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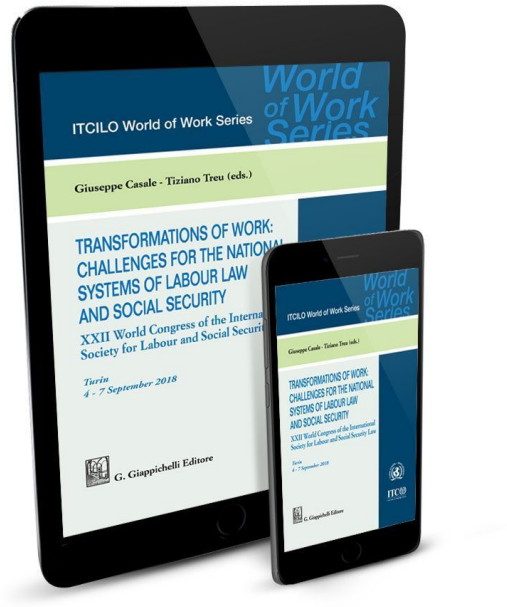

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The World Congress was an important, inspiring and collaborative event, which brought together academics and practitioners from all around the world to discuss on the latest trends and issues in the changing world of work. The following main themes were presented at the World Congress and are the result of the seven international research groups created for this event. They are: Informal workers; Migrant workers; Global trade and labour; Organization, productivity and well-being at work; Transnational collective agreements; New forms of social security; The role of the State and industrial relations.

Keywords: ISLSSL; Labour Law; Social Security Law; Informal workers; Migrant workers; Global trade and labour; Organization, productivity and well-being at work; Transnational collective agreements; New forms of social security; The role of the State and industrial relations.

GIUSEPPE CASALE
Deputy Director of the International Training Centre of the ILO and Director of the Turin School of Development. He is the Secretary General of the International Society for Labour and Social Security Law (ISLSSL). Professor of International and European Union Labour Law at the University of Turin. Visiting Professor in International and Comparative Labour Law at the Cá Foscari University of Venice and at the universities of Zejiang and Fuzhou (China). He is the author of many publications on international

and comparative labour law, industrial relations, employment relationship, labour administration and labour inspection.

TIZIANO TREU

GIUSEPPE CASALE (Curatore) - TIZIANO TREU (Curatore)

The Right to Disconnect in the Prism of Work-life Balance. The Role of Collective Bargaining: A Comparison between Italy and France

Emanuele Dagnino *

Introduction

The right to disconnect has been a topic of discussion for labour law scholars since Jean-Emmanuel Ray first introduced the notion in 2002 (Ray 2002). However, it has been recognized only after the first decade of the new millennium, appearing in the first instance in collective agreements (mostly in France) and, only later, encompassed in the French (2016) and Italian (2017) national laws.

While the significance of the right to disconnect in responding to the perils of *working anytime, anywhere* (EUROFOUND-ILO 2017; Popma, 2013) has been already a subject of study in the literature (Coelho Moreira, 2017; Mella Mendez, 2016) the role played by collective bargaining in shaping the right and its rationale and in making it effective in companies and in the single work relationships has not already received the needed attention.

Therefore, the aim of this paper is to contribute closing this gap, analyzing the French and Italian cases and deepening the subject in three different directions, pointing out:

a) the different role assigned to collective bargaining by the laws that regulate the right;
b) the practices of regulation and implementation of the right in the collective agreements in the two different countries.

The paper is organized as follows.

Paragraph § 1 is aimed to clarify the notion of the right to disconnect and its role according to its regulation. In so doing, a specific focus will be given to the understanding work-life balance implied by the right. Paragraph § 2 will focus on the issue expressed in letter a) analyzing which are the sources of regulation of the right expressly selected by legislators in the two countries, linking the decision to the philosophy of the two acts. Paragraph § 3 will be dedicated to the contents of collective agreements which regulate the right in the two countries (France and Italy) in order to outline trends, measures and tools used (letter c). Finally, paragraph § 4 will draw some conclusions from the previous analysis.

1. The right to disconnect: the notion and the relevance for work-life balance

Even if the introduction of the right in France and Italy followed a different pattern – started in 2002 and involving collective bargaining even before the law passed, in France; started in 2016 during the par-

* Researcher, ADAPT.

liamentary debate, in Italy – and, as we will see, its scope and the specific tools required by the law for its implementation are different, the legislative action responds to the same *ratio* in both the countries.

In France it is the law itself that provides the *ratio* of the regulation, stating that the right to disconnect as well as the regulation on the use of ICTs were introduced "in order to ensure the respect of rest times and leave and of the personal and familiar life". [1]

Although it is not clearly stated in the law, also the Italian understanding of the right to disconnect is connected to the protection of workers' health and safety and work-life balance. First of all, the right [2] is introduced with reference to a form of work (*lavoro agile*) specifically aimed to improve workers' work-life balance. [3] Furthermore, the provision referring to the disconnection regulates as well the rest times: [4] there is a specific link between the enjoyment of the right to rest, as a right to protect workers' health, and the right to disconnect.

Not only the expressed or implicit aims of the right are the same, but also the understanding of the right in the prism of the transformation of work and, especially, in the field of the work-life balance mirror each other. Against this background, the introduction of a right to disconnect could be seen as a response to the shift, promoted by management theorists, from work-life balance to work-life blending (Ushakova 2016). While work-life balance requires a distinction between the time of private life and the time of work, work-life blending assumes that this distinction is no more relevant and that the well-being of the workers should be guaranteed focusing on work-life integration. By reaffirming a clear distinction between not only working and rest time, but also between working time and personal and familiar time, the introduction of a right to disconnect seems to be clearly aimed to contrast the trend towards the full integration of professional and personal time and, using a metaphor proposed by Anna Fenoglio, to build "a digital levee against temporal fluidity" of the work performance (Fenoglio 2018, 555).

Described the *ratio* of the right to disconnect and its understanding in the prism of work-life balance, before moving to the sources of regulation and the specific tools required by the law for the implementation of the right, it is now worth mentioning in greater detail the content and the scope of application of the right itself.

Neither the French, nor the Italian provisions regarding the right to disconnect do provide a specific definition of this right, focusing on the duty to individuate the specific measures aimed to guarantee its enjoyment.

While some commentators doubt of the relevance of the right itself, since outside working hours the employee is not obliged to respond to any solicitation coming from the office (Vallecillo Gámez 2017; Rotondi 2017), some others point out that not explaining the specific measure or, at least, a minimum standard of protection, the right will probably be inefficient for its aims (Fenoglio 2018, 561).

However, these objections seem to be not well suited.

The right to disconnect is not intended as a mere prohibition to mail (or contact) the workers outside of working hours, nor it is a replication of the right to rest. As clearly pointed out by its main advocate, the right to disconnect, is a right of the workers to which corresponds a legal obligation to manage the work organization in order to ensure the enjoyment of the right (Ray 2016, 912). So, far from being a mere prohibition, it implies a specific duty to actively operate, providing measures well suited for the aim.

Moreover, these measures must be well suited not for a hypothetical company, but for the specific company where they are to be applied. Thus, the generality of the provision corresponds to a choice to enable actors closer to the specific work organization because of their better knowledge of the needs and the functioning of the company and its employees.

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[1] L.2242-17 of the Code du travail. Translated by the Author.

Firsty introduced as article L.2242-8 of the Labour Code by the Law El Khomri (Loi n. 2016-1088 du 8 août 2016), the provision is now contained in article L.2242-17 as a consequence of the Ordonnance n. 2017-1385 du 22 septembre 2017 passed by Macron's government.

[2] While the majority of the Italian scholars intends the disconnection as a right, some others commentators question the nature of the disconnection in term of a specific right of the workers (Allamprese, Pascucci, 2017).

[3] According to article 18 of Law n. 81/2017 lavoro agile is promoted by the law as a form of work that contributes improving workers' work-life balance and companies' competitiveness.

[4] Article 19 of Law n. 81/2017.

As for the scope of application, it is worth highlighting that in both countries the right to disconnect is applied only under certain circumstances, thus not covering any situation in which might be needed.

In France the obligation to individuate the measures to guarantee the right to disconnect is provided with reference to two specific cases: *a*) in companies where one or more trade union sections are established: generally, companies employing more than 50 employees (L2242-17 of the Labour Code); *b*) in the case of *forfait en jours sur l'année* (L3121-64 of the Labour Code); in Italy, the same obligation is established in case of the adoption of *lavoro agile*.

Thus, while in France the regulation regarding the right to disconnect covers, on the one hand, all the employees of a company (when the threshold is reached) leaving aside the form of work and, on the other, any employee involved in a peculiar form of work in terms of flexibility leaving aside the numbers of employee, in Italy the coverage is limited to a specific form of work characterized by spatial and temporal flexibility of the work performance.

2. The individuation of the measures aimed to guarantee the disconnection: sources and tools

In France, both in case *a*) and case *b*), the law individuates the source of regulation of the right in the collective bargaining and only absent collective agreement in the unilateral determination by the employer.

Article L2242-17 requires that the right to disconnect (as well as the regulation of the use of working tools) is part of the yearly mandatory bargaining regarding "*l'égalité professionnelle entre les femmes et les hommes et la qualité de vie au travail*" which after the Ordonnance n. 2017-1385 is due only when the collective agreement regulating the frequency and the theme of the mandatory bargaining for companies employing more than 50 employees lacks or is not respected (L2242-112). Absent an agreement, the measures must be specified in a *charte*, a company policy provided by the employer after the consultation of the Social and economic committee.

Regarding the regulation of the right to disconnect in the case of *forfait annuel en jours*, article L3121-64 states that the measures provided for the enjoyment of the right to disconnect are to be specified in the collective agreement that authorizes the use of this form of work at company or workplace level, or, lacking these agreements, at sector level. According to article L3121-65, if the agreement lacks, the measures are unilaterally defined by the employer and, where applicable, they must conform to the above-mentioned *charte*.

The solution adopted by the Italian law is different: the organizational and technical measures individuated for guaranteeing the enjoyment of the right to disconnect are to be specified in the individual agreement required by the law for the adoption of the peculiar form of work (*lavoro agile*).

While the reasons for a specific provision related to the right to disconnect is the same for the French case of *forfait annuel en jours* and the Italian case of *lavoro agile* (both the forms of work are characterized by a certain degree of flexibility in favour of the employee and meanwhile by risks of overwork and self-exploitation), the different solutions stem from the different approaches used. The French legislator decided that the peculiar promises and perils of the *forfait annuel* required the mediation by the union; the Italian legislator in order to promote the maximum diffusion of *lavoro agile* decided not to burden the adoption of the form of work to the previous conclusion of a collective agreement, requiring only an individual agreement.

Notwithstanding these different approaches, since the introduction of *lavoro agile* is a matter of organizational nature, many employers – even before the law n. 81/2017 – decided to stipulate a collective agreement to introduce a framework regulation of the form of work in the company. Moreover, stemming from the discussion regarding *lavoro agile* some collective agreements – very few at the moment – are starting regulating the right even for workers not involved in this flexible form of work.

3. The practices of collective bargaining on the right to disconnect

In order to evaluate the effectiveness of the right to disconnect, it is necessary to see more in detail the contents of the collective agreements which regulate it. The analysis will focus on agreements stipu-

lated after the entry into force of the French and Italian law on the right to disconnect. However, although the right to disconnect is in force in France since January 1st 2017, the analysis will cover the collective agreements stipulated after September 1st 2017, namely the ones collected and available in the public database contained in *Legifrance*;[5] for the Italian case, the collective agreements analysed are those collected in the database provided by the *Osservatorio ADAPT sullo smart working*.[6]

3.1. *The right to disconnect in the yearly mandatory bargaining*

At the date of May 10th 2018, the Legifrance database contained 350 company-level collective agreements mentioning in the title – thus specifically regulating – the *droit à la déconnexion*.

At first glance, these agreements show a "cut-and-paste" approach. Not only the great majority of the collective agreements present a recurring structure – and similar, where not the same, measures to guarantee the right to disconnect – but they also share very often the words used within the text, starting from the formulas used to define the right.

The following scheme, divided into three parts, can be seen as the most recurring one.

1) A preamble (*preambule*) defines the aims and the legal framework of the bargaining. This section is followed by a second one which individuates the establishments and the workers covered by the regulation (*champ d'application*). Follows a section dedicated to *definitions*, usually containing the notion of the right to disconnect itself and those regarding working time and ICTs. Sometimes the latter section is preceded by a paragraph specifically aimed to the *affirmation* of the right to disconnect, containing indications regarding the aims and the legal framework of the right (usually contained in the preamble).
2) After this first "introductory" part, the collective agreements present the sections dedicated to the specific measures concerning the enjoyment of the right to disconnect. While the order of the described sections can vary, this part often starts with the proposition of awareness-raising campaigns and training about the risks posed by the use of new ICTs and the need of disconnection (*sensibilisation et formation à la déconnexion*). Generally, two sections are introduced strengthening the importance of a good use of ICTs in order to avoid, respectively, the informational overload (*lutte contre le surcharge informationnelle*) and the stress outcomes of ICTs use (*lutte contre le stress lié à l'utilisation des outils numériques*). This part usually ends with a section specifically dedicated to the right to disconnect.
3) A third and final part contains sections dedicated to monitoring actions regarding the enjoyment of the right, the duration of the agreement, forms and occasion of amendments, the possibility to terminate the agreement and the formalities regarding communication and publicity of the agreement.

In general terms, it must be highlighted that the collective agreements put under the same label "*droit a la déconnexion*", the regulation regarding the use of ICTs required by the same disposition and addresses this subject in the agreement (in the above-mentioned sections dedicated to informational overload and stress outcome of ICTs use) in a way that makes clear that they are not separate subjects but complementary ones.

As for the definition of the right to disconnect, while there is no legal definition of the right, a shared definition in the practice of collective bargaining can be found. The great majority of the agreements defines the right to disconnect as the right not to be connected (*connecté*) to any ICT tool used for professional reasons – ranging from the devices to the software and the apps – outside working time. Only in few cases this definition is substituted by one focused on the right not to be contacted (*sollicité*), while in a certain number of cases (approximatively one out of four agreements) the latter understanding of the right is a complement of the more common one (*connecté et contacté*).

Whit regard to the third part of the analysed agreements, the most common form of monitoring is

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[5] *www.legifrance.gouv.fr*.

[6] *https://moodle.adaptland.it/course/view.php?id=625*. The Osservatorio ADAPT sullo smart working is managed by a group of researchers including me, deepening the topic of lavoro agile.

structured around an annual survey (*bilan annuel*) of the use of ICTs for professional reasons in order to determine the need of further action; often bilateral committees (composed by representatives of the company and the workers) established for the purpose of monitoring or existing committee are involved in this action (especially the *Comité d'hygiène, de sécurité et des conditions de travail*). [7]

Moving to the measures established by the agreements, the cut-and-paste approach could clearly be recognized. This is particularly true for the regulation of the ICTs use both against the informational overload and the stress-related issues. The fight against these concerns takes the form of the suggested adoption of good practices (*recommandation*), which sometimes are assisted by more efficient measures of enforcement providing for sanctions in case of violation of the good practices by managers and workers. [8] The good practices mainly regard a careful use of the different means of communication used in the company in terms of: choice of the means; content of the message; recipients of the message (Are the recipients of the message all involved in issue discussed?); timing of the message; management of the period of unavailability due to holiday or paid leave.

A little more variation on the standard content and different levels of commitment by the company can be individuated regarding the specific measures implemented for the right to disconnect.

The standard content provides for raising-awareness campaigns and specific training regarding the right to disconnect and the risks of *always on culture* delivered to workers and managers as well (the focus placed on the importance of managers for the implementation of the right is often specified in the agreements [9]). In many cases a personalized approach to the training is required, at least if specific complaints are raised by workers. [10] In other cases, there is a specification of the link between disconnection and workload, requiring a peculiar attention to the latter issue for an effective enjoyment of the right. [11] Moreover, it is not uncommon to find the introduction in the organization of a specific job position aimed to the management of the digitalisation process covered by a worker who should also be the reference for the issues related to the disconnection from ICTs. [12]

As for the specific measures provided by the collective agreements for the enjoyment of the right, the regulation usually refers to the case of disconnection outside working hours (*droit à la déconnexion en dehors de temps de travail effectif*), but there are few agreements where a specific attention to the disconnection during working hours is given (*déconnexion pendant les temps de travail*). [13] More often insights regarding the need of a better management of the communication during working hours are contained in the sections dedicated to the regulation of ICTs use. Concerning the disconnection outside working hours, the basic version of the protection is composed by two statements: workers and managers should not contact each other or anyone in the company outside working hours and during leaves, except in cases of urgency; [14] in the same moments, workers are not required to connect to the device and respond to the requests and the messages.

While the abovementioned statements configure the basic regulation, the agreements are usually more articulated. In many cases, the agreements specify that enjoyment of the right to disconnect from the ICTs cannot be taken into account for disciplinary reasons and in the process of workers evaluation. [15] A certain number of agreement introduce a time slot (from the evening to the morning of the day

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[7] See, e.g.: Accord Gfi Business Transformation (19/01/2018); Accord Mutuelle Entrain (25/01/2018); Accord Sanofi Camargue (31/10/2017). (Edit: all the dates regarding the agreements are in the format dd/mm/yyyy used in France and Italy).

[8] See, *inter alia*, Accord d'entreprise Droit à la déconnexion, Le Clos Moreau (25/01/2018).

[9] See Accord GAP SUD (10/10/2017) for specific actions of training for managers. See, e.g., Accord Carlberson Seine et Marne (27/01/2017) for a specific attention to the role of the manager in the implementation of the right to disconnect.

[10] See, *inter alia*, Accord Crouzet Automatisme (28/09/2017).

[11] See, e.g., Accord Georges Renault (12/10/2017).

[12] This is the case, e.g., of the Accord Thyssenkrupp France (6/09/2017).

[13] This is the case, e.g., of the Accord G.I.E. Kaufman & Broad (19/09/2017) and the Accord Polyclinique du Val de Saône (27/10/2017).

[14] In some agreements, a section is specifically dedicated to the case of exceptions (see Accord UES NEXITY, 12/10/2017), while usually, the agreements present a general clause regarding the possibility to derogate in case of urgency.

[15] See, as an example, Accord SEMEC (01/09/2017).

after) which has the aim to establish a period of continuative rest respectful of the working time regulation: some agreements refer to this time slot as a default indication to be used when there is no clear definition of worker's working time in the contract of employment or in the company organization; [16] other agreements use the time slot to differentiate between period when the communication with the worker is strictly prohibited and period when (outside usual working hours, but before or after the time slot) the communication is possible in case of urgent need. [17] Other measures provided by the agreements involve meetings with the management, both on a regular basis or on request by workers who suffer problems regarding the enjoyment of the right; [18] sometimes the meeting is promoted by a manager when the worker spends long hours connected outside working time. [19] A more invasive approach is used in some companies where the disconnection from company's server is forced, since it is deactivated during certain periods (weekends, and sometimes during night time); in other cases, the software used only shows pop-up windows remembering the need to disconnect. [20] In few cases, in continuity with some insights coming from previous experiences, the right to disconnect is complemented by a duty for the worker to disconnect from ICTs. [21] Sometimes, the agreements introduce specific tools to monitor the respect of the right to disconnect by the employee. [22] As for the leave periods, the suggestion to establish a message of "out of office" is commonly included in the agreement; it is also, often, suggested to provide name and address of a colleague who can be contacted on behalf.

A number of agreements also accounts for some peculiar forms of work, especially for those characterized by flexibility of time (*forfait en jour*, see *infra* §3.2) [23] and space (telework): [24] in these cases, the agreement usually confirms the effort by the company to guarantee the enjoyment of the right, taking into account the specificity of the form of work. While the responsibility of the workers for the enjoyment is usually recalled by the agreements, the approach towards a *connexion choisie* (i.e. a real autonomy in the determination of the times of connection) is uncommon.

3.2. *The right to disconnect and the* forfait en jours

With regard to the regulation of the right to disconnect for the cases of *forfait annuel en jours*, a first consideration concerns the integration between the different sources of regulation. As said in the previous paragraph, there are some company-level collective agreements stipulated in the context of the mandatory annual bargaining concerning the quality of work that take into account the case of *forfait jours*. At the same time, there are company-level collective agreements stipulated according to article L3121-65 (those regulating *forfait en jours)* that do not provide a specific regulation of the measures to be implemented for the enjoyment of the right, making reference to the ones contained in the agreements stipulated according to article L2242-17. In some cases, the cross-reference is to a company-level collective agreement, [25] while, in some others, it is to the *charte* which unilaterally provided by the employer when the collective agreement regulating the right lacks. [26]

Among the 38 company-level collective agreements collected in the Legifrance database under the

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[16] See, *inter alia*, Accord Andra (15/12/2017) and Accord CRT Traitement (26/10/2017).

[17] See, e.g., Accord Groupe AGPM (22/01/2018). Sometimes these different time slots are defined with the expressions: high disconnection (haute deconnéxion) and low disconnection (basse deconnéxion).

[18] See, *inter alia*, Accord ARaymond (25/01/2018) and Accord INSTALLUX (22/12/2017).

[19] See, e.g., Accord U.E.S. Marionnaud (15/12/2017).

[20] A mediation between these two approaches is applied, e.g., by Accord Mutuelle du Soleil Livre II (22/12/2017) which establish a forced disconnection between midnight and 5 a.m., while a pop-up advice is used from Monday to Friday between 9 p.m. and midnight and between 5 a.m. and 7 a.m. The same pop-up is also used during the week-ends.

[21] See, e.g., Accord U GIE IRIS (08/09/2017).

[22] See, *inter alia*, Accord ANFH (14/11/2017) and Accord APSA (18/01/2018). In the second case, the tool will be implemented only if the managers will discover an overuse of the ICTs by the workers.

[23] See, *inter alia*, Accord DOREL (26/10/2017) and Accord Nagra France (16/10/2017).

[24] See, *inter alia*, Accord UES EXANE (01/01/2018).

[25] See, *inter alia*, Accord DPD France (25/09/2017) and Accord Société Aéroport de Strasbourg (22/11/2017).

[26] See, e.g., Accord Coopérative agricole des producteurs (08/12/2017) and Accord COMPOSITEWORKS (18/12/2017).

label *forfait annuel* at the date of 10th May 2018, except for the cases of cross-reference and the few cases of absence of a regulation of the right,[27] the remaining collective agreements offer some interesting insights on the regulation of the right for the peculiar form of work. While there is a little number of collective agreements which only provide a generic reference to the existence of the right,[28] some others provide a more precise regulation.

Compared to the bargaining regarding the right to disconnect explained in the previous paragraph, a stronger role is given to worker's responsibility in the enjoyment of the right,[29] thus in many cases a duty to disconnect is clearly established.[30] This is due to the autonomy recognized to the workers in *forfait jours* regarding the determination of the times of work.

Other measures are similar to those adopted in the collective agreements stipulated according to article L2242-17. As usual, workers' right not to respond to any request outside working hours and the limits posed on other workers and managers on contacting the worker are specified.

The right to disconnect is often part of the discussion during the annual meeting of the worker with the management, however some collective agreements specify the possibility to ask a meeting before the date already scheduled in case of issues arisen regarding the enjoyment of the disconnection[31] or an intervention by the manager for evaluate possible solutions.[32] Other collective agreements establish precise time-frame for the disconnection,[33] raising-awareness campaign[34] and pop-up windows.[35] The exceptions in case of urgency are established as well.

More specific provisions are sometimes introduced regarding, for example, the case of part-timers,[36] the use of devices for both personal and professional aims,[37] the implementation of systems of monitoring of the use of ICTs in order to discover problematic cases[38] and the need to recall in the individual agreement of *forfait annuel en jours* the existence of the right.[39]

3.3. *The right to disconnect in company-level collective agreements regarding lavoro agile*

The analysis of the company-level collective agreements regarding *lavoro agile* which regulate the right to disconnect focuses on those stipulated after the Law n. 81/2017 passed (May 10th, 2018). The reason for the choice is very simple: even though before that date more than 25 agreements have already been stipulated (and a certain number after the right to disconnect started to be discussed at the Chambers with specific reference to *lavoro agile*),[40] none of them has shown interest in the regulation of the right.

Even after that date, the collective bargaining concerning *lavoro agile* has shown lack of interest to regulate the right. On the one hand, some collective agreements do not make any reference to the right to disconnect; on the other, when the right to disconnect is mentioned the related provisions are not remarkable.

The provisions contained in such collective agreements are usually very generic: in some cases, the

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[27] Only 4 out of 38 agreements do not regulate the right to disconnect, and, between these, one is an "avenant", namely an agreement of amendment.

[28] See, e.g., Accord Novelis (10/10/2017) and Accord Association Pour le Service Aux Aînés (14/01/2018).

[29] See, e.g., Accord Gant (19/09/2017).

[30] See, *inter alia*, Accord INBP (03/01/2018), Accord Polar Sails (15/01/2018).

[31] See, e.g., Accord ANED (22/09/2017).

[32] See, e.g., Accord Maison de Savoie (21/11/2017).

[33] See, e.g., Accord AXAIR SANTE (10/03/2018) and Accord Groupe Dubreil Service (22/12/2017).

[34] See, again, Accord Groupe Dubreil Service.

[35] See, e.g., Accord Mutualité Francais (22/03/2018).

[36] See, again, Accord Groupe Dubreil Service.

[37] See, again, Accord Maison de Savoie.

[38] See Accord ISC AGR1 (26/02/2018) and Accord BARCOS (20/10/2017).

[39] This is the case of the Accord Transport Perocheau (27/12/2017).

[40] It is to be noted that during the discussion of the law, a first recognition of the right has been made outside collective bargaining, by the University of Insubria (Varese and Como).

regulation of the right is limited to a provision stating that the employee has no duty to address e-mails or phone calls outside working hours or a specified time-frame[41] or that, outside working hours, the workers has the right to disconnect from the used devices;[42] moreover in some others, the solution proposed is a little more articulated, taking into account both the specification of the lack of the duty to respond to requests and the possibility to deactivate the devices.[43]

No specific measures are provided for the implementation of the right to disconnect if compared to those provided by collective agreements in France. Notably, it's interesting to underline that, while all the agreements concerning *lavoro agile* provide a section dedicated to the training of workers regarding the risks related to the specific form of work, none of them make reference to the right to disconnect, even if, it could be foreseen that such a training would take into account the issues related to *always on culture*.

Finally, it's worth emphasising that one of the more articulated regulation of the right to disconnect is not provided in the context of a collective agreement regulating *lavoro agile*, but in a company-level collective agreement providing measures for the improvement of work-life balance, thus covering not only *smart workers* (as the workers involved in *lavoro agile* are usually called), but all the workers of the company.[44] It includes some indications on the correct use of the ICTs, excluding the use outside working hours except for urgent reasons, and binding the company to implement a raising-awareness campaign and training activities regarding the right.

4. Concluding remarks

The overview of the contents of collective agreements regulating the right to disconnect in France and Italy has shown a very different reality of the role currently played by the collective bargaining in the implementation of the right due to the different legal frameworks explained above, but also in relation to the different awareness and readiness of the unions in the regulation of the right.

Starting from the Italian case, it is easy to say that the collective bargaining plays a very little role in guaranteeing the effectiveness of the right and it is unable, for the time being at least, to meet the expectations of those commentators which advocate for a leading role of the company-level collective agreements in determining a common framework of reference well-balanced to meet companies' and workers' features and needs (Fenoglio 2018, 561; Di Meo 2017; Lamberti 2018, 205). The consequence is that, as established by the law, this leading role is played by individual agreements, which are a better suited source to customize the form of enjoyment of the right – even in the form of the *connexion choisie* foreseen by Loiseau (Loiseau 2017, 468). However, the individual agreement is a tool that could be impacted by the unbalance of bargaining power and it is not effective for managing the right as a matter of organization.

As for France, as mentioned above, the analysis of collective bargaining has shown a "cut-and-paste" approach to the regulation of the right, differing the agreements more on the commitment of the company than on the attempt to determine the best solution for the specific company. While many of the measures proposed are very useful for the enjoyment of the right (and can be seen as its basic protections), the possibility to apply the same measures in companies of different sectors is an index of the generic nature of the provision. Their effectiveness is thus to be proved in the company according to the specific features of the organization and to the specific needs and wills of the workers (especially *millennials*; Ray 2015). The risks of ineffectiveness directly resulting from a "one-size-fits-all" approach can be addressed only with a pattern of customization of the solution that implies an effort by the collective parts in their bargaining and the ability to shape more specific ways of implementation of the right if not on individual basis, at least

[41] See, e.g., Accordo Findomestic (06/06/2017) and, for the time slot, Accordo ICCREA (19/10/2017).

[42] See Accordo Sara Assicurazioni (17/01/2018) and Accordo AON (12/06/2017).

[43] See, e.g., Accordo Cattolica Assicurazioni (14/11/2017) and Accordo Allianz (10/10/2017).

[44] See Accordo sulle nuove misure per la promozione della conciliazione fra vita professionale e vita privata dei dipendenti del Gruppo UniCredit del perimetro Italia (13/04/2018).

with reference to departments, roles and job positions. It is not a case that more customized measures are adopted in the collective agreements regulating the *forfait annuel en jours*.

Bibliography

Allamprese A., Pascucci F. (2017), *La tutela della salute e della sicurezza del lavoratore "agile"*, in *RGL*, 2017, No. 2.

Coelho Moreira M.T. (2017), *L'impatto delle nuove tecnologie nella conciliazione tra vita e lavoro*, in *LLI*, vol. 3, No. 1.

EUROFOUND, ILO (2017), *Working anytime, anywhere: The effects on the world of work*, in *Joint ILO-Eurofound Report*.

Fenoglio A. (2018), *Il diritto alla disconnessione del lavoratore agile*, in G. Zilio Grandi, M. Biasi, *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Cedam.

Lamberti M. (2018), *L'accordo individuale e i diritti del lavoratore agile*, in A. Perulli, M. Fiorillo (a cura di), *Il jobs act del lavoro autonomo e del lavoro agile*, Giappichelli.

Loiseau G. (2017), *La déconnexion. Observations sur la régulation du travail dans le nouvel espace-temps des entreprises connectées*, in *DS*, No. 5.

Popma J. (2013), *The Janus face of the 'New Ways of Work': Risk, risks and regulation of nomadic work*, in *Working Paper*, July 2013, ETUI, Brussels.

Ray J.-E. (2002), *Naissance et avis de décès du droit à la déconnexion, le droit à la vie privée du XXI siecle*, in *DS*, No. 11.

Ray J.-E. (2015), *Actualité des TIC. Tout connectés, partout, tout le temps?*, in *DS*, No. 6.

Ray J.-E. (2016), *Grande accélération et droit à la déconnexion*, in *DS*, n. 11.

Rotondi F. (2017), *Diritto alla disconnessione del lavoratore: non è necessario per legge*, in *IPSOA Quotidiano*, May 20th, 2017.

Ushakova T. (2017), *De la conciliación a la desconexión tecnológica. Apuntes para el debate*, in *N. Rev. Esp. Der. Trab.*, No. 192.

Vallecillo Gámez M.R. (2017), *El derecho a la desconexión ¿"Novedad digital" o esnobismo del "viejo" derecho al descanso?*, in *Rev. Trab. Seg. Soc.*, n. 408.