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Second Synthesis Report

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Introduction

In this synthesis report, the members of the team are summarizing the findings on the "HOW" and "WHAT" dimensions of the DIGILARE project. They are presenting preliminary outcomes of the findings on digitalisation in information and consultation procedures in the Member states represented in the project. These are, in alphabetical order: Austria, Estonia, France, Germany, Hungary, Ireland, Italy, Luxemburg, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and Turkey.

As far as the methodological approach is concerned, the results were obtained through country-specific questionnaires answered by the national experts. The questionnaires in the HOW coordinate covered the following subjects: (1) A brief overview on how employee representation is structured (i.e. existing bodies, their competences), (2) the elections of the representative body or bodies (i.e. legal or other rules, possibilities to use digital means or procedures), (3) the meetings and decision-making within these bodies (i.e. legal or other rules, possibilities to use digital means or procedures), (4) the functioning in the sense of material necessities for the functioning and finally (5) legal rules and obligations concerning the setup and use of databases.

Experts were requested to describe and analyse their own national system, using a colour code in the HOW coordinate. The relevant categories that we build up to systematise the degree and modes of digitalisation are the following: The first cluster comprises all national legislations which explicitly allow for and facilitate digitalisation in the sense of remote meetings, remote voting etc. (labelled as "green"). The second category can be described as legally "neutral" one: in the national systems classified as such, there are no explicit laws prohibiting or allowing digitalisation, in some countries it might be open to interpretation or leave the subject to the social partners (labelled as "yellow"). It may be that in these

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countries, decisions by courts or self-regulation by social partners, employers and/or works councils may decide whether to allow certain ways of digitalised elections, voting and functioning. Due to this last clarification, it may be difficult to factually distinguish between the "silent" systems and the green or red systems if courts offer guidance or if social partners offer regulation. In order to prevent this potential confusion, we included all systems without clear statutory regulations in this category, even though they may seem "green" in practice. As to the final group, it comprises the systems here the legal framework explicitly forbids any or certain forms of digital and/or remote elections, voting, or functioning or puts obstacles to digital interaction, i.e., for example, physical presence in meetings, physical signatures (labelled as "red").

In the WHAT coordinate, the four main axis of research, according to the plan of the project were: (1) the participation of workers' representatives concerning digital surveillance tools, including video surveillance and geolocalisation; (2) the role of information and consultation rights in the field of AI systems; (3), the right to disconnect; and (4), environmental performance measures, an issue not related to digitalisation, but perfectly contemporary. Both legislation and collective agreements were examined and the results were classified in two main groups, according to the existence or not of any legal development in the country. Of course, many of the answers must be read with nuances.

All the questionnaires, in both coordinates, are available to all the members of the research project and are being used in their specific research.

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I. "HOW": Rules on information and consultation and their degree and modes of adaptation to digitalisation

Before going into depth on digitalisation, we would like to briefly recapitulate the general findings on the actors involved in information and consultation procedures. The report focusses on trade unions and their representatives, which – in some form or other – exist in all Member States and those representative bodies envisaged by Directive 2002/14/EC. In this way, we hope to make the picture as clear as possible and prevent unnecessary confusion. Obviously, additional representative bodies do exist depending on national legislations, especially for certain groups of employees, such as young employees or handicapped persons.

Broadly stated, in the EU Member States we have researched, we find dual channel systems as well as single channel systems, the latter constituting a minority. We identified **Romania**, **Sweden** and **Turkey** as the three single channel systems, where information and consultation is achieved exclusively through trade unions and their representatives in the company or establishment.

In the other countries, we find trade unions alongside works councils in different ways. **Estonia** seems to have a fully double system in place, where both types of employee representatives need to be involved in information and consultation. **Ireland** offers a choice between trade union bodies and excepted bodies or specific information and consultation bodies in the sense of Directive 2002/14/EC on company level. The situation in **Italy** seems comparable, with two potential options. **Romania** can be considered to be part of this category. The report indicated that trade union representatives are the envisaged representatives, and that only if they do not exist, the fallback option could be employee representatives from inside the enterprise. However, it remains an open question whether this is a representative in the sense of Directive 2002/14/EC. The other Member States, while allowing for trade unions and their representatives to act in various ways, have generally vested

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the information and consultation rights discussed in this project in a works council as defined in Directive 2002/14/EC.

1. Establishment of employees' representative bodies and digitalised elections

In this section, we will exclusively focus on rules on digital and/or remote elections that are used to constitute the representative body. Any questions on how the members of the body can vote, e.g. in internal elections of a chairperson, are treated as internal decision-making rules as part of the meetings of the representative bodies.

1.1. Interdiction of or obstacles to digital or remote elections

In some countries, the legal framework prohibits digital voting. This is true for **Austria, Germany** and **Luxembourg**. The main argument in the **Austrian** legal system is art. 51 ArbVerfG and its wording, which precludes digital voting. In **Germany**, elections cannot be held digitally. The procedure is regulated in detail (Art. 14 et seqq. BetrVG and BetrVG-WahlO). A reform was planned to allow for digital elections, but the law was not passed in the last legislature. However, it is envisaged by the new government[1]. In **Luxembourg**, the elections must be done on paper and sent via postal services. It seems that concerns on confidentiality influence the stance of the Luxembourg legislator.

Interestingly, the prohibition of digital voting may also be the case for **Spain** which differentiates between remote workers and non-remote workers in general. However, the report states that for elections to the representative body travelling may be required. To us this signifies the impossibility of digital voting or remote voting, but the legal situation seems to be very dynamic.

[1] Deutschlands Zukunft gestalten, Koalitionsvertrag zwischen CDU, CSU und SPD, 18. Legislaturperiode, https://www.bundestag.de/resource/blob/194886/696f36f795961df200fb27fb6803d83e/koalitionsvertrag-data.pdf (30 May 2025).

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1.2. Legal rules promoting digital or remote voting

In **France**, the law explicitly allows for digital and remote voting in case of the Comité Social et Économique (CSE), if regulations are adapted that implement these possibilities. Even though, additional regulations and internal decisions in the company are necessary, we consider this framework digital friendly.

1.3. Neutral legal framework

In all other states where this is relevant (the single-channel countries excluded, therefore), the laws neither explicitly allow nor prohibit digital elections of the representative body. It is interesting to note that within this category, different approaches can be discerned:

Estonia, Ireland, Hungary and the **Netherlands** all have provisions that refer to written ballots, signatures or comparable criteria. On face value, these systems therefore appear red – it can be inferred from the wording that digital or remote elections were not envisaged or are not seen as the preferred or more common modus operandi. In these countries, however, the references are interpreted broadly (maybe in the light of technical developments more recent than the last changes to the law) and therefore are thought to not exclude digital means. The widespread use of digital voting mechanisms is reported at least from **Hungary** and the **Netherlands**, despite the lacunae in or the aged wording of the law. We therefore consider these member states in the "neutral" category, despite the wording of the underlying statutory pro-visions would tend to include them in the "red" category.

Where no explicit legal rules exist, there is a need for some kind of legal ground how to agree on the modus operandi for elections to the works council. In **Poland**, the employer makes regulations for elections for works councils and may provide for digital voting, which has happened in practice. There is also the possibility to adopt procedures through the social partners. Apparently, both ways are possible. The report on the legal situation in **Ireland** mentions the employer needing to agree to a representative body, be it the trade union representative, the exempted body

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or a specialised ad hoc committee for information and consultation. Due to the plethora of possibilities – which, apparently, are all little used – no clear legal or doctrinal answer can be given other than that the statute may be interpreted broadly and digital or remote elections would be considered possible as well.

In the **Netherlands**, an employer is obliged to draft temporary regulations on elections in case of a first establishment of the works council, afterwards, the works council needs to decide on a permanent regulation which contains all procedural rules such as a quorum, methods of election and decision-making and the like. The model regulations provided by the nation-wide tripartite body (*Sociaal Economische Raad*) do provide general rules and guidelines as well as minimum requirements in case digital elections are chosen. There are several market parties that offer digital election and voting tools which fulfil all criteria and digital elections for works councils are quite common. The legal basis for the use of digital means in this case is the regulation, i.e. a unilateral decision by the works council after consultation with the employer. The situation in Italy seems similar, with no explicit rules being in place, but examples being present for online digital elections to representative bodies. The legal basis for these practices, however, are company agreements. Whether this is something fundamentally different from the Irish agreement between employer and excepted body or trade union or the Polish "agreement by or with social partners" needs to be further researched.

With respect to **Hungary** and **Portugal**, neither law explicitly prohibits nor allows for digital elections, but both rapporteurs are of the opinion that digital elections were possible.

2. Online meetings and voting within employee representative bodies or consultation procedures

We examine in the following section, if the national law provides any rules for non-presential meetings. By non-presential meetings we understand telephone- or

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video-conferencing systems. We are not only interested in whether non-presential meetings are allowed, but also if there are particular rules for internal elections for special positions within the workers' representative body (e.g. the chair or president) and/or rules for decision-making and voting in general. The answers focus on representative bodies at company or undertaking level but may also concern bodies at the "lower" establishment or "higher" group level.

2.1. Online meetings

2.1.1 Explicit rules allow for online meetings

In **Austria**, the legal rules allow other forms than face-to-face meetings. The regulation is interpreted in such a way that online meetings are also possible. In **Germany**, art. 30 BetrVG explicitly provides for meetings held by telephone- or videoconferencing systems. However, priority is given to meetings in-person, the internal rules of the works council need to allow digital meetings, and a qualified majority of members need to agree on the digital form of a planned meeting. In **France**, the legal rules provide videoconferencing for CSE-meetings since 2015 if this is foreseen by a collective agreement or if the employer decides so. This said, special conditions need to be respected, i.e. concerning a maximum number of meetings per year and prerequisites for the device that is used.

It seems that in some national legal orders, the use of digital means is possible in some special cases, but not in general. For example, in **Portugal**, online meetings and voting are possible for teleworkers under the telework regime (art.169 Labour Code).

2.1.2 Digital meetings considered to be possible in the absence of particular rules

In most countries, no explicit rules exist on online meetings, but they are considered to be possible. This is the case for **Hungary**, **Romania**, **Estonia**, **Poland** and **Turkey**. Also, in **Ireland**, references in legislation could be interpreted by the courts and

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tribunals to encompass virtual meetings, but there is no case law to this date. It might be dealt with the issue on enterprise level, but no information is publicly available on the matter. Often, the question is left to internal regulation of the competent bodies. This seems to be the case in **Luxembourg** and the **Netherlands**. In some national systems, the approval of or an agreement with the employer would be necessary.

In **Spain**, no legal provisions on the form of meetings exist. However, the Supreme Court considers, "that the obligation of consultation cannot be legally fulfilled by email, stating that a procedure is needed 'in which opinions are contrasted and assessed jointly among all the interlocutors who in the end may reach an agreement or disagree with the measure proposed by the employer".

2.2. Online decision-making

The national reports show that the legal framework allowing online-meetings does not necessarily include rules on online decision-making. In most cases, the possibility of online voting seems to come along with the possibility to hold meetings online. However, restrictions may apply when it comes to internal elections.

2.2.1 Explicit rules that allow for online decision-making

Explicit rules exist on online decision making in **Austria**. The law gives priority to in-person-voting but provides an alternative voting mechanism for works councils to in-person-voting on subject matters, for example via telephone or other similar forms (art. 68 para. 4 ArbVG). Therefore e-voting is considered possible by the prevailing doctrine. In **Germany**, it is possible to adopt resolutions and to voting in online-meetings, if particular legal requirements are fulfilled (arts.30, 33 BetrVG). Thus, the legislator has not provided for the possibility of digital elections within the works council. Legal scholars consider that digital elections were not allowed, as secret ballots could not be ensured in a digital meeting. However, if technical

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means can guarantee secret ballots, the legal rules should not prevent digital elections within the works council.

In **France**, non-presential meetings of the CSE are allowed since 2015, and online voting is possible (art. 2315-4 code du travail).

As online meetings are possible in **Portugal** for special groups of workers, i.e. teleworkers (see telework regime, art.169), for this group, online voting is possible as well.

2.2.2 Online decision-making is considered possible in the absence of legal rules

In most countries without any legal rules existing on online decision-making, the workers representative bodies are allowed to fix their own rules of procedure, that may include non-presential modes of decision-making. This is the case for **Hungary** (art.259.3 Labour Code), **Poland** (Art. 11.4 Law on Informing and Consulting Employees), the **Netherlands** and also **Spain**. However, in **Spain**, the question seems to raise strategic questions and also to depend on the equipment provided by the employer.

2.3. Particularities in case of single channel representation: Workers' representation by trade unions

In case that workers interests are (exclusively or mainly) represented by trade unions, the mode of collaboration in mainly left to the collective autonomy and can be agreed on by the social partners. Examples are **Sweden**, **Hungary** and **Romania**. However, **Romania** has minimum standard rules provided by the law stating that information on decisions that are subject to information and consultation rights shall be communicated "in writing" to the employee representatives (Art. 30 para 4 of Law no. 367/202). Thus, no particular form is required, but decisions are commonly communicated through electronic means, i.e. via email.

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In the public sector in **Italy**, provisions in the Framework Agreement on Telework of 2020 for Public Administrations guarantee the exercise of trade union rights and oblige administrations and organisations that employ telework, "to establish an electronic union notice board and to allow the use of email with trade union representatives at the workplace". In **Germany**, the Federal Labour Court allowed trade unions to use professional e-mails to exercise their constitutional rights guaranteed by article 9 para. 3 of the Grundgesetz. In a recent decision, however, the court considered that the employer was not obliged to provide a trade union with the professional email-addresses of the employees, considering that the trade union could collect them by asking the employees in the workplace. This, of course, requires the existence of a physical workplace where the employees are present in person. The new German government plans to introduce a statutory right to digital access to the workplace for trade unions[2].

3. The functioning of the employee representative body

Here, we will present rules on the obligation of the employer to provide the workers representative bodies with facilities, equipment, and features. We were asking for any specific legal or other binding provisions concerning digital means or tools available for workers' representatives, such as intranets, use of e-mail, use of apps. We asked whether or not employee representative bodies were entitled to tools and if they were to be (mandatorily) provided by the employer. Another question would be, if and under which conditions the workers representative bodies have a right to access to employee data (i.e. name lists, email-addresses).

[2] Deutschlands Zukunft gestalten, Koalitionsvertrag zwischen CDU, CSU und SPD, 18. Legislaturperiode, https://www.bundestag.de/resource/blob/194886/696f36f795961df200fb27fb6803d83e/koalitionsvertrag-data.pdf (30 may 2025).

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3.1. Legal provisions concerning digital means or tools

3.1.1. Legal provisions on digital equipment

In **Austria**, art. 72 ArbVG obliges the employer to provide for necessary equipment; case-law considers the dynamic character of the rule, so the obligation includes the access to internal online-platforms and intranet. The same applies for **Germany**. Thus, the necessity of the equipment needs to be established in every individual case. However, given the possibility for online meetings, the employer cannot contest the necessity of laptops for the members of the works council, for example.

In **France**, the required establishment standard normally includes the provision of computers and software for word processing and spreadsheets in addition to a telephone. If an internal information and communication system (intranet) is implemented in the establishment, workers' representatives must be granted access and use. However, the legal provision only concerns communication rights of trade unions. There is no specific provision concerning elected representatives' rights (CSE). For them, the question must be addressed in an agreement or in the internal rules of the CSE.

It seems that in **Spain**, the regulation is twofold. Remote workers that are members of the workers representative body may claim the necessary equipment and tools to fulfil their function as works council members. It is contested, whether or not the rule should be applied by analogy to trade union representatives. The rules do not directly apply to ordinary workers, but an obligation for the employer to provide them with digital means might derive from collective agreements. Also, in practice, it seems as if employers would apply the rule of equal treatment.

3.1.2. Digital equipment is or may be granted in absence of legal provisions

For the **Netherlands**, any decisions on internal functioning are laid down in the "reglement", which the employer will see and may comment upon. They will immediately influence the facilities that are deemed reasonably necessary. If a

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decision is made that the works council works mostly digitally, digital means of communication will be necessary – they may also be more relevant than a fax, printer, or space in the enterprise.

In **Hungary**, the Labour Code prescribes that the employer shall provide the means for the trade union and for the works council to display information connected to their activities at the employer. There is no specific rule on the use of digital tools. Nonetheless, if the employer normally uses digital means to communicate with their employees, the same communication channels should also be made available to the workers' representatives.

Often, legal framework obliges the employer to provide the workers representative body with the necessary means to fulfil their tasks. Even if digital means are not mentioned expressively, the obligation might include this equipment. This seems to be the case in the **Netherlands** (Art. 17 read in combination with art. 22 Act on Works Councils). In other countries, the obligations depend on the rules that the employer and the works council establish by agreement. This is, for example, the case in **Poland** (see art. 5 of the Law on Informing and Consulting Employees). In **Estonia** there are only very general rules (TUIS and AÜS), but no specific provisions on digital means. The same seems to apply for **Ireland**, **Portugal** and **Romania**.

In **Sweden**, the employer is required to make an area available in the workplace, where the trade union representative can conduct trade union work. Apart from that, more comprehensive duties may derive from collective agreements. The situation seems to be comparable in **Turkey** (Art. 27 para. 4 Act No. 6356 on Trade Unions and Collective Agreements). This seems to apply for trade unions in **Portugal** as well (Art. 464 and art. 421 Labour Code).

3.2. Access to employee data

3.2.1. Legal provisions or case-law on access to employee data

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In **Germany**, the employer has to provide the works council with any information that is necessary for the exercise of their function. This includes any relevant personal data of employees. Data protection legislation may not be opposed to the works council by the employer. Similarly, in **Portugal**, workers' representative bodies have access to employee data, such as names and email addresses, if this is necessary to exercise their functions (Art. 464 and art. 421 Labour Code). The case of **Luxembourg** seems similar, where the employees' representative has the right to contact the employees by all possible means.

3.2.2 Access on employee data considered possible in absence of legal provisions

In **Italy**, there are no specific provisions for workers' representative, but general provisions in the form of Guidelines issued by the Authority on data protection (Guidelines Applying to the Use of E-Mails and the Internet in the Employment Context of 1 March 2007). Case law states, that workers' representative can have access to employees' data if employees are union members. In **Germany**, Trade Unions may use the professional email-addresses, but don't have the right to claim them from the employer.

4. Databases

No legal system except **France** seems to oblige employers to provide special data bases and grant access to employees' representatives. The employers' obligation to provide the "*Base de données Économiques, Sociales et Environnementales* (BDESE)" in companies with 50 employees or more seems to be unique (art. L. 2312-18, L. 2312-36 and L. 2312-21 code du travail). We will further discuss the possible advantages and disadvantages to introduce respective regulations in other Member States' legal systems.

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5. Preliminary conclusions and research perspectives

Apart from the traditional difference made between single-channel and dual-channel representation, the results of the research do not allow for categorizing legal systems when it comes to the degrees and modes of digitalisation of information and consultation of employees' representative bodies. In highly regulated systems legislation may promote or hinder digitalisation in particular. This can be exemplified by **France**, **Austria** and **Germany**. The absence of explicit legal rules or the autonomy given to social partners, employers and/or workers representative bodies to decide on the procedures to be adopted leads to a huge variety of practices that is highly heterogenous and needs to be researched in depth.

Furthermore, the findings lead us to hypothesise that there is a link between the legal framework on digitalised elections, digitalised information and consultation procedures and the obligations of the employer to provide the representative bodies with tools and data access. However, no clear pattern of influence could be established but the national systems seem to combine different approaches in this regard in various ways. Here, further research would be needed to systematise in more detail. Efforts will be made to address the open questions in preparation of and during the final conference.

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II. "WHAT": Material scope of information and consultation at the digital workplace

The digitalisation of work has brought with it specific digital content at the collective level, and this second part of the report is devoted to it. From the point of view of workers' representation, the most important ones are, without wishing to be exhaustive due to the limited scope of this paper, corporate means of surveillance, the right to disconnect, and algorithms and artificial intelligence. When delimiting the content of this papers, it has been decided to omit the participation of data protection representation, as it is a field that has been sufficiently explored by the doctrine.

In its Work Programme for 2022, the European Commission proclaimed its intention to ensure that the growing digital world adapts to people. However, through the remote monitoring of workers, such classic freedoms as privacy and the inviolability of the home can be affected. Companies can observe their remote staff at home, in a café or even in another country. This is why the role that rights of information and consultation of workers' representatives can play in monitoring them, as *watchers of the watcher*, is of great interest.

1. Digital surveillance tools

As digital surveillance tools proliferate in modern workplaces, legal frameworks across Europe have responded with varied degrees of regulation. While some countries have robust co-determination rights and clear data protection laws, others remain more permissive or ambiguous. This summary outlines the most important elements of the answers provided to the questions: what are relevant legislation, collective agreements – company, undertaking level – but perhaps also TCAs in each country? and what are the consequences if the employer does not comply?

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European approaches to digital workplace surveillance vary from, on the one hand, countries with more or less regulation of this issue, but explicit in any case; to, on the other, hand, those without specific legal references on these matters (**Turkey, Ireland,** and **Sweden**). The first group is more numerous and include very diverse situations, from co-determination models (**Austria, Germany**), those which focus is on transparency, proportionality, and GDPR compliance (**France, Luxembourg, Portugal, Spain**), and, finally, states that recognize surveillance under general labour or I&C laws, but lack dedicated or robust enforcement frameworks (**Estonia Hungary, Romania**)

Austria mandates co-determination via the works council for surveillance measures that affect human dignity (e.g., keyloggers, webcams). If no works council exists, individual employee consent is required. Courts apply a proportionality test to weigh employer interests against employee rights. Unauthorized surveillance may lead to injunctive relief, removal claims, or declaratory judgments.

There are no special rules on these issues in **Estonia**. The general regulations on employee privacy protection and data protection apply. In general, the employer is not obliged to involve employee representatives in these matters. However, the general regulations on employee privacy protection and data protection apply.

In **France**, law emphasizes transparency and proportionality. Employers must inform employees and consult the CSE (works council) when surveillance is used. Clandestine monitoring is prohibited, and courts may still accept unlawfully obtained evidence under strict conditions. The right to alert allows rapid investigation of violations.

In **Germany,** the Works Constitution Act (§ 87 BetrVG) requires mandatory co-determination for any monitoring technology. Surveillance that affects employee behavior, even if indirectly, must be jointly regulated. Violations may invalidate measures and trigger injunctive relief or make evidence inadmissible.

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In **Hungary,** employers may monitor employees using technical tools with prior written notice. They must consult works councils before implementing surveillance. Non-compliance can be challenged in labour court, though courts typically only declare violations without further sanctions.

Ireland lacks specific laws for digital surveillance but ties regulation to general information and consultation (I&C) laws. Surveillance changes likely fall under the 2006 and 2005 Acts. Breaches can result in criminal fines or imprisonment. The Workplace Relations Commission and Labour Court handle disputes.

In **Italy**, surveillance tools require an agreement with worker representatives or authorization from the labour inspectorate (Art. 4 of the Workers' Statute). Tools essential to the job (e.g., phones, computers) are exempt, provided employees are informed. Unauthorized surveillance can lead to anti-union behaviour claims and judicial orders to remove tools.

In **Luxembourg,** surveillance is governed by GDPR and national law. Employers must inform the staff delegation or Labour Inspectorate, justify surveillance based on necessity and proportionality, and often obtain CNPD approval. Illegal surveillance may render evidence inadmissible and trigger fines up to €125,000.

Works councils have the right to advise and approve changes related to employee data and surveillance under the WOR in the **Netherlands**. Failure to obtain consent renders employer decisions null and void. Courts may issue injunctions, and informal agreements are not legally binding on individual employment terms.

In **Poland,** employers may introduce surveillance via collective agreements, work regulations, or announcements after consulting trade unions. Informing and consulting employee councils is also required. Violations may lead to civil damages, criminal fines, and legal challenges for infringement of personal rights.

Surveillance for performance monitoring is generally prohibited in **Portugal**. Exceptions apply for safety or job-specific needs, requiring worker notification but

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not formal I&C. Telework regulations ban constant video/sound monitoring. Violations may result in administrative sanctions, and trade unions may litigate.

Concerning **Romania**, there is no specific legislation or collective agreement addressing information and consultation on algorithmic decision-making. Only general provisions under Law no. 367/2022 apply, obligating employers to inform and consult workers' representatives about significant changes, potentially including AI use. While no legal framework targets AI directly, related provisions from collective bargaining laws and the GDPR may offer indirect protections.

In **Spain**, the law explicitly affirms employees' right to privacy in their use of digital devices, but this right may be further developed by collective bargaining agreements, which may introduce additional safeguards. Employers are allowed to use surveillance systems to monitor compliance with work duties, but they must clearly inform employees and, where applicable, their representatives, in advance.

In **Sweden,** only trade unions have I&C rights. Employers must negotiate significant changes, including surveillance. This obligation exists even if employees consent or changes seem beneficial. Non-compliance may result in union-led claims for damages. There are no direct employee enforcement rights without union support.

Turkey lacks a comprehensive I&C framework. Surveillance is mainly regulated through data protection laws (Act No. 6698). Employers must process personal data lawfully and proportionately. The role of union shop stewards is limited, and enforcement is mostly via civil claims or fines.

2. AI systems relating with algorithmic decision making

The increasing deployment of Artificial Intelligence (AI) systems in Human Resources (HR) — particularly in recruitment, evaluation, and dismissal — raises important legal, ethical, and procedural concerns across Europe. This synthesis provides a comparative summary of national-level responses in 15 European

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countries. It focuses on key legislation, rights of workers and their representatives, and the role of collective agreements

There are substantial disparities in the legal treatment of AI in employment across Europe. While nine countries have introduced specific legal frameworks and/or collective agreements governing AI in employment – **Austria, France, Germany, Hungary, Italy, Luxembourg, Portugal, Romania** and **Spain**, six countries - **Estonia, Ireland, Netherlands, Poland, Sweden** and **Turkey**, rely on general labour and data protection laws to address AI's impact. Collective bargaining emerges as a critical but uneven tool in shaping AI governance in the workplace.

Austria has a well-defined framework under the Labour Constitution Act (ArbVG), focusing on data protection and co-determination. Employers must inform the works council about the automated collection and processing of personal data (§91(2) ArbVG). The use of AI in recruitment or internal evaluation frequently requires a company-level agreement, especially when such systems go beyond basic data collection. The consent of the works council is often required; in some cases, a conciliation board may substitute agreement. Fully automated decisions are prohibited under Article 22 of the GDPR. Human intervention must be substantive, not merely formal.

Estonia applies general data protection and employment law principles. Employers may not collect excessive personal information during recruitment unless they have a legitimate interest (TLS §11). There is no obligation to involve employee representatives unless AI deployment results in significant organisational change. In practice, consultation on such matters remains rare.

France lacks specific legislation on AI in employment, but general legal safeguards—privacy, equality, and non-discrimination—apply. While the GDPR is the primary legal reference, there is limited regulation in collective agreements, which mostly mention AI in the context of telework or job transformation. There is

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no structured right to information or consultation regarding AI systems, though emerging collective texts begin to acknowledge their use.

Germany has adopted a proactive regulatory posture. The Works Constitution Act (BetrVG), as amended by the BRMG, includes express references to AI. Works councils have the right to consult experts on AI matters and must be involved in decisions relating to personnel selection involving AI (§95(2a)). AI systems used for surveillance or behavioural monitoring fall under co-determination rules (§87). The framework ensures early-stage consultation and imposes obligations on employers to consider the impact of AI on working conditions.

Hungarian labour law requires consultation with works councils before introducing new methods of work organisation, including AI-based systems (LC Art. 264). Representatives also have rights to request information proactively. Sanctions for non-compliance are outlined in the Labour Code. While AI is not directly regulated, the law provides a framework for negotiation and information rights where such technologies impact employment structures.

Ireland has no specific regulation governing AI in HR processes. Obligations to consult workers depend on the existence of recognised trade unions or information and consultation bodies under the 2006 Act. Data protection and working time regulations apply, but the intersection with AI remains unclear. A key issue is the use of surveillance in remote work, which presents a legal conflict between privacy protections and the employer's obligation to monitor work. Case law (e.g. *Doolin*) underlines the necessity for clear purpose-limitation in data processing.

Italy has introduced comprehensive regulation through the Transparency Decree (Legislative Decree 104/2022). Employers must inform workers—prior to employment—about AI systems used in HR decisions, including logic, objectives, data, risks, and any corrective mechanisms. These requirements apply even when decisions are not fully automated. Workers may request additional information

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within 30 days. The Italian Data Protection Authority stresses the importance of human oversight, transparency, and fairness in automated decision-making.

Luxembourg's approach centres on preventing discrimination and enforcing GDPR compliance. Employers are liable for indirect discrimination caused by biased AI systems, even when not designed by the employer. In firms with more than 150 employees, works council agreement is required for implementing technical systems that monitor performance or affect recruitment. The law emphasises transparency and mutual agreement to reduce risks posed by AI.

The **Netherlands** have no specific legal or contractual provisions addressing AI in employment. Existing frameworks may apply indirectly, but no targeted rules or case law were identified.

Poland has no direct regulation on AI in employment. The law mandates information and consultation when significant changes in work organisation are foreseen, but only where employee councils exist. The debate around AI was sparked by litigation involving HR practices but remains largely theoretical. No known collective agreements currently regulate AI systems.

Portugal's Labour Code has been updated in 2023 to include explicit provisions on AI. Employers must disclose the parameters, criteria, and logic behind algorithmic decision-making systems to workers and also to their representatives (Articles 106, 424, 466). These obligations apply to employment decisions including access, maintenance, and working conditions. Violations constitute serious administrative offences. Both works councils and trade unions possess rights to information and consultation.

Romania lacks specific AI legislation but offers indirect protections. Law no. 367/2022 obliges employers to inform and consult employee representatives on decisions that significantly impact work organisation, which can include AI. GDPR applies to AI-related data processing, and sanctions may result from breaches.

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Dismissals based on professional evaluation must follow procedures outlined in collective agreements, potentially covering AI assessment tools.

Spain is a frontrunner in regulating AI at work. Law 12/2021 grants legal representatives the right to be informed about algorithmic systems affecting employment decisions. Sectoral and company-level collective agreements go further, introducing obligations to disclose the data, parameters, and objectives of algorithms. Some agreements, such as those in the banking and food trade sectors, establish periodic information duties and oversight bodies (e.g. Algorithm Commissions). Spain's framework encourages consultation, training, and proactive governance of AI in HR.

Sweden has not introduced specific rules on AI systems in employment contexts. However, general labour law and anti-discrimination principles apply. Employers are responsible for ensuring their systems do not breach existing employee protections.

In **Turkey**, there are no specific legal provisions govern AI systems in HR. Discussions are mainly theoretical and occur in public forums. The only legal mechanism is ex-post judicial control, for instance when a dismissal is challenged in court. Employers may be subject to liability if AI-based decisions are contested, but no proactive safeguards or consultation duties are defined.

3. The right to disconnect

The concept of the "right to disconnect" (R2D) has gained significant attention across various European countries, reflecting the growing concern over the impact of digital communication tools on employees' work-life balance. This part of the report explores how different countries have approached the implementation of R2D, highlighting legislative measures, collective agreements, and practical applications within workplaces. Comparing these countries reveals diverse approaches to R2D, ranging from explicit legislative measures to non-binding

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guidelines and theoretical possibilities within collective agreements. **France** and **Luxembourg** have clear legislative frameworks, while **Austria** and **Portugal** rely on indirect support through existing labour laws. **Ireland** and **Hungary** offer non-binding guidelines and theoretical frameworks, respectively. On the other hand, **Italy** and **Spain** have integrated R2D into broader data protection and smart working laws, while **Germany** and **Sweden** rely on company policies and collective agreements. The **Netherlands** and **Turkey** show potential for future agreements, while **Estonia** and **Poland** remain reliant on existing working time regulations. **Romania's** approach is largely driven by company policies. The effectiveness of R2D implementation varies, reflecting each country's legal, cultural, and organizational contexts.

Austria does not have explicit legislation for R2D, but the Austrian Working Hours Act mandates strict rest periods. The interplay between mandatory rest periods and working time limitations, coupled with effective labor inspections, suggests that Austrian law indirectly supports R2D. The obligations of care and loyalty within employment contracts further complicate the practical application of R2D, making it a case-by-case assessment.

Estonia does not have specific R2D rules, relying on existing regulations for working and rest periods. Collective agreements are typically general and do not address R2D

France enshrined R2D in its Labour Code in 2016, requiring companies to implement this right through collective agreements or unilateral charters. The law mandates annual bargaining on R2D but leaves the specifics to employers. Agreements typically define R2D as the right not to be connected outside working hours, with some extending this to working hours to enhance concentration and interpersonal relations.

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Germany lacks explicit R2D regulations, but larger companies often have internal guidelines to ensure employees are not reachable outside working hours. The legal framework for working hours includes mandatory rest periods, and collective agreements can provide additional clarity.

Hungary lacks specific R2D legislation but follows the European Court of Justice's binary system of working time and rest periods. Collective agreements can theoretically introduce R2D, prescribing that employees should not engage in work-related activities outside working hours.

Ireland has a non-binding Code of Practice for R2D, advising employers to consider suitable monitoring methods for remote and flexible working. The Code emphasizes proactive engagement with employees and trade unions to develop R2D policies, integrating them with existing dignity, e-communications, data protection, and confidentiality policies.

Italy introduced R2D in the context of smart working through Law 81/2017, requiring individual agreements to specify rest periods and disconnection measures. Collective agreements have extended R2D protections beyond smart working, particularly in response to the pandemic.

Luxembourg recently adopted specific R2D legislation, requiring enterprises to define practical arrangements for disconnecting from digital tools, awareness-raising measures, and compensation for exceptional derogations. The regime should ideally be applied through sectoral collective agreements or enterprise-level definitions.

The **Netherlands** allows for R2D through sectoral collective agreements, particularly in care sectors. Agreements at lower levels are gaining traction, and works councils play a significant role in negotiating employment conditions.

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Poland does not have specific R2D legislation, relying on existing working time regulations. Collective agreements do not typically address R2D, and the government sees no need for additional legislation, though European-level solutions are anticipated.

Portugal's legislation mandates employers to refrain from contacting workers during rest periods, except in emergencies. Violations constitute serious administrative offenses. Despite limited collective agreements addressing R2D, the legal focus is on the employer's duty to refrain from contact, contrasting with the conventional focus on the worker's right to disconnect.

Romania allows for R2D in collective agreements, but there are no known agreements addressing it. Company policies or recommendations often prohibit contacting employees outside working hours unless in emergencies.

Spain regulates R2D through the Organic Law on Data Protection, ensuring respect for rest time, leave, and holidays. Employers must develop internal policies for R2D, particularly for remote work, and collective agreements often address the specifics of implementation. The situation may change in the future, as a reform on this issue has been introduced in Parliament. It if passes, a new definition will be established, giving a great role collective bargaining in its implementation.

Sweden does not have legal rules on R2D, but collective agreements can address working time and rest periods. The content of such agreements is decided by the contracting parties.

Turkey does not have specific R2D agreements, but rest periods and working hours are covered in collective agreements. Future agreements may address R2D as the concept gains traction.

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4. Environmental performance measures

Apart from the digital world, there is a *contemporary* content that is winning importance. In the framework of the Green Deal, each country's approach reflects its specific legal, economic, and social context, highlighting the diverse ways in which environmental performance is being integrated into labour relations across Europe.

Austria, France, Germany, and **Hungary** have established frameworks where works councils or similar bodies play a significant role in proposing and consulting on environmental measures. **Italy** and **Spain** have integrated environmental considerations into collective agreements and regulatory measures, emphasizing sustainability and worker involvement. The **Netherlands** and **Sweden** allow for environmental issues to be addressed through collective agreements, with works councils or trade unions having negotiation rights. **Estonia** and **Portugal** promote responsible employee involvement and consultation on significant changes, though they lack explicit environmental references. **Poland** and **Turkey** currently do not prioritize environmental issues in their social partner agendas, with some resistance to broader environmental policies like the Green Deal. **Luxembourg** faces unique challenges due to its economic model and high GHG emissions, focusing on social cohesion and green transition.

Austria does not have specific provisions regarding environmental performance measures. However, the works council can propose sustainability measures under the intervening right (§ 108 ArbVG). Company agreements can include normative environmental content (§ 97 ArbVG), such as efficient resource use and workplace design.

Estonia has no special rules on environmental issues. Employers must inform and consult about decisions likely to bring substantial changes in work organization, potentially including environmental measures.

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In **France,** the Climate Law of 2021 extends the Economic and Social Committee's rights to include the environmental impact of company activities. Employers must inform and consult the CSE about the environmental consequences of their decisions. Representative training now includes environmental topics, and the CSE's digital database has a new chapter on environmental impact.

In **Germany,** works councils have duties to promote environmental protection (BetrVG § 80, 89). They can initiate measures and conclude voluntary agreements (§ 88 BetrVG). Employers must involve works councils in inspections and inform them of environmental requirements.

The Labour Code in **Hungary** requires employers to consult the works council before making decisions on environmental protection measures. Unions and works councils can request information and consultations on environmental performance. Sanctions and the role of collective agreements are similar to other areas.

In **Ireland,** unions and employers can voluntarily include environmental clauses in collective agreements. Relevant legislation includes the Protected Disclosure Acts and the Safety, Health and Welfare at Work Act. Environmental issues are not prevalent in collective bargaining but may become more significant with new sustainability directives.

In **Italy,** some collective agreements, in sectors like Energy and Oil, include rules on sustainability. Annual meetings between companies and workers' representatives focus on environmental strategies, compliance, and training.

Luxembourg has no specific rules on environmental aspects. The economic model relies on key sectors like steel and finance, with significant cross-border worker movement. High GHG emissions are a challenge, mainly due to traffic congestion. The NRRP focuses on social cohesion, green transition, and digitalization. Trade unions emphasize the need for ecological transition alongside social dialogue to avoid new social divides.

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In the **Netherlands,** works councils have the right to promote environmentally friendly policies (art. 28 WOR). Information and consultation rights depend on the decision type (art. 25, 27 WOR). Collective agreements can regulate competencies and add rights for works councils (art. 32 WOR).

Environmental issues are not currently a priority for social partners in **Poland**. Some unions, like NSZZ "Solidarność," oppose the Green Deal. No collective agreements examined include environmental regulations.

In **Portugal,** management control promotes responsible employee involvement in company activities (Art. 426). The works council can make suggestions on resource use and improving working conditions, though there is no explicit reference to environmental issues.

Romania has no specific rules or debate on environmental issues. Employers may have a general obligation to consult trade unions on environmental measures based on social dialogue law.

In **Spain,** after the Valencia catastrophe of October 2024, urgent regulatory measures were adopted, including paid climate leaves and remote work provisions. The Sustainable Mobility Bill will require companies to negotiate sustainable mobility plans. Collective agreements increasingly include green clauses related to health, safety, and environmental monitoring.

In **Sweden,** trade unions have the right to negotiate with employers on environmental performance measures. Collective agreements can address these issues, though there is ongoing discussion on their development.

Turkey has no rules regarding environmental performance measures.

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