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## TEXTS ADOPTED

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### P9\_TA(2021)0021

#### The right to disconnect

#### European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL))

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to point (b) of Article 153(2) TFEU, in conjunction with points (a), (b) and (i) of Article 153(1) TFEU,
- having regard to Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>1</sup>,
- having regard to Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship<sup>2</sup>,
- having regard to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time<sup>3</sup>,
- having regard to Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union<sup>4</sup>,
- having regard to Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU<sup>5</sup>,
- having regard to Articles 23 and 31 of the Charter of Fundamental Rights of the European Union (the ‘Charter’),

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<sup>1</sup> OJ L 183, 29.6.1989, p. 1.

<sup>2</sup> OJ L 206, 29.7.1991, p. 19.

<sup>3</sup> OJ L 299, 18.11.2003, p. 9.

<sup>4</sup> OJ L 186, 11.7.2019, p. 105.

<sup>5</sup> OJ L 188, 12.7.2019, p. 79.

- having regard to the European Pillar of Social Rights, in particular principle Nos 5, 7, 8, 9 and 10,
- having regard to the conventions and recommendations of the International Labour Organization (ILO), in particular the 1919 Hours of Work (Industry) Convention (No. 1), the 1930 Hours of Work (Commerce and Offices) Convention (No. 30), the 1981 Collective Bargaining Recommendation (No. 163), the 1981 Convention on Workers with Family Responsibilities (No. 156) and its accompanying Recommendation (No. 165), as well as the 2019 ILO Centenary Declaration on the Future of Work,
- having regard to the Council of Europe’s Revised European Social Charter of 3 May 1996, and in particular Article 2 (regarding the right to just working conditions, including to reasonable working hours and to rest periods), Article 3 (regarding the right to safe and healthy working conditions), Article 6 (regarding the right to collective bargaining) and Article 27 (regarding the protection of workers with family responsibilities) thereof,
- having regard to Article 24 of the Universal Declaration of Human Rights,
- having regard to the European Social Partners Framework Agreements on Telework (2002) and Digitalisation (2020),
- having regard to the European Added Value Assessment study of the European Added Value Unit of the European Parliament Research Service (EPRS) entitled ‘The right to disconnect’<sup>1</sup>,
- having regard to the report of Eurofound of 31 July 2019 entitled ‘The right to switch off’,
- having regard to the Eurofound Working Paper entitled ‘The right to disconnect in the 27 EU Member States’,
- having regard to the case-law of the Court of Justice of the European Union (CJEU) on the criteria for determining working time, including on-call and standby time, on the significance of rest time, on the requirement to measure working time, and on the criteria for determining the status of a worker<sup>2</sup>,
- having regard to CJEU judgment in case C-518/15, according to which the stand-by time of a worker at home who is obliged to respond to calls from the employer within a

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<sup>1</sup> PE 642.847, July 2020;  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS\\_BRI\(2020\)642847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf)

<sup>2</sup> See, inter alia, judgments of the Court of Justice of 5 October 2004, Pfeiffer and others, C-397/01 to C-403/01, ECLI:EU:C:2004:584, paragraph 93; of 7 September 2006, Commission v United Kingdom, C-484/04, ECLI:EU:C:2006:526, paragraph 36; of 17 November 2016, Betriebsrat der Ruhrländklinik, C-216/15, ECLI:EU:C:2016:883, paragraph 27; of 21 February 2018, Matzak, ECLI:EU:C:2018:82, C-518/15, paragraph 66; and of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18, ECLI:EU:C:2019:402, paragraph 60.

- short period must be regarded as 'working time'<sup>1</sup>,
- having regard to CJEU judgment in case C-55/18, according to which Member States must require employers to set up a system enabling the duration of daily working time to be measured<sup>2</sup>,
  - having regard to the UNI Global Union's report entitled 'The Right to Disconnect: Best Practices',
  - having regard to paragraph 17 of its resolution of 10 October 2019 on employment and social policies of the euro area<sup>3</sup>,
  - having regard to Article 5 of the Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament<sup>4</sup>,
  - having regard to Rules 47 and 54 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (A9-0246/2020),
- A. whereas there is currently no specific Union law on the worker's right to disconnect from digital tools, including information and communication technology (ICT), for work purposes;
- B. whereas digitalisation and the appropriate use of digital tools have brought many economic and societal benefits and advantages to employers and workers, such as increased flexibility and autonomy, the potential to improve work-life balance and reduced commuting times, but have also brought disadvantages giving rise to a number of ethical, legal and employment related challenges, such as intensifying work and extending working hours, thus blurring the boundaries between work and private life;
- C. whereas the ever greater use of digital tools for work purposes has resulted in an 'ever-connected', 'always on', or 'constantly on-call' culture, which can have detrimental effect on workers' fundamental rights and fair working conditions, including fair remuneration, the limitation of working time and work-life balance, physical and mental health and safety at work and well-being, as well as, because of its disproportionate impact on workers with caring responsibilities, who tend to be women, equality between men and women; whereas the digital transition should be guided by respect for human rights and for the fundamental rights and values of the Union, and should have a positive impact on workers and working conditions;
- D. whereas the use of digital tools for extended periods of time may cause a reduction of concentration as well as cognitive and emotional overload; whereas monotonous repetitive manipulations and static posture over long periods of time may lead to muscle strain and musculoskeletal disorders; whereas the International Agency for Research on

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<sup>1</sup> Judgment of the Court of Justice of 21 February 2018, Matzak, ECLI:EU:C:2018:82, C-518/15, paragraph 66.

<sup>2</sup> Judgment of the Court of Justice of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18, ECLI:EU:C:2019:402, paragraph 60.

<sup>3</sup> Texts adopted, P9\_TA(2019)0033.

<sup>4</sup> OJ L 262, 7.10.2005, p. 1.

Cancer has classified radio-frequency radiation as a possible carcinogenic; whereas pregnant women may be at particular risk when exposed to radio-frequency radiation;

- E. whereas the excessive use of technological devices can aggravate phenomena such as isolation, techno-addiction, sleep deprivation, emotional exhaustion, anxiety and burnout; whereas, according to the WHO, more than 300 million people globally suffer from depression and common mental disorders related to work and 38,2 % of the Union population suffers from a mental disorder each year;
- F. whereas the measures taken as a result of the COVID-19 crisis have changed the way in which people work and have demonstrated the importance of digital solutions, including the use of work-at-home schemes by companies, the self-employed and public administration bodies, across the Union; whereas, according to Eurofound, over a third of Union workers started working from home during the lockdown, compared to 5 % who usually worked from home, and there was a substantial increase in the use of digital tools for work purposes; whereas, according to Eurofound, 27 % of respondents working from home reported that they had worked in their free time to meet work demands<sup>1</sup>; whereas remote working and telework have increased during the COVID-19 crisis and are expected to remain higher than before the COVID-19 crisis or even to increase further;
- G. whereas women are at a particularly high risk from and are more severely hit by the economic and social fallout resulting from the COVID-19 crisis, due to their predominant or still traditional role of carer of the home and family; whereas the increase of teleworking during the COVID-19 crisis can also pose a higher risk to young people and people with caring responsibilities, such as single parents, families with children and families with dependent relatives requiring care; whereas work and private life during a time of teleworking, social distancing and lockdown needs to be well balanced; whereas gender aspects should be addressed in the context of the right to disconnect;
- H. whereas the right to disconnect is a fundamental right which is an inseparable part of the new working patterns in the new digital era; whereas that right should be seen as an important social policy instrument at Union level to ensure protection of the rights of all workers; whereas the right to disconnect is of particular importance to the most vulnerable workers and those with caring responsibilities;
- I. whereas technological advances have added a new layer of complexity to monitoring and surveillance in the workplace; whereas the use of intrusive digital technologies in the workplace is to some extent addressed and regulated only in some Member States; whereas Article 8 of the European Convention of Human Rights (ECHR) provides that ‘everyone has the right to the protection of personal data concerning him or her’; whereas this has been used across national jurisdictions to protect employees’ privacy in the employment context; whereas Article 8 ECHR and the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR)<sup>2</sup>

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<sup>1</sup> <https://www.eurofound.europa.eu/publications/blog/covid-19-unleashed-the-potential-for-telework-how-are-workers-coping>

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data

should ensure that employees receive adequate information on the scope and nature of the monitoring and surveillance and that employers are required to justify the measures and minimise their impact by deploying the least intrusive methods;

- J. whereas the Eurofound study stated that 27 % of respondents working from home reported that they had worked in their free time to meet work demands;
1. Stresses that digital tools, including ICT, for work purposes have increased flexibility with regard to the time, place and manner in which work can be performed and workers can be reached outside their working; whereas the appropriate use of digital tools can be an asset to employers and workers in terms of allowing greater freedom, independence and flexibility to better organise working time and working tasks, reduce time spent travelling to work, and facilitate the management of personal and family obligations, thus creating a better work-life balance; notes that the needs of workers differ greatly and emphasises in this regard the importance of developing a clear framework which promotes personal flexibility and the protection of workers' rights at the same time;
  2. Highlights that constant connectivity combined with high job demands and the rising expectation that workers are reachable at any time can negatively affect workers' fundamental rights, their work-life balance, and their physical and mental health and well-being;
  3. Acknowledges that the effective recording of working time can contribute to respecting contractual working time; stresses that, while it is important that working time is recorded for the purposes of ensuring agreed hours and legal limits are not exceeded, attention must be paid to effectiveness, given that regulations on this matter exist only in a few Member States;
  4. Notes that an increasing body of evidence underlines that the effects of a delimitation of working hours, work-life balance, some flexibility in the organisation of working time as well as active measures to improve well-being at work include positive impacts on workers' physical and mental health, improved workplace safety and increased labour productivity due to reduced fatigue and stress, higher levels of employee job satisfaction and motivation and lower rates of absenteeism<sup>1</sup>;
  5. Acknowledges the importance of using digital tools for work purposes properly and efficiently, for both workers and employers, with care to avoid any infringement of workers' rights to fair working conditions, including a fair remuneration, the limitation of working time, and a work-life balance, as well as health and safety at work;
  6. Believes that interruptions of workers' non-working time and the extension of their working hours can increase the risk of unremunerated overtime, work fatigue, psychosocial, mental and physical problems, such as anxiety, depression, burnout and technostress, and can have a negative impact on their health and safety at work, their

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Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>1</sup> Messenger, ILO, quoted in the European Added Value Assessment study of the European Added Value Unit of the European Parliament Research Service (EPRS) entitled 'The right to disconnect' (PE 642.847, July 2020):  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS\\_BRI\(2020\)642847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf)

work-life balance and their rest from work;

7. Acknowledges Eurofound findings which show that people who regularly work from home are more than twice as likely to work in excess of the requisite maximum 48 hours per week and are at risk of resting for less than the requisite 11 hours between working days, as provided for by Union law, compared to those working on their employer's premises; highlights that almost 30 % of such teleworkers report working in their free time every day or several times a week, compared to below 5 % of 'office'-based workers and that teleworkers are also more likely to work irregular hours; stresses that the number of home-based workers in the Union reporting long working hours or who are unable to benefit from non-working time is increasing; notes, further, that regular teleworkers are more likely to report suffering from work-related stress and being affected by sleep disorders, stress and exposure to the light of digital screens, and notes that other effects on the health of teleworkers and 'highly-mobile' workers are headaches, eye strain, fatigue, anxiety and musculoskeletal disorders; acknowledges that regular home-based work can take a physical toll on workers, since workspaces set up ad hoc in the home as well as laptops and other ICT equipment may not meet ergonomic standards; calls on the Commission and Member States to improve research and data collection and to conduct a detailed assessment of those problems; stresses that the importance of addressing those issues increases in light of the predicted expansion of teleworking in the longer term;
8. Points out that telework has been instrumental in helping to safeguard some employment and business during the COVID-19 crisis, but reiterates that, because of the combination of long working hours and higher demands it can also pose higher risks to workers with a negative impact on the quality of their working time and their work-life balance, as well as their physical and mental health; highlights the fact that particular difficulties arise when work is not tied to a specific place of work, when connectivity to work is constant and when work spills into family and private life;
9. Stresses that workers' right to disconnect is vital to protecting their physical and mental health and well-being and to protecting them from psychological risks; reiterates the importance and benefits of implementing psychosocial risk assessments at private and public company level and reiterates the importance of promoting mental health and preventing mental disorder at the workplace, creating better conditions for both employees and employers; recognises that committees on health and safety established by the social partners can play a positive role in ensuring more frequent and accurate risk assessments;
10. Recalls that according to current legislation and the case-law of the Court of Justice of the European Union, workers are not required to be available to the employer constantly and without interruption and that there is a difference between working time, where a worker has to be at the disposal of the employer, and non-working time, where a worker has no obligation to remain at the disposal of the employer, and that on-call time is working time; acknowledges, however, that the right to disconnect is not explicitly regulated in Union law; recalls that the situation in the Member States varies widely, with a number of Member States and the social partners having taken steps to regulate in law, collective agreements or both, the use of digital tools for work purposes in order to provide safeguards and protection to workers and their families; calls on the Commission and Member States and encourages the social partners to exchange best practices and to ensure a coordinated common approach to the existing working conditions without being detrimental to social rights and mobility within the Union;

11. Calls on the Commission to evaluate and address the risks of not protecting the right to disconnect;
12. Calls on Member States and employers to ensure that workers are informed of and able to exercise their right to disconnect;
13. Recalls the specific needs of and disparities between different sectors in relation to the right of disconnect; calls on the Commission to put forward, on the basis of a thorough assessment, a proper evaluation and a consultation of Member States and the social partners, a proposal for a Union directive on minimum standards and conditions to ensure that workers are able to exercise effectively their right to disconnect and to regulate the use of existing and new digital tools for work purposes, whilst taking into consideration the European Social Partners Framework Agreement on Digitalisation, which includes arrangements for connecting and disconnecting; recalls that the Framework Agreement provides for the social partners to take implementation measures within the next three years and that a legislative proposal before the end of that implementation period would disregard the role of social partners laid down in the TFEU; insists that any legislative initiative respects the social partners' autonomy at national level, national collective agreements, and national labour market traditions and models, and does not affect the right to negotiate, conclude and enforce collective agreements in accordance with national law and practice;
14. Calls on the Commission to present a legislative framework with a view to establishing minimum requirements for remote work across the Union ensuring that teleworking does not affect the employment conditions of teleworkers; stresses that such framework should clarify working conditions, including the provision, use and liability of equipment, such as of existing and new digital tools, and should ensure that such work is carried out on a voluntary basis and that the rights, workload and performance standards of teleworkers are equivalent to comparable workers;
15. Is of the opinion that the new directive should particularise, complement and fully respect the requirements laid down in Directive 2003/88/EC concerning certain aspects of the organisation of working time, in particular as regards the right to paid annual leave, in Directive (EU) 2019/1152 on transparent and predictable working conditions, in Directive (EU) 2019/1158 on work-life balance for parents and carers and in Council Directive 89/391/EEC on the safety and health of workers, and in particular the requirements in those directives that relate to maximum working hours and minimum rest periods, flexible working arrangements, and information obligations, and should not have any negative effect on workers; believes that the new directive should provide for solutions to address existing models, the role of the social partners, the responsibilities of employers and the needs of workers regarding the organisation of their working time when they use digital tools; highlights the fundamental importance of the correct transposition, implementation and application of Union rules and recalls that the employment and social acquis of the Union fully applies to the digital transition; calls on the Commission and the Member States to ensure proper enforcement through the national labour inspection authorities;
16. Stresses that the right to disconnect allows workers to refrain from engaging in work-related tasks, activities and electronic communication, such as phone calls, emails and other messages, outside their working time, including during rest periods, official and annual holidays maternity, paternity and parental leave, and other types of leave, without facing any adverse consequences; stresses that certain autonomy, flexibility and

respect for time sovereignty according to which workers must be allowed to schedule their working time around personal responsibilities, in particular caring for children or sick family members, should be respected; stresses that the increase in connectivity at the workplace should not lead to any discrimination or negative consequences with regard to recruitment or career advancement;

17. Stresses that progress in new technological possibilities, such as artificial intelligence, play a critical role in shaping the workplace of the future and the appreciation of work efficiency and should not lead to a dehumanised use of digital tools or raise concerns as regards privacy and disproportionate and illegal collection of personal data, surveillance and monitoring of workers; stresses that new forms of workspace and work performance surveillance tools, allowing companies to track extensively workers' activities, should not be seen as an opportunity to carry out systematic surveillance of workers; calls on the social partners as well as data protection supervisory authorities to ensure that any labour monitoring tools are used only where necessary and proportionate and ensure the right to privacy of employees and self-determination in their work; points out that if employees are allowed to use communication services provided by the employer for private purposes the employer has no right to have access to communication metadata or content and workers must be trained and informed in relation to the processing of their data; recalls that in work relations, the consent of an employee for the processing of personal data cannot normally be considered to be freely given and is therefore not valid, because there is a clear imbalance of power between the employee data subject and the employer controller;
18. Reiterates that the respect for working time and its predictability is considered to be essential to ensure the health and safety of workers and their families in the Union;
19. Stresses that the Commission, Member States, employers and workers must actively support and encourage the right to disconnect and promote an efficient, reasoned and balanced approach to digital tools at work, as well as awareness-raising measures, education and training campaigns relating to working time and the right to disconnect; stresses the importance of the reasonable use of digital tools, ensuring that the right to disconnect and all other rights that are designed to protect the mental and physical health of workers are effectively implemented and become established as an active component of working culture in the Union;
20. Underlines the fact that employers should not require workers to be directly or indirectly available or reachable outside their working time and that co-workers should refrain from contacting their colleagues outside the agreed working hours for work purposes; recalls that time during which a worker is available or reachable for the employer is working time; stresses that, in light of the evolving nature of the world of work, there is an increased need for workers to be fully informed about their working conditions for the purpose of implementing the right to disconnect, which should occur in a timely manner and in written or digital form to which workers have easy access; points out that employers must provide workers with sufficient information, including a written statement, setting out the workers' right to disconnect, namely at least the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring or surveillance tools, the manner in which working time is recorded, the employer's health and safety assessment, and the measures for protecting workers against adverse treatment and for implementing workers' right of redress; reiterates the importance of equal treatment for cross-border workers and calls on the Commission and Member States to ensure that workers are properly informed of their



right to disconnect, including across borders;

21. Stresses the importance of the social partners to ensure the effective implementation and enforcement of the right to disconnect, in accordance with national practices, and emphasises that the work that they have already carried out in this respect should therefore be taken into account; believes that Member States must ensure that workers are able to exercise effectively their right to disconnect, including by means of collective agreement; calls on the Member States to establish precise and sufficient mechanisms to ensure a minimum standard of protection in accordance with Union law and the enforcement of their right to disconnect for all workers;
22. Calls on Member States to ensure that workers who invoke their right to disconnect are protected from victimisation and other negative repercussions and that there are mechanisms in place to deal with complaints or breaches of the right to disconnect;
23. Stresses that all remote professional learning and training activities must be counted as work activity and must not take place during overtime or free days without adequate compensation;
24. Stresses the importance of supporting individual training aiming to improve IT skills for all workers, in particular for persons with disabilities and more senior colleagues, in order to ensure good and efficient performance of their work;
25. Calls on the Commission to include the right to disconnect in its New Occupational Safety and Health Strategy, and to explicitly develop new psychosocial measures and actions within the framework of Occupational Safety and Health;
26. Requests that the Commission submit, on the basis of point (b) of Article 153(2), in conjunction with points (a), (b) and (i) of Article 153(1) TFEU, a proposal for an act on the right to disconnect, following the recommendations set out in the Annex hereto;
27. Considers that the requested proposal does not have financial implications;
28. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and to the parliaments and governments of the Member States.

**ANNEX TO THE RESOLUTION:  
RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

TEXT OF THE LEGISLATIVE PROPOSAL REQUESTED

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the right to disconnect

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with points (a), (b) and (i) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

- (1) Points (a), (b) and (i) of Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to support and complement the activities of the Member States in the fields of improving the working environment to protect workers' health and safety, of working conditions and of equality between men and women with regard to labour market opportunities and treatment at work.
- (2) Article 31 of the Charter of Fundamental Rights of the European Union (Charter) provides that every worker has the right to working conditions which respect his or her health, safety and dignity, as well as the right to limitation of maximum working time,

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<sup>1</sup> OJ C...

<sup>2</sup> OJ C...

<sup>3</sup> Position of the European Parliament...

to daily and weekly rest periods and to an annual period of paid leave. Article 30 of the Charter provides for the right to protection in the event of unjustified dismissal and Articles 20 and 21 of the Charter provide for equality before the law and prohibit discrimination. Article 23 of the Charter requires equality between men and women to be ensured in all areas, including employment, work and pay.

- (3) The European Pillar of Social Rights provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, that the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured, that innovative forms of work that ensure quality working conditions are to be fostered, and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting the abuse of atypical contracts (Principle No 5). It also provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship (Principle No 7), that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices (Principle No 8), that parents and people with caring responsibilities have the right to suitable leave and flexible working arrangements (Principle No 9), and that workers have the right to a healthy, safe and well-adapted work environment and data protection, as well as the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market (Principle No 10).
- (4) This Directive takes account of the conventions and recommendations of the International Labour Organization with regard to the organisation of working time, including, in particular, the 1919 Hours of Work (Industry) Convention (No. 1), the 1930 Hours of Work (Commerce and Offices) Convention (No. 30), the 1981 Collective Bargaining Recommendation (No. 163), the 1981 Convention on Workers with Family Responsibilities (No. 156) and its accompanying Recommendation (No. 165) as well as the 2019 ILO Centenary Declaration on the Future of Work;
- (5) This Directive also takes account of the Council of Europe's Revised European Social Charter of 3 May 1996, and in particular Article 2 (regarding the right to just working conditions, including to reasonable working hours and to rest periods), Article 3 (regarding the right to safe and healthy working conditions), Article 6 (regarding the

right to collective bargaining) and Article 27 (regarding the protection of workers with family responsibilities) thereof.

- (6) Article 24 of the Universal Declaration of Human Rights states that everyone has the right to rest and leisure, including the reasonable limitation of working time and periodic holidays with pay.
- (7) Digital tools enable workers to work from anywhere at any time and can, when used appropriately, contribute to improving workers' work-life balance by allowing them more flexibility in the organisation of their private life. However, the use of digital tools, including ICT, for work purposes also has possible negative effects, such as resulting in longer working hours by inducing workers to work outside their working time, higher work intensity, as well as the blurring of the boundaries between working time and free time. If not used exclusively during working time, such digital tools may interfere with workers' private lives. For workers with unremunerated caring responsibilities, digital tools can make it particularly difficult to find a healthy work-life balance. Women spend more time than men in fulfilling such caring responsibilities, work fewer hours in paid employment and may leave employment entirely.
- (8) Digital tools that are used for work purposes can create constant pressure and stress, have a detrimental impact on workers' physical and mental health and well-being and can lead to psychosocial or other occupational illnesses, such as anxiety, depression, burnout, technostress, sleep disorders and musculoskeletal disorders. All those effects place an increasing burden on employers and social insurance systems and increase the risk of infringing workers' right to working conditions that respect their health and safety. Given the challenges presented by the significantly increasing use of digital tools for work purposes, atypical employment relationships and teleworking arrangements, in particular in the context of the increase in teleworking that arose as a result of the COVID-19 crisis, leading to additional work-related stress and obscuring the divide between work and private life, it has become even more urgent to ensure that workers are able to exercise their right to disconnect.
- (9) The expanding use of digital technologies has transformed the traditional models of work and has created an 'ever-connected' and 'always on' culture. In that context, it is important to ensure the protection of workers' fundamental rights, fair working

conditions, including their right to a fair remuneration and the implementation of their working time, health and safety, and equality between men and women.

- (10) The right to disconnect refers to workers' right not to engage in work-related activities or communications outside working time, by means of digital tools, such as phone calls, emails or other messages. The right to disconnect should entitle workers to switch off work-related tools and not to respond to employers' requests outside working time, with no risk of adverse consequences, such as dismissal or other retaliatory measures. Conversely, employers should not require workers to work outside working time. Employers should not promote an 'always on' work culture in which workers who waive their right to disconnect are clearly favoured over those who do not. Workers reporting situations of non-compliance with the right to disconnect in the workplace should not be penalised.
- (11) The right to disconnect should apply to all workers and all sectors, both public and private and should be effectively enforced. The purpose of the right to disconnect is to ensure the protection of workers' health and safety, and of fair working conditions, including work-life balance.
- (12) There is currently no Union law specifically regulating the right to disconnect and legislation in this domain varies widely across the Member States. However, Council Directives 89/391/EEC<sup>1</sup> and 91/383/EEC<sup>2</sup> have the purpose of encouraging improvements in the safety and health of workers with an unlimited, fixed-term or temporary employment relationship; Directive 2003/88/EC of the European Parliament and of the Council<sup>3</sup> lays down minimum safety and health requirements for the organisation of working time, including in relation to maximum allowed working hours and minimum rest periods to be respected; Directive (EU) 2019/1152 of the European

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<sup>1</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

<sup>2</sup> Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ L 206, 29.7.1991, p. 19).

<sup>3</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

Parliament and of the Council<sup>1</sup> has the purpose of improving working conditions by promoting more transparent and predictable employment; and Directive (EU) 2019/1158 of the European Parliament and of the Council<sup>2</sup> lays down minimum requirements to facilitate the reconciliation of work and private life for workers who are parents or carers.

- (13) Pursuant to Directive 2003/88/EC, workers in the Union have the right to minimum safety and health requirements for the organisation of working time. In that context, that Directive provides for daily rest, rest breaks, weekly rest, maximum weekly working time and annual leave, and regulates certain aspects of night work, shift work and work patterns. It is settled case-law of the Court of Justice of the European Union (CJEU) that on-call time, during which a worker is required to be physically present at a place specified by the employer, is to be regarded as “wholly working time [...], irrespective of the fact that, during periods of on-call time, the person concerned is not continuously carrying on any professional activity”<sup>3</sup>, and that standby time, which a worker is obliged to spend at home, while being available to the employer, is to be considered to be working time<sup>4</sup>. Moreover, the CJEU has interpreted minimum rest periods as “rules of Community social law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health”<sup>5</sup>. However, Directive 2003/88/EC makes no express provision for a worker’s right to disconnect, nor does it require workers to be reachable outside working hours, during rest periods or other non-work time, but it does provide for the right to uninterrupted daily, weekly and annual rest periods, during which the worker should not be reached. Furthermore, there is no explicit Union provision that enforces the right to be

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<sup>1</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

<sup>2</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

<sup>3</sup> Judgment of the Court of Justice of 5 October 2004, Pfeiffer and others, C-397/01 to C-403/01, ECLI:EU:C:2004:584, paragraph 93.

<sup>4</sup> Judgment of the Court of Justice of 21 February 2018, Matzak, ECLI:EU:C:2018:82, C-518/15, paragraph 66.

<sup>5</sup> Judgment of 7 September 2006, Commission v United Kingdom, C-484/04, ECLI:EU:C:2006:526, paragraph 38.

unavailable at all times outside of the (contractually) agreed working hours.

- (14) The CJEU has confirmed that Directives 89/391/EEC and 2003/88/EC require employers to set up a system enabling the duration of time worked each day by each worker to be measured and that such a system be “objective, reliable and accessible”<sup>1</sup>.
- (15) In its case law, the CJEU has established criteria for determining the status of a worker. The interpretation of the CJEU of those criteria should be taken into account in the implementation of this Directive. Provided that they fulfil those criteria, all workers in both the private and the public sectors, including on-demand workers, part-time workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices, fall within the scope of this Directive. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties’ description of the relationship. For the purposes of this Directive, the term worker refers to any worker who has an employment relationship that fulfils the criteria of the CJEU.
- (16) In recent decades, standard employment contracts have declined and the prevalence of atypical or flexible working arrangements has increased, due in large part to the digitalisation of economic activities. There is Union law on some types of atypical work. Council Directive 97/81/EC<sup>2</sup> implements the framework agreement between the European social partners on part-time work and has the purpose of providing for the removal of discrimination against part-time workers, improving the quality of part-time work, facilitating the development of part-time work on a voluntary basis and

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<sup>1</sup> Judgment of the Court of Justice of 14 May 2019, *Federación de Servicios de Comisiones Obreras (CCOO)*, C-55/18, ECLI:EU:C:2019:402, paragraph 60.

<sup>2</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14, 20.1.1998, p. 9).

contributing to the flexible organisation of working time in a manner which takes into account the needs of employers and workers. Council Directive 1999/70/EC<sup>1</sup> puts into effect the framework agreement between the European social partners on fixed-term contracts and has the purpose of improving the quality of fixed-term work by ensuring the application of the principle of non-discrimination and preventing abuse arising from the use of successive fixed-term employment contracts or relationships. Directive 2008/104/EC of the European Parliament and of the Council<sup>2</sup>, which was adopted following the failure of the European social partners to adopt a framework agreement, has the purpose of ensuring the protection of temporary agency workers and improving the quality of temporary agency work by ensuring equal treatment and by recognising temporary work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.

- (17) The European social partners adopted framework agreements on telework in July 2002 and on digitalisation in June 2020. The framework agreement on digitalisation provides for possible measures to be agreed between the social partners with regard to workers' connecting with and disconnecting from work. In light of developments since adoption of the framework agreement on telework in 2002, it has become evident that there is a need for an evaluation and a legal framework at Union level for some of the elements of that agreement.
- (18) Point (a) of Article 3(1) and Article 3(2) of Directive 2008/104/EC provide for the concept of 'worker' to be defined by national law. However, the CJEU has determined that the criteria established in its settled case-law are to be applied to assess whether someone has the status of a worker. In particular, whether "a person performs services for and under the direction of another person, in return for which he receives remuneration" is determinative and "the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between

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<sup>1</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

<sup>2</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).



those two persons [are not] decisive in that regard”<sup>1</sup>.

- (19) Some Member States have taken steps to regulate the right to disconnect for workers who use digital tools for work purposes. Other Member States promote the use of digital tools for work purposes without specifically addressing the risks, a third group of Member States applies general legislation to the use of digital tools and a fourth group has no specific legislation<sup>2</sup>. Action at Union level in this area would provide for minimum requirements to protect all workers in the Union who use digital tools for work purposes, and, more specifically, their fundamental rights with regard to fair working conditions.
- (20) The purpose of this Directive is to improve working conditions for all workers by laying down minimum requirements for the right to disconnect. This Directive should be implemented in a manner that fully respects the requirements set out in Directives 89/391/EEC, 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158 and should not have any negative effect on workers.
- (21) The practical arrangements for the exercise of the right to disconnect by the worker and the implementation of that right by the employer should be able to be agreed by the social partners by means of collective agreement or at the level of the employer undertaking. Member States should ensure, such as through national labour inspection authorities, that employers provide workers with a statement setting out those practical arrangements.
- (22) Member States should ensure employers set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured, in accordance with the case-law of the CJEU, in particular its judgment of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18<sup>3</sup>.
- (23) The autonomy of the social partners should be respected. Member States should support

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<sup>1</sup> Judgment of the Court of Justice of 17 November 2016, Betriebsrat der Ruhrlandklinik, C-216/15, ECLI:EU:C:2016:883, paragraph 27.

<sup>2</sup> Eurofound.

<sup>3</sup> Judgment of the Court of Justice of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO), C-55/18, ECLI:EU:C:2019:402.

the social partners in establishing collective agreements to implement this Directive.

- (24) Member States should ensure, in accordance with national law and practice, the effective involvement of the social partners and promote and enhance social dialogue with a view to implementing this Directive. To that end, Member States should ensure that, after consulting the social partners at the appropriate level, a minimum set of working conditions are established to enable workers to exercise their right to disconnect. Member States should be able to entrust the social partners with the implementation of this Directive, in accordance with national law and practice, for the purpose of providing for or complementing that minimum set of working conditions.
- (25) Derogations from the requirement to implement the right to disconnect should be provided only in exceptional circumstances, such as force majeure or other emergencies, and subject to the employer providing each worker concerned with reasons in writing, substantiating the need for the derogation. The minimum set of working conditions implementing the right to disconnect should provide for the criteria for such derogations and for determining compensation for any work carried out outside working time. Such compensation should ensure that the overall goal of ensuring workers' health and safety is respected.
- (26) Workers who exercise their rights provided for in this Directive should be protected from any adverse consequences, including dismissal and other retaliatory measures. Such workers should also be protected against discriminatory measures, such as a loss of income or of promotion opportunities.
- (27) Workers should have adequate and rapid judicial and administrative protection against any adverse treatment resulting from their exercising or seeking to exercise the rights provided for under this Directive, including the right of redress as well as the right to initiate administrative or legal proceedings to ensure compliance with this Directive.
- (28) Member States should lay down the arrangements for the implementation of the right to disconnect established in this Directive, in accordance with national law, collective agreements or practice. Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive.
- (29) The burden of proof with regard to establishing that a dismissal or equivalent detriment

did not take place on the grounds that a worker exercised or sought to exercise the right to disconnect should fall on the employer where a worker has established, before a court or another competent authority, facts capable of giving rise to a presumption that the worker has been dismissed or suffered other detrimental effects on such grounds.

- (30) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. This Directive and its implementation should not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.
- (31) The Commission should review the implementation of this Directive in order to monitor and ensure compliance with this Directive. To that end, Member States should submit regular reports to the Commission.
- (32) In order to assess the impact of this Directive, the Commission and the Member States are encouraged to continue to cooperate with one another, with support from the ELA, in order to develop comparable statistics and data on the implementation of the rights established in this Directive.
- (33) Since the objective of this Directive, namely to establish appropriate safeguards for the enforcement of the right to disconnect in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### *Subject matter and scope*

- 1. This Directive lays down minimum requirements to enable workers who use digital tools, including ICT, for work purposes, to exercise their right to disconnect and to

ensure that employers respect workers' right to disconnect. It applies to all sectors, both public and private, and to all workers, independent of their status and their working arrangements.

2. This Directive particularises and complements Directives 89/391/EEC, 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158, for the purposes mentioned in paragraph 1, without prejudice to the requirements laid down in those Directives.

## *Article 2*

### *Definitions*

For the purposes of this Directive, the following definitions apply:

- (1) “disconnect” means not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time;
- (2) “working time” means working time as defined in point (1) of Article 2 of Directive 2003/88/EC.

## *Article 3*

### *Right to disconnect*

1. Member States shall ensure that employers take the necessary measures to provide workers with the means to exercise their right to disconnect.
2. Member States shall ensure that employers set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured, in accordance with workers' right to privacy and to the protection of their personal data. Workers shall have the possibility to request and obtain the record of their working times.
3. Member States shall ensure that employers implement the right to disconnect in a fair, lawful and transparent manner.

## *Article 4*

### *Measures implementing the right to disconnect*

1. Member States shall ensure that detailed arrangements are established, after consulting the social partners at the appropriate level, to enable workers to exercise their right to disconnect and that employers implement that right in a fair and transparent manner. To that end, Member States shall provide for at least the following working conditions:
  - (a) the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring tools;
  - (b) the system for measuring working time;
  - (c) health and safety assessments, including psychosocial risk assessments, with regard to the right to disconnect;
  - (d) the criteria for any derogation by employers from their requirement to implement a worker's right to disconnect;
  - (e) in the case of a derogation under point (d), the criteria for determining how compensation for work performed outside working time is to be calculated in accordance with Directives 89/391/EEC, 2003/88/EC, (EU) 2019/1152 and (EU) 2019/1158, and with national law and practices.
  - (f) the awareness-raising measures, including in-work training, to be taken by employers with regard to the working conditions referred to in this paragraph.

Any derogation under point (d) of the first subparagraph shall be provided for only in exceptional circumstances, such as force majeure or other emergencies, and subject to the employer providing each worker concerned with reasons in writing, substantiating the need for the derogation on every occasion on which the derogation is invoked.

2. Member States may, in accordance with national law and practice, entrust the social

partners to conclude collective agreements at national, regional, sectoral or employer level providing for or complementing the working conditions referred to in paragraph 1.

3. Member States shall ensure that workers who are not covered by a collective agreement pursuant to paragraph 2 benefit from protection in accordance with this Directive.

## *Article 5*

### *Protection against adverse treatment*

1. Member States shall ensure that discrimination, less favourable treatment, dismissal and other adverse measures by employers on the ground that workers have exercised or have sought to exercise their right to disconnect are prohibited.
2. Member States shall ensure that employers protect workers, including workers' representatives, from any adverse treatment and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.
3. Member States shall ensure that where workers who consider that they have been dismissed or subject to other adverse treatment on the grounds that they exercised or sought to exercise their right to disconnect establish, before a court or other competent authority, facts capable of giving rise to a presumption that they have been dismissed or subject to other adverse treatment on such grounds, it shall be for the employer to prove that the dismissal or other adverse treatment was based on other grounds.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to workers.
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.

6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by Member States.

## *Article 6*

### *Right of redress*

1. Member States shall ensure that workers whose right to disconnect is violated have access to swift, effective, and impartial dispute resolution and a right of redress in the case of infringements of their rights arising from this Directive.
2. Member States may provide trade union organisations or other workers' representatives with a possibility, on behalf or in support of the workers and with their approval, to engage in administrative proceedings with the objective of ensuring compliance with or enforcement of this Directive.

## *Article 7*

### *Obligation to provide information*

Member States shall ensure that employers provide each worker in writing with clear, sufficient and adequate information on their right to disconnect, including a statement setting out the terms of any applicable collective or other agreements. Such information shall include at least the following:

- (a) the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring tools, as referred to in point (a) of Article 4(1);
- (b) the system for measuring working time, as referred to in point (b) of Article 4(1);
- (c) the employer's health and safety assessments with regard to the right to disconnect, including psychosocial risk assessments, as referred to in point (c) of Article 4(1);
- (d) the criteria for any derogation from the employers' requirement to implement the

right to disconnect and any criteria for determining compensation for work performed outside working time, as referred to in points (d) and (e) of Article 4(1);

- (e) the employer's awareness-raising measures, including in-work training, as referred to in point (f) of Article 4(1);
- (f) the measures for protecting workers against adverse treatment in accordance with Article 5;
- (g) the measures for implementing workers' right of redress in accordance with Article 6.

## *Article 8*

### *Penalties*

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, or of the relevant provisions already in force concerning the rights which are within the scope of this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by ... [two years after the date of entry into force of this Directive], notify the Commission of those rules and measures and shall notify it, without delay, of any subsequent amendment affecting them.

## *Article 9*

### *Level of protection*

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers.



3. This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

#### *Article 10*

##### *Reporting, evaluation and review of the right to disconnect*

1. By ... [five years after the entry into force of this Directive] and every two years thereafter, Member States shall submit to the Commission a report on all relevant information regarding the practical implementation and application of this Directive, as well as evaluation indicators on the implementation practices of the right to disconnect, indicating the respective viewpoints of national social partners.
2. On the basis of the information provided by the Member States pursuant to paragraph 1, the Commission shall, by ... [six years after entry into force of this Directive] and every two years thereafter, submit a report to the European Parliament and to the Council on the implementation and application of this Directive and consider the need for additional measures, including, where appropriate, amendments to this Directive.

#### *Article 11*

##### *Transposition*

1. By ... [two years after the entry into force of this Directive], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from ... [three years after the date of entry into force of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member

States.

2. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments, of any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.
3. In accordance with Article 153(3) TFEU, Member States may entrust the social partners, at their joint request, with the implementation of this Directive, provided that they ensure compliance with this Directive.

### *Article 12*

#### *Personal data*

Employers shall process personal data pursuant to points (a) and (b) of Article 4(1) of this Directive only for the purpose of recording an individual worker's working time. They shall not process such data for any other purpose. Personal data shall be processed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>2</sup>.

### *Article 13*

#### *Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the Union*.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>2</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

*Article 14*

*Addressees*

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*