Spain to the R2D. RDL 28/2020 regulates distance work as the work done remotely during at least 30% of working time and it states that it shall be based on a voluntary written agreement for both the worker and the company (articles 1 to 8). Article 18 refers to the R2D specifically in the context of partial or total distance/homework making use of digital devices, and refers to collective agreements to set up the conditions that guarantee the R2D.

Telefónica started to promote telework early in 2015⁸⁹ and reached a Joint Statement pertaining to the Right to Disconnect of employees⁹⁰ with the two main trade unions (CCOO and UGT) in November 2018, one month before the approval of the mentioned OL 3/2018 that first introduced the R2D in Spain. In January 2019, Telefónica, the two main trade unions and Uni Global Union

⁸⁷ Source: Telefonica 2019 profile, available at <https://www.telefonica.com/documents/153952/145510978/2019-Telefonica-Profile.pdf>

⁸⁸ It is called Collective Agreement of Linked Companies 2019-2021 (*Convenio Colectivo de Empresas Vinculadas*, CEV)

⁸⁹ As included in the I Collective Agreement of Linked Companies (*Convenio de Empresas Vinculadas*, CEV), signed in 2015. Annex V. Agreement to implement telework in the linked companies.

⁹⁰ Available at <https://www.telefonica.com/documents/23283/144278198/posicionamiento-global-desconexion-digital.pdf/b6a5a6cb-1678-9677-107d-96b863741ee4?version=1.0>

included in the International Framework Agreement that guides labour relations in the rest of countries an annex with the principles of the R2D in Telefónica that also recognises the role of local representation of workers to define measures to guarantee it according to the local needs and preferences. Some months later, in July 2019, the initial joint statement was developed into an Internal Policy regulating the R2D. At the same time, Guidelines for the recording of working time in Telefónica Group Spain were also agreed upon, in response to the obligation of RDL 8/2019. These two documents were eventually included as annexes in the recent company II Collective Agreement for 2019-2021. This recent II Collective Agreement includes also an annex with the Agreement on Telework and Flexiwork⁹¹.

Rationale for introducing the R2D in Telefónica

Telefónica Group is a global and a digital company and it started to promote remote and teleworking as early as in 2015. Since then, the acceptance of tele/remote work is very high, as evidenced by the staff surveys regularly carried out both with workers and those with (line) managerial responsibilities. In general, it is perceived that tele/remote work contributes to increased productivity. Before the Covid-19 crisis, 15% of staff used to have a specific telework contract with specific conditions for homework in each case. With the restrictions resulting from public health measures to combat the spread of Covid-19, up to 95% of staff work at present from home/remotely (not all with the specific telework contract) and it is foreseen that, once the pandemic is over, this share will remain high, though less than this 95%.

Three years after starting to promote telework in 2015, early in 2018 negotiations on the R2D began between the company and trade unions and eventually a Joint Statement pertaining to the Right to Disconnect of employees⁹² was signed by the Spanish part of the company and the two most representative trade unions (*Unión General de Trabajadores* (UGT) and *Comisiones Obreras* (CCOO)) in November 2018⁹³. This common position document states the willingness of the company and trade unions to reach an agreement of the R2D in Spain and to apply it later to the rest of countries where Telefónica is based. The main concern was the risk of excessive connection facilitated by digitalisation and globalisation for the balance between work and personal life, for workers' physical and mental health, wellbeing of employees and, as a consequence, for productivity. The adequate use and avoidance of abuse of corporate digital devices and services (phone, email) was another source of concern. The company recognised the R2D and committed to promote measures to guarantee adequate rest, such as awareness raising and training for managers and the rest of employees.

As reflected in the Internal Policy regulating the R2D signed in 2019 (see section 4 for more detail), the approach adopted in Telefonica towards the implementation of the R2D is based on flexibility supported by technology and focuses on two main results: first, growth of the business focused on digitalisation, sustainability and increased productivity; second, improved balance between

⁹¹ This is the agreement for three companies of the group, as mentioned in footnote 2. Note that the company I Collective Agreement of Linked Companies 2015-2018 (signed in 2016) included already an article 89 on Telework and an Annex V on the implementation of Telework, but no reference to the R2D.

⁹² Available at <https://www.telefonica.com/documents/23283/144278198/posicionamiento-global-desconexion-digital.pdf/b6a5a6cb-1678-9677-107d-96b863741ee4?version=1.0>

⁹³ All interviewees state that the initiative to negotiate and sign the Joint Statement was theirs and all acknowledge that the response by the other part was excellent.

professional and personal life so as to ensure physical and mental health of workers and their wellbeing. The rationale is that digitalisation allows for better conciliation, which in turn allows for more diversity and better health, which results eventually in increased productivity. If the company is willing to reap the benefits of flexible work based on the new possibilities provided by the technology (among which tele/remote work), then it needs to make sure that it is implemented in a sustainable way.

The challenge is therefore not to reduce long working hours, which are not generalised in the company⁹⁴, but to address the blurring between professional and personal life and insufficient rest enabled by constant connectivity. In this context, digital disconnection is considered necessary for 100% of staff, regardless of remote/telework, since all workers are digitally connected; the Internal Policy applies also to all workers, including medium and high responsibility staff, with the only exception of workers with special availability requirements due to the “essential” nature of their work⁹⁵. A soft approach has been adopted, in which workers have the right to disconnect, but not the obligation: a worker can send an email outside normal working hours, but s/he cannot expect this email to be responded immediately.

As the R2D was addressed before the Covid-19 crisis, the company was prepared to deal with the challenges involved in massive telework (95% of workers). Yet, at the start of the health crisis, the almost wholesale and quick shift to telework in the company resulted temporarily in hyper-connection (very long hours, excess of meetings...), caused by the novelty of the situation and initial confusion. However, the fact that a debate and agreement had already been adopted has helped to quickly move back towards sustainable telework. As expressed by the trade union representative interviewed, a key challenge is to “convince” employees that they do not need to respond to mails or calls outside their working hours, even if they come from their superiors. When it comes to telework, it is also about trust of staff with responsibilities in their subordinates and about co-responsibility of all employees.

As mentioned, following RDL 8/2019, Telefónica agreed on some Guidelines for the recording of working time. The document stresses the focus on flexibility, self-management of working time of all employees (including managers), mutual trust and responsibility in responding to working time. In general terms, the Personal Identification Card (TIP in its Spanish acronym) needed when accessing the company’s premises is used as register of entry and exit time and, deducting the stipulated times for lunch and breaks, as the daily register of working time. For those workers and situations where the TIP cannot be used (remote/home base work), an IT system called *Success Factor* has been developed (see section 6 for more detail). Thus the register of working hours shall not interfere in the flexibility policy, since overtime, as explicitly stated in the Guidelines, is exceptional. The Guidelines include also explicitly the R2D, as agreed in the Joint Declaration and agreement of 2018 and 2019 respectively.

⁹⁴ Working overtime needs to be approved by the superior responsible person and, on the grounds of cost saving internal policy, is not generalised. The persons interviewed confirmed that overtime is not frequent in the company.

⁹⁵ These are workers devoted to installation and repairing works, considered as “essential”, since Telefónica has the obligation to provide an universal service, and they have specific contract clauses with extra payment.

Finally, the R2D is also understood by trade unions and Telefónica as part of its social corporate responsibility, aiming to be a reference for the society, other companies in the sector and for collective bargaining in general⁹⁶.

Negotiating process and coverage

The negotiating process on the R2D in Telefónica has followed an interesting pathway initiated with the mentioned Joint Statement pertaining to the Right to Disconnect signed in November 2018 (before the Law 3/2018 on personal data protection was passed) and which expired in September 2019 with the inclusion of the R2D in the new Telefónica Collective Agreement for Spain.

The most contentious issue during the negotiating process was that trade unions wanted the R2D to be an obligation for all, while the company understood this obligation as incompatible to increased work flexibility (and increased conciliation possibilities). The company wanted the R2D to be a right, but not an obligation, which was considered initially by the trade unions too soft: together with a policy aiming at work flexibility, they feared that this approach could potentially mean a sort of deregulation of working hours associated with digitalisation and telework. Eventually, the agreement was reached thanks, according to interviewees, to clear messages expressed by the president of the company that flexibility needed to be understood coupled with committing with the R2D by all workers, included direction staff. Interviewees agree on the fact that solemn declarations by the president of the company are effective when it comes to change attitudes among a part of middle/higher level managers.

During negotiations, hard shut-downs were discussed but eventually not included. The main reason was related with the risks of missing critical issues (breakdowns, system failures...) when shutting-down the information system that could affect the activity. Indeed, telecommunication and digital services are considered essential activities that could also be affected by shut-downs.

As for the coverage, as mentioned above, the R2D applies to all workers, including directive staff, with the exception of workers with special availability requirements due to the “essential” nature of their work. This latter group of workers is, according to interviewees, very small.

Content of the agreement

The Internal Policy regulating the R2D agreed in July 2019 includes 12 articles. It firstly recognizes the employees’ rights not to reply to solicitations of the employer outside normal working hours, and stresses the particular responsibility of managing staff of being a model for the teams they coordinate. The disconnection is formally recognised as a right of the worker and not as a duty and the agreement specifies that employees cannot be subject to sanctions or disadvantage for refusing to respond to such messages. Thus, those who, nonetheless, send e-mails or messages during the rest periods will have to assume that they will not receive a reply until the following day.

A clause containing exceptional situations is included in the agreement. Thus, the R2D is not guaranteed in force majeure situations or in those that suppose a serious, immediate and evident damage for the company that requires undoubtedly quick response. In such cases, employees may

⁹⁶ The representative of CCOO explained that the agreements reached in Telefónica are reference for the discussions being held in other companies (Orange, Vodafone, Ono) and for other negotiators of the trade union.

be compensated for overtime work with free time. As mentioned above, workers with special availability requirements due to the “essential” nature of their work are also excluded from the agreement.

Further:

- Meetings shall be requested and training shall be organised providing information on their approximate length. Meetings and training should take place inside normal working hours;
- The R2D is guaranteed during (bank) holidays, week-ends, sick/paternity leaves, etc. Employees shall leave an email message stating that they are on leave and communicating the contact details of a reference person;
- The company commits to organise training, information and awareness raising activities aiming the responsible utilisation of digital tools and the R2D, in particular among managers with staff responsibilities;
- A parity working group for monitoring and assessing the agreement is foreseen.

Implementation / detail of measures

As mentioned above, soft measures have been implemented to guarantee the R2D in Telefónica. They rely on an IT internal tool called “Success Factor”⁹⁷ that records and monitors, among many other things, working time, thus, detecting long working hours. It has been gradually implemented over the last 1.5 year. Each worker is registered with his/her standard work schedule, but flexibility in working time is allowed, so different (including longer) working days can be recorded, thus compensating one day’s overtime with time off. This tool, however, is not used to monitor whether emails are sent outside normal working hours. It is not easy to monitor whether calls are being made outside working hours either, unless employees report on it.

It needs to be noticed that a high variety of employees’ profiles work in Telefónica with very different time schedules and conditions: additional to those working in more or less standard times (with or without midday break), some work on time shifts; some on week-ends or bank holidays; others work on call; some are excluded from the R2D (and receive extra salary for this) because they may be requested to be immediately available in breakdowns or malfunction cases⁹⁸. The company collective agreement establishes time schedules for each of these groups of workers and 1.5 or 2 hours entry/exit time flexibility. Additionally, whenever possible and in agreement with the managers, other time flexibility measures (other time schedules) or homework can be adopted. It needs to be guaranteed that the employee makes use of flexibility, while at the same time preserving the work of the team she or he is working in. Respect for compulsory rest times between the end of one day and the beginning of the next day is also guaranteed.

In general terms, overtime is explicitly limited in the company since it has to be authorised in writing by superiors. In these cases, overtime hours are paid with an increase of 75% to 100% with respect

⁹⁷ This is a SAP cloud tool for managing HR. As mentioned in section 3, the Personal Identification Card (TIP) is the basis for registering entry and exit time of Telefónica’s premises and thus used for complying with the daily obligation of registering working time. The information gathered through the TIP is included in *Success Factor*.

⁹⁸ All these situations are regulated in the collective agreement.

to usual payment. Alternatively, it can be agreed that each hour overtime can be compensated with 1:45 or 2:00 hours rest time.⁹⁹

Communication, information and training measures are implemented too, both by the company and trade unions. In practice, these have been massive and regular communication activities that also include recommendations as how to improve the daily practice. It is stressed that the president of the company has addressed at least twice the importance of correctly implementing the R2D in his meetings with high level management worldwide. These presidential messages are believed to have a strong impact on managerial staff. Moreover, the company manages an internal network that reaches out to 120,000 workers worldwide, able to organise events on streaming for more than 80,000 workers. Also, an internal worldwide communication channel called “*Somos*” via email with the most important daily news from the company is used. The recommendations made by the trade union CCOO via a massive email platform include: “Organise beforehand the contents of the meetings and identify the participants”; “Address your messages only to the participants in meetings or only to the relevant persons”; “Respect time schedules (lunch breaks, part-time work, etc)”; “Organise training preferably in the morning”. The recommendations prepared by the company are more informal: “Stop the mania for meetings and plan them between 10:00 and 18:00”; “Respect others: communicate between 8:00 and 18:00”; “You are digital: get to know your digital devices and do not allow them to invade your life”; “Life is short, enjoy your holidays: make sure you leave an email stating you are on annual leave and communicating a reference person”; “You have to live, so as to be able to give your best”.

Training is also part of the approach, as managers are regularly trained in managerial skills, including leadership and human resources management, which includes the R2D, as a key commitment of the company. Additionally, all employees can also be trained in time and stress management.

A key challenge in the approach adopted in Telefónica is to empower employees in the R2D, for instance, if their boss calls or sends emails outside normal working hours. Both the sender and recipient of the message or call need to understand that s/he has the right to disconnect, although not the obligation. Thus, line management is also key in the approach both as role models (as explicitly included in the agreement) and as organisers of work. This challenge is not understood really as a problem, but rather as a necessary process, which the Covid-19 crisis has very much accelerated. Recording of working time, communication and awareness raising activities, support to correct use of digital devices and technology and the statement that employees shall not be sanctioned if they do not reply to messages/calls or attend requests outside normal working hours shall contribute to address this challenge. The strong social dialogue between the company and trade unions is also key.

A tool has been set up for employees to anonymously or confidentially report actions or behaviours by superiors or colleagues which are against the corporate values and principles, among which corruption, fraud, bribery, labour conflicts or discrimination. This tool is being used regularly by employees¹⁰⁰, but, according to interviewees, violations on the R2D have not yet been reported.

⁹⁹ Depending on whether the overtime is made during the day or night, week day or week-end (art. 53 of collective agreement).

¹⁰⁰ In 2019, 1,222 cases were reported and investigated out of which 465 were accepted: 43% of these were related with “inadequate behaviour and other labour conflicts” and 28% with fraud cases. As a result, 140

As reported by the trade union representative, there have been some (few) cases where a manager would send messages or call outside the normal working time, demanding immediate response. In these cases, the manager would be reported to the HR department, that would inform him/her about the need to respect the R2D and about how to do it, but no sanction procedures are foreseen. As it seems, this does not occur often.

Impact

As mentioned above, the agreement on the R2D signed in July 2019 includes the setup of a parity working groups for monitoring and assessing its impact. The Collective Agreement 2019-2021 signed in September 2019 includes also a parity Commission for its interpretation and monitoring (art 219), and a specific Commission on organisation of working time. Thus, a meeting devoted specifically to monitoring and assessing the impact of the R2D was foreseen, but finally not held because of the outbreak of the Covid-19 crisis. It may be too early to assess the impact of the agreement on the R2D. This said, some impacts have been identified by interviewees.

Firstly, very much linked with remote/teleworking and also with the pandemic crisis, the attitude of workers is assessed both by the company and trade unions very positive: they have been responsible when it was needed, so the necessary trust by managers on their self-organisation skills and on their commitment has been confirmed. This is understood as key for a correct implementation of the R2D, within a work flexibility approach.

Interestingly in this context, a side effect of homework and of the implementation of the R2D is a flattening of the hierarchical structure, traditionally quite vertical in Telefónica. Digitalisation, self-organisation of working time and empowerment of workers as regards their right to disconnect are key to change some traditional standards. Managers do no longer organise employees' working time as thoroughly as they used to do, so workers are more free to organise as it better suits them; this affects also work outside normal working hours, which is no longer determined by managers, who cannot expect their messages or requests be replied.

Second, worldwide, almost 32,000 persons work remotely or from home in Telefónica¹⁰¹. Remote/homework is a very well praised tool for improved balance between professional and personal life, as detected in the staff satisfaction surveys regularly carried out. Gender equality is thereby improved, because flexibility is available for both women and men and the R2D applies to all employees, including line managers. Yet, as acknowledged in the 2019 Consolidated Company Report, 60% of employees benefiting from one of the flexibility measures, part-time, are women.¹⁰² The Equality Plan¹⁰³ includes the possibility of homeworking during up to 4 days a week as a gender

persons were dismissed in 2019 and 630 since 2016. Source: <https://okdiario.com/economia/denuncias-empleados-telefonica-abuso-corrupcion-crecen-34-140-despidos-5228299>

¹⁰¹ In countries as Chile, Ecuador and Perú, the share of workers working remotely/home based is near 50% (no disaggregation by sex readily available), according to the 2019 Consolidated Company Report, available at <https://www.telefonica.com/documents/153952/13347843/Informe-de-Gestion-Consolidado-Telefonica-2019.pdf/8ebc45d9-0ac5-80d0-db51-b9a4e62583ec>

¹⁰² Available at <https://www.telefonica.com/documents/153952/13347843/Informe-de-Gestion-Consolidado-Telefonica-2019.pdf/8ebc45d9-0ac5-80d0-db51-b9a4e62583ec>

¹⁰³ Included as Annex VII in the Collective Agreement 2019-2021

equality measure; it also states that meetings should be organised preferentially during the normal working time, so that they do not affect conciliation.

Some detrimental practices for the R2D have been identified and addressed. Thus, an excessive number of emails sent; too many persons addressed in the emails and calls for meetings; an inefficient use of shared agendas and of the possibility to set up meetings in others' agendas... Though these practices have to do more with incorrect use of digitalisation possibilities, they are understood as potentially detrimental for the R2D. As mentioned above, the communication campaigns on the R2D by the company and trade unions recommend limiting these practices, but their effectiveness has not been assessed quantitatively.

The R2D seems to be already normalised within the company. The time elapsed since the Joint Declaration in November 2018, the possibilities of digitalisation and the pandemic crisis have contributed to it.

Additional to satisfaction surveys, the company organises regularly focus groups with line managers and employees. As relevant findings about homework linked with the R2D the following impacts are identified: managers consider remote/homework productive, since employees are more satisfied and committed because they can better conciliate professional and personal life and, as a consequence, productivity increases; it also allows to have more diverse teams. More reluctant managers have been able to realise that, adequately implemented (meaning, among others, implementation of the R2D), remote/home/flexible organisation of work yields positive results. The experience during the Covid19 pandemic has further contributed to reaffirm this perception.

Another remarkable impact of the experience in Telefónica is the mirror effect in other large companies in the telecommunication sector, such as Orange or Vodafone, whose collective agreements include very similar approaches to the R2D as Telefónica¹⁰⁴.

Covid-19

Before the pandemic, remote/homework affected about 15% of Telefónica employees in Spain, who had signed specific homework contracts, according to the agreement on homework that was included in the previous collective agreement signed in 2015. During the pandemic and at the time of writing this report, this share increased to 95%. The pandemic has accelerated and improved the implementation of the R2D thanks to accelerated learning process: at the very beginning of confinement, hyper-connexion and very little respect to the R2D both by employees and line managers occurred, leading to physical and psychological tiredness. As mentioned above, employees even postponed their holidays when confinement meant they could not leave the city where they live, in the belief that staying at home is not rest. After a while, the situation has already changed and, according to interviewees, the communications efforts done by the company and trade unions as regards the R2D have resulted in a more normalised situation at present.

It is foreseen that after the pandemic the share of remote/home workers will decline, but that it will be well above the 15% ceiling prior to the health crisis, since it was an objective to expand

¹⁰⁴ Article 23 on the R2D of Orange Collective Agreement signed in October 2019 shows and almost identical approach as Telefónica (see https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-14981); the same holds for article 31 on the R2D of Vodafone agreement signed in December 2020 (see <http://www.stcvodafone.es/iiconveniogrupo Vodafone/>)

homework. Foreseeably, a high share of workers will work remotely 2-3 days a week, but, after the massive remoteness experience, physical contact is now deemed necessary. It is in the discussions the possibility to establish a general working time in Europe from Monday at 6 am to Saturday at 10 pm. earmarking some hours for common work e.g. from 12 am to 3 pm. No changes as regards the current approach to the R2D are foreseen so far, though, as mentioned above, a specific meeting is pending for assessing the implementation of the R2D and its impacts and some changes could be made, if necessary.

Total

R2D in France

In France, law No 2016-1088 of 8 August 2016¹⁰⁵ (known as the El Khomri law), effective on 31 December 2017, introduced the right to disconnect (R2D). The R2D can be implemented either via a company agreement negotiated every year, or in the absence of an agreement, by a Charter, proposed by the employer and discussed with employee representatives. The agreements or Charter are non-binding and there are no sanctions foreseen for breaching them.

The company

TOTAL operates in the producers and distributors of fuel, gas and electricity sector. In terms of gender balance, the majority of staff are male, with 40% of a global workforce of 110 000 employees being women. TOTAL is a company of engineers and the proportion of women being recruited is in line with the proportion of University graduates in Engineering in France.

Rationale for introducing the R2D

Following the introduction of the Law in France, the employee representative mentioned that Total trade unions asked management to negotiate an agreement on this right. The management side noted that as the right was legislated, there was going to be a negotiation on this topic. According to the trade union interviewee, the motivator was one of the trade unions (Confederation autonome de travail - C.A.T) which is not the biggest trade union at Total (represents 17% of employees), but which pushed hard for the R2D, seeing it as one of the more important topics of this era. As technology is changing, companies do not talk about the impact these changes have on employee health and wellbeing. With all the technology at the disposal of employees, it was essential to negotiate a R2D to respect the boundaries between professional and family life. Not respecting the R2D can lead to digital addiction and have a catastrophic impact on family and society.

Negotiating process and coverage

The company level agreement regulating the nature and implementation of the R2D in TOTAL was signed in October 2019. The negotiation process started in 2018.

The agreement only covers France, and within France, it only covers what is called the 'Common social base (Socle social commun)' of the company, made up of 17 companies, the 'heart' of TOTAL. This represents some 15000 employees out of a total workforce of 35000. TOTAL has some other subsidiaries in France that are not covered by the agreement because the competence for negotiations of the Socle social commun is these 15000 employees.

The employee side organisations involved in the negotiations included CAT, CFDT, CFC-CGC, SICTAME-CNGT representing engineers CGT. Four of these five trade unions signed the agreement, representing about 75%-80% of the Socle Social Employees. CGT was the only of the five trade unions present at TOTAL that did not sign the agreement.

¹⁰⁵ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032983213/>

Regarding the negotiation process, according to the trade union interview, initially management wanted to include the R2D under the gender equality agreement but the trade unions did not accept this and asked for a separate agreement on the R2D. It was not easy but they succeeded to get it and the negotiation lasted several months during 2019. According to the same source, management wanted to include broad brush principles in the agreement with few details, that finally would not change much.

According to the trade union interview, when the company wanted to keep the agreement general, C.A.T. went away and drafted the text of an agreement on R2D. That was a first in Total, it was not something that was happening before, usually there were negotiation meetings, followed by management proposing the draft texts of agreements. According to management, the basis for negotiations was not the draft provided by C.A.T. but rather a draft prepared by management.

All five trade unions representing employees participated in the negotiations but only four of the five ended up signing the agreement.

The draft agreement that had been prepared by the C.A.T. trade union¹⁰⁶, had included some 'harder' measures such as the following provisions (Article 3.6 of the draft) which were however not included in the final agreement:

- In the manner of harmful tobacco products, each software used will display a prominent statement such as, "The abuse of digital tools is harmful to health and efficiency. To be used reasonably".
- When used outside of conventional working hours, the software will remind the user of conventional working hours and that they do not have to work outside of these hours. This reminder can be done by a window displayed on the screen requiring validation to be cleared.
- The messaging system will be configured so that emails sent outside of conventional working hours are sent at the start of the next working day. An immediate dispatch procedure will be possible in an emergency.

During the negotiations, the issue of whether to use a software application to monitor the R2D was debated at length between management and the trade unions. The management was of the view that it would be more appropriate to monitor R2D qualitatively, rather than quantitatively. The justification provided was that they did not want this type of surveillance of their employees but also that technically, there is no appropriate tool to quantitatively monitor the R2D. This was because as the agreement concerns 15000 employees who perform very different jobs and activities. For example, those in service stations or in refineries do not necessarily have computers in their job. Engineers use computers but do not all use the same software. The management side also noted that with regard to the control of connection times, for management and certain trade unions, an employee turning on their computer does not necessarily mean that they start working (e.g. due to having a break with a computer left switched on, going to a work meeting without a computer, use of the professional computer for private purposes during breaks, etc.). For all these reasons, management preferred the solution of following up the implementation of the R2D through developing a guide, training and communication activities as well as an employee survey to monitor the implementation of R2D is respected.

¹⁰⁶ Draft text supplied to the researcher by C.A.T.

During the negotiation process, as also illustrated by the above article 3.6 of the draft agreement, the trade unions wished for the R2D to be monitored both quantitatively and qualitatively. At the end of the negotiation process, 4 of the 5 trade unions signed the agreement, with the element of monitoring via software having been removed.

Content and implementation

As already described, it was decided not to implement R2D via IT applications but rather awareness raising, training and communication activities and to monitor implementation through an employee survey.

The agreement foresees that an employee survey will be carried out one year after the signature of the agreement and once more before the end of the four-year term of the validity of the agreement. The survey will measure evolution of the extent to which the right is respected. It will include questions on employee perceptions of the extent to which the right is respected by three entities: a) each employee themselves, b) by the hierarchy and whether they themselves set good examples by disconnecting, and c) by peers/colleagues throughout the company.

Total's R2D agreement¹⁰⁷ was signed in October 2019 and foresees that the issue of disconnection must be addressed at departmental meetings every year to take stock of implementation based on a qualitative discussion of what works well and what works less well. and more generally must be the subject of permanent dialogue between employees and their supervisors. Management is committed to making all staff aware of disconnection through a number of measures such as presenting the communication plan to the unions signing the agreement, before implementing this plan. It is also foreseen that management, together with the signatory unions, will produce a guide which will include all the good practices implemented in the company on the R2D. The agreement also foresees that an employee survey will be carried out in the first year of the agreement and before its end to measure the evolution of practices.

Other measures foreseen include:

- Creating a dedicated space on R2D in the company intranet,
- Management offering awareness and training modules for managers and employees on the use of digital tools (risks of addiction, inappropriate use).
- Article 5.3 of the agreement foresees that if an employee thinks their R2D is not being respected, has the right to alert their managers (N+1 or N+2) for remedial action to be taken. Alternatively, they can contact in confidence the 'developpeur de talent' who is a member of HR, the staff member responsible for psycho social risks, the occupational therapist or an employee representative (member of the Works Council or trade union).
- The occupational doctor putting in place personalised support for employees that they identify as suffering from addiction to digital tools.
- an assessment report in the autumn of every year and an anonymous employee survey to provide data on this.

The agreement does not foresee raising awareness on the R2D with clients.

¹⁰⁷ http://www.dialogue-social.fr/files_upload/documentation/201911051624130.accord%20total.pdf

In terms of implementation, the agreement did not foresee a technical solution to monitor respect of R2D but rather relied on awareness raising, training and communication activities for implementing the R2D. The activities were to be developed jointly by the management and trade unions. The company started work on awareness raising in November 2019 and the plan was to have many communication activities at the start of 2020 but this was overtaken by COVID-19. However, implementation of the agreement was overtaken by the pandemic, which put other topics higher on the agenda of discussions between the employee and employer side, so it has not been possible to implement any of the communication activities foreseen in the R2D agreement, nor any of the monitoring activities.

In Autumn 2020, an employee survey on the implementation of the agreement was due to take place. However, the implementation of the agreement was suspended because at the time when France went into the first COVID-19 related lockdown in March 2020, the management and trade unions were going to enter into 3 meetings in April-May-June 2020 to develop the guide, the survey on R2D and the communication campaign jointly. The management interviewee pointed out that as the agreement was to develop these aspects jointly, management could not take unilateral action. For these reasons, implementation and setting up the working groups will have to wait until the 2nd semester of 2021.

That will represent a 2-year delay in the implementation of the agreement, out of a total duration of 4 years for the agreement. The agreement could have been prepared as an indeterminate one, but the intention had been to bring everyone around the table again after 4 years, to discuss whether there was a need to ameliorate it.

In terms of telework, there is an agreement in place at Total since 2013. The conditions for teleworking changed in 2019 with a new agreement. For Total, telework is a completely different issue to R2D. Only 15-20% of employees teleworked 1 day or 2 days per week pre-Covid. There is a culture that employees have to have the face to face contact with the company and their colleagues. Telework had to be the exception, with at least 3 days per week of presence in the office.

Impact

The trade union representative interviewed believes that the TOTAL agreement has really helped things progress as the negotiation process already raised awareness of R2D with management and management was on board with the ambitious communication plan.

Impact of COVID-19

According to the trade union representative interviewed during the first COVID-19 related lockdown in March-May 2020, 100% of staff had to move to telework except from workers in the refineries, and the sales staff who continued to go to their clients. At the beginning of June 2020, it was possible to return to office buildings gradually, but many of the employees who discovered telework for the first time during the Spring 2020 lockdown, asked to telework for 1-2 days/week during the summer of 2020, based on the Total Telework agreement but some delays were experienced in receiving responses from Management. The management interviewee pointed out that while teleworking during the Covid-19 pandemic, the company sends communications to employees alerting them to respect working time.

Conclusions

In October 2019, Total signed a company level agreement on R2D, for a duration of 4 years. The agreement did not foresee a technical solution to monitor R2D but rather relied on awareness raising, training and communication activities for implementing the right. These activities were intended to be jointly developed by company management and trade unions. However, implementation of the agreement was overtaken by the COVID-19 pandemic, which put other topics higher on the agenda of discussions between the employee and employer side. Implementation of the agreement will be resumed during the second semester of 2021.

UniCredit S.p.A

Introduction and methodology

This case study analyses the development and implementation of the Right to Disconnect (R2D) in UniCredit S.p.A. UniCredit S.p.A. is a pan European Commercial Bank, headquartered in Italy and active in several countries¹⁰⁸.

As of 2019, UniCredit S.p.A. employed over 93,000 people globally, of which 38,764 people in Italy (46.82% female in Italy; 56.25% female globally)¹⁰⁹. UniCredit S.p.A. was selected due to its pioneering approach to the R2D, having explicitly addressed it since 2017.

The case study is based on the review of key documents as well as three interviews: one with representatives of management, one with representatives of unions and one with representatives of the EWC.

Needless to say, the debate on R2D is closely linked to the Covid-19 Pandemic of 2020/2021, which has accelerated the adoption of remote working practices and therefore the need to understand the R2D. In the UniCredit group, remote working was of approximately 20% before the pandemic and is over 60% currently.

The document is organised as follows: section 2 provides a quick overview of the Right to Disconnect in Italy and in the banking sector, section 3 describes how the Right to Disconnect is addressed in UniCredit S.p.A, through two European Works Council Joint Declarations and the adoption of one of them in Italy; section 4 explores the implementation of the R2D looking into: the logic underpinning it, the monitoring approach, the tools adopted and the role of managerial and organisational culture; section 5 explores the impact of R2D and the challenges ahead, whilst section 6 concludes.

The Right to Disconnect in Italy¹¹⁰

In Italy the R2D falls within the remit of Law no.81/2017¹¹¹, which covers only the so-called “Smart Workers”¹¹², i.e. employees that can work remotely following an individual written agreement with the employer.

¹⁰⁸ UniCredit S.p.a operates in Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Italy, Romania, Russia, Serbia, Slovakia and Slovenia. Moreover it has a network of branches and representative offices around the globe. For an overview of UniCredit S.p.A. presence see here: [Microsoft PowerPoint - UniCreditGroupCompanyProfileSept_2020.pptx](#)

¹⁰⁹ [IR_ITA2019_LINK.pdf \(UniCredit S.p.A. group.eu\)](#)

¹¹⁰ The paragraph is based largely on Vargas Llave, O., Weber, T., Avofaro, M. (2019) Right to disconnect in the 27 EU Member States. Eurofound Report.

<https://www.eurofound.europa.eu/sites/default/files/wpef20019.pdf>

¹¹¹ [Law No. 81 of May 22, 2017, Measures for the Protection of Non-Entrepreneurial Autonomous Work and Measures to Encourage Flexible Adaptation as to Times and Places of Subordinate \[i.e., Non-Autonomous\] Work.](#)

¹¹² Smart Working and Tele working are not considered equivalent in the Italian system. “Teleworking” is a permanent modality of work conducted in a fixed space outside the company, with fixed timings. In “Smart working” employees can chose where they work from and when (so long as an agreement is reached). Smart working is also not necessarily permanent.

The R2D is not explicitly mentioned by Law no.81/2017, rather, the latter provides a soft regulatory framework confirming the general rules on working time, leaving it to the individual agreement to define actual working time and the modalities to exercise, beyond those time limits, the R2D (Di Meo, 2017¹¹³; Tiraboschi, 2017¹¹⁴; Zucaro, 2019¹¹⁵).

In particular, the law states that smart working shall take place ‘within the limits of maximum duration of the daily and weekly working time, as established by law and collective bargaining’ (Article 18, par. 1). The individual agreements between the employee and the employer ‘shall include the worker’s rest times as well as the necessary technical and organisational measures to ensure the worker’s disconnection from the work technological instruments’ (Article 19, par. 1).

Since the Covid-19 Pandemic remote workers have increased dramatically and the government has by Decree¹¹⁶ (D.P.C.M. 1 March 2020) established a simplified procedure for Smart Working, which does not require the aforementioned individual agreement. Such approach, originally foreseen up until the end of January 2021, will be valid until the end of the health emergency.

The banking sector had recognised the R2D in the collective bargaining agreement of 2019 (article 30), in which it also included the possibility of 10 days of smart work per month (article 11). In relation to the R2D, the agreement posits, among other things, that the use of the company equipment must guarantee the right to rest/holiday periods as well as leave entitlements; moreover, work communications shall take place, except for temporary and exceptional needs, exclusively through company devices and channels; last but not least, outside working hours and in cases of legitimate absence, the worker is not required to access and connect to the company information system and may deactivate her own connection devices.¹¹⁷

The *Right to Disconnect* in UniCredit S.p.A

In UniCredit S.p.A. the R2D emerges largely from a concerted effort among the unions and the company. UniCredit S.p.A. has declared its commitment to improving working conditions in the company. Needless to say, the increased digitalisation of working life in the past decade has required a reflection on the implications for employees’ wellbeing, which has been further accelerated by the Covid-19 pandemic.

The company has explored the R2D with the European Works Council: two joint declarations (one pre-Covid-19 in November 2017 and one during the pandemic in October 2020) set the basis for the R2D across all the countries in which the company operates, namely:

¹¹³ Di Meo, R. (2017), ‘Il diritto alla disconnessione nella prospettiva italiana e comparata’, *Labour & Law Issues*, Vol. 3, No. 2.

¹¹⁴ Tiraboschi, M. (2017), ‘Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro’, *WP CSDLE “Massimo D’Antona”.IT*, No. 335.

¹¹⁵ Zucaro, R. (2019), ‘Il diritto alla disconnessione tra interesse collettivo e individuale. Possibili profili di tutela’, *Labour & Law Issues*, Vol. 5, No. 2, pp. 216-233.

¹¹⁶ D.P.C.M. 1 marzo 2020 (1). Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da CO-VID-19. <https://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2020/DPCM-del-01032020-lavoro-agile.pdf>

¹¹⁷ The agreement is available here: https://www.uilca.it/pdf/news/accordo_di_rinnovo_19.12.2019.pdf

- The UniCredit S.p.A and European Works Council declaration on Work Life Balance¹¹⁸ in 2017, formally adopted in Italy in 2018.¹¹⁹
- The UniCredit S.p.A and European Works Council declaration on Remote Working 2020. This declaration has not yet been formally transposed to Italy.

As indicated by the management the development and implementation of the R2D is similar across all countries in which UniCredit S.p.A operates.

It should be noted that whilst Joint Declarations represent strong commitments, they do not per se constitute a legal obligation until they are transposed in each country through an agreement between the company and the unions.

The Joint Declaration on Work-Life Balance and its adoption in Italy

The joint declaration on Work Life Balance in 2017 promotes a set of specific actions across five areas, based on the principle that new technologies are to support employees in terms of both skills and time, whilst respecting their private life. The declaration focusses on five areas:

- Digitalization: aimed at managing the digital evolution through proper use of technology fully respecting people and their private life and rest times;
- Space and time flexibility: encouraging a work-organisation approach with flexible time and space, where possible;
- Time management at work: adopting measures to maximize quality and effectiveness of time during working hours;
- Well-being: promoting the adoption of measures to improve people's well-being during their life-cycle;
- Cultural change: inspiring actions and behaviours to support a shift towards a corporate culture effectively based on 'work-life balance' and 'inclusion'.

Under the heading “Digitalisation” there are several measures related to disconnection, as shown in box 1 below. However, as should be clear throughout the case-study, all the areas are necessary for a proper implementation of the R2D.

Box 1 Digitalisation measures for work-life balance in the UniCredit S.p.A- EWC joint declaration on work-life balance

Leave work at work

Proper use of corporate devices:

- in principle respecting official working hours, according to the different level of managerial responsibility and seniority;
- preserving employees' daily, weekly and holiday rest times;

¹¹⁸ https://www.UniCredit S.p.A. group.eu/content/dam/UniCredit S.p.A. group-eu/documents/en/sustainability/EuropeanWorksCouncil/JD_workLifeBalance_EN.pdf

¹¹⁹ UniCredit S.p.A was the first in the financial sector, to develop such joint declarations. In Italy it has set the industry standards, having been used as a model for ABI (Associazione Bancaria Italiana).

- avoiding any misuse and abuse of digital channels (i.e. SMS, video-calls, WhatsApp, chat, calls).

Create your free-tech zone

- use of personal devices for business needs is allowed only in case of real urgency;
- to be avoided: texting, calling and emailing to personal devices for business reasons.

There is a work-life balance out of your inbox

Responsible use of e-mails

- in principle respecting official working hours and preserving employees' daily, weekly and holiday rest times, according to the different level of managerial responsibility and seniority;
- sending only to the strictly interested addressees (copied people by exception);
- assuring that content is synthetic, clear and always respectful;
- avoiding an excessive use of emails, preferring verbal dialogue when possible.

Source: https://www.UniCredit S.p.A. group.eu/content/dam/UniCredit S.p.A. group-eu/documents/en/sustainability/EuropeanWorksCouncil/JD_workLifeBalance_EN.pdf

In the Italian adoption of the EWC declaration, the *Protection of Disconnection times* is recognised under Article 16 (tutela dei tempi disconnessione).¹²⁰ Article 16 includes all the provisions mentioned in the EWC declaration and adds to them a commitment to provide training and information on the issues. The Joint Declaration and the Italian adoption cover all workers, thereby expanding the national legal prerogative of Law 81/2017, which, as mentioned above, covers only Smart Workers.

The Joint Declaration on Remote Work

The Joint Declaration on “Remote Work”, adopted October 2020¹²¹, explicitly mentions the *Right to Disconnect* as a key principle underpinning the agreement. In particular, the declaration states the following:

“Right to Disconnect: we reaffirm the essential function of safeguarding the health of employees and promoting well-being, which must also be pursued through respect of official working hours in full compliance with national contracts, laws and people's private and family life.”

The principle is articulated across several points, provided in Box 2.

Box 2 Working hours and Right to Disconnect in UniCredit S.p.A: UniCredit S.p.A- EWC joint declaration on Remote Work

Working hours and the Right to Disconnect

The Group is committed to develop a culture oriented to:

¹²⁰ See the agreement here: https://www.fisacunicredit.eu/news_old/101376_1073.pdf; and here: [Accordo Unicredit conciliazione vita lavoro.pdf \(cisl.it\)](https://www.fisacunicredit.eu/news_old/101376_1073.pdf)

¹²¹ [UEWC-JOINT DECLARATION RemoteWork EN.pdf \(uni-europa.org\)](https://www.fisacunicredit.eu/news_old/101376_1073.pdf)

- respect the official working hours according to the different level of managerial responsibility and seniority;
- preserve the rest times and sick leave avoiding any inappropriate use and abuse of digital channels;
- respect privacy of colleagues, bearing in mind that the use of personal devices for business needs could be allowed only in case of real urgency;
- avoid texting, calling and emailing to personal devices for business reasons;
- reiterate the invitation to the responsible use of e-mails in principle respecting official working hours;
- assign sustainable tasks for the employees in compliance with their personal and extraprofessional endeavours;
- encourage collaboration to enhance the different contributions for a common purpose and promote excellence;
- facilitate the involvement of employees¹²² and stimulate virtuous behaviour oriented towards work-life balance and personal well-being;
- encourage people to take care of themselves physically and mentally, stimulating managers to act consistently as "model to be inspired by".
- listen to the opinions and feelings of people, stimulating a constant dialogue between managers and their people, by creating a positive environment.

Source: https://www.uni-europa.org/wp-content/uploads/2020/11/UEWC-JOINT_DECLARATION_RemoteWork_EN.pdf

The joint declaration distinguishes between remote working among staff in central services and staff in branches. For the former, an average 40% of remote working is foreseen, whilst for the latter is of 20%. However, the guiding principles of remote working are the same for all employees. The application of smart work is carried out in accordance with local legal requirements, national contracts and laws, the resources available, the specific compatible roles and the customer service model applied locally (in practice, some roles also require a physical relationship with customers).

The guidelines, principles and standards developed in the document will be applied progressively to all employees and will have to be implemented through local negotiations in the countries where UniCredit operates.

The Joint Declaration states provisions and principles meant to address remote working in the post-pandemic world.

Designing and implementing the R2D in UniCredit S.p.A.

The R2D in UniCredit S.p.A. is strongly linked to the work-life balance approach of the company and to its objective of being a high-quality employer. The evolution between the two Joint Declarations highlights a more detailed understanding of how to manage connection and disconnection times.

¹²² Even when working remotely.

Whilst in the first Joint Declaration, the approach was more explicitly linked to managing digital devices, in the Joint Declaration on Remote Work the Right to Disconnect is framed more broadly. In particular, the respect to working hours is linked to the type of tasks assigned (i.e. which have to be “sustainable”), to the modes of working (i.e. which have to be collaborative) and to good examples set by the hierarchy. In other words, the Right to Disconnect is not only a technical or a behavioural matter (in which tools and rules ensure that employees’ space is preserved) but is also depends on how the work is distributed and organised.

A smooth negotiation process at EU and Italian level

The negotiation of both joint declarations is considered to have been smooth in relation to the Right to Disconnect. UniCredit S.p.A management has highlighted that the signing of the Joint Declaration by the CEO clearly demonstrates UniCredit's strong commitment to the topic of work-life balance, which is considered a priority for the Company. The representatives from Unions and the EWC also stressed the importance of the CEO involvement in the success of the agreement.

The representative of the EWC stressed that both the EWC and the unions reflected on their position related to the R2D before any plans of a Joint Declaration on Remote Work were made, as it was also an extremely important issue for them.

According to the union representative interviewed, the aspects that have been considered, relatively speaking, more complex to discuss in the Italian transposition of the 2017 Joint Declaration include the timings and scope of potential IT shut-downs for R2D, which do not feature in the agreement.

Implementing R2D: IT tools and cultural measures

The implementation of the R2D requires both rules related to the appropriate use of digital devices and cultural measures that support the necessary organisational shift.

The former (as seen in both Joint Declarations) include clear limits on the use of personal devices for work communication and guidelines on how to use emails and other communication devices. Moreover, as indicated by the union representative, some IT apps/services are inaccessible to employees (excluding top-management) from 8pm to 6 am in Italy.

The latter have emerged as critical in recent months, due to the Covid-19 Pandemic and the need to quickly adapt to massive remote working. Adjusting workloads, objectives and management approaches to the new context has required a learning process as well as a cultural reflection. The ability to respect the R2D (and more broadly to guarantee a sustainable and effective remote working) has emerged as linked to the management style. This has required the publication of the so call “Etiquette on leading virtual teams and respecting work-life balance” by UniCredit S.p.A, which reinforces guidelines to managers in leading virtual teams. The first item in the Etiquette document is precisely about the R2D, as shown in box 3.

Box 3 R2D in the “Leading virtual teams and respecting work-life balance etiquette”

Make your team leave work at work, respecting their Right to Disconnect

Preserve your team’s daily, weekly and holiday time off, avoiding misuse and abuse of any digital channels

Source: <https://one.unicreditgroup.eu/wp-content/uploads/2020/08/Etiquette-Leading-Virtual-Teams-03-LT.pdf>

Monitoring: a key tool for implementation

The importance of monitoring is explicitly recognised in both the EWC Joint Declarations and in the Italian adoption of the 2017 Declaration. The tools to monitor the R2D are engrained in those for monitoring work-life balance and remote working. They include records related to relevant R2D trainings or activities, potential to file complaints/grievance reports (internal or from unions) and, most importantly, employee surveys. The latter have been run several times since the inception of the pandemic and currently point to a successful implementation of remote working (and therefore of the R2D) without differences among countries, gender and age-bands.

Beyond those, there are currently no specific measures of connection and disconnection times of individuals.

Monitoring is, according to unions and the EWC expected to be a crucial element of the negotiation for transposing the Joint Declaration on Remote Work at the national level. It will be necessary to identify the right procedures and monitoring approaches to ensure that tasks and objectives are assigned sustainably in line with the R2D.

Impacts and future challenges of R2D

The pandemic has accelerated the shift from presential to remote working and it is possible to draw some preliminary reflections on how the R2D is affecting the organisation of work. According to the interviewees, the duration, timing and organisation of meetings is now organised to respect the disconnection needs of employees. In particular, according to the interviewees, meetings tend to be shorter and pauses are more frequent.

More broadly, the articulation of the R2D impacts on the way remote working is conceived, in that it frames it not only “spatially” (i.e. work that is conducted outside the premises) but also in terms of managerial and organisational adjustments, as recognised clearly in the formal Joint Declarations and in the “Etiquette” campaigns conducted within the company.

Future challenges relate, according to the management, to the logistical implementation of the R2D, ensuring that digital disconnection is coupled with personal connection to maintain a healthy workforce. This social aspect of work has been clearly affected by the Covid-19 pandemic and ways need to be found to ensure the workers remain connected to colleagues and developments in the company even when they are working remotely.

For representative of the unions and EWC the key challenges lay in the future negotiation to transpose the Joint Declaration at the national level. It will be essential to define monitoring mechanisms and procedures to ensure that tasks and objectives are assigned in a sustainable

fashion. There are also specific concerns emerged in relation to workers in the commercial network offices, on the one hand because remote working may be harder to implement and because technological development may affect significantly their organisation of work.

Joint Declaration on Remote Work provides a founding and comprehensive framework to address the above foreseen challenges.

Conclusions

This case study has explored the definition and implementation of the *Right to Disconnect* in UniCredit S.p.A., a pan European commercial bank, with a focus on Italy (where the HQ of the company are based). In the firm, the R2D is framed as a critical part of work-life balance and remote-working.

The Covid-19 pandemic has fast-tracked the implementation of remote working, generating the opportunity to stress-test the implementation of R2D, highlighting its cultural/managerial dimension as much as its technological one.

As well as formal limits to the use of digital devices, it appears essential to support managers in organising work in a way that is efficient in the new context and respectful of the resting times of employees. At the same time, it is critical to ensure a high degree of awareness among the workforce, developing clear monitoring strategies that comprise surveys as well as relevant administrative records.

Looking forward it appears clear that new working modalities, balancing remote and presential working, will emerge once the health emergency is passed. The Right to Disconnect will be crucial in ensuring the sustainability of these new models.

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