

# The right to disconnect in Spain: Conclusions on the role played by collective agreements

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## Introduction

The Organic Law 3/2018, of December 5, on Personal Data Protection and guarantee of digital rights, proclaimed that workers will have the right to disconnect and established that “The modalities of exercise of this right (...) will be subject to what is established in collective bargaining or, failing that, to what is agreed between the company and the workers’ representatives” (article 88.2).

In this line, Law 10/2021, of July 9, promotes that collective agreements establish the means and measures to guarantee the effective exercise of the right to disconnect in remote work and the adequate organization of working time in a way that is compatible with the guarantee of rest times (article 18).

A milestone in collective governance on the matter has been the V Agreement for Employment and Collective Bargaining, signed on May 10, 2023, by the employers’ associations (CEOE, CEPYME) and the trade union confederations CCOO and UGT, which has dedicated its Chapter XI to Digital Disconnection. The V AENC includes commitments that will have to be developed in thousand of negotiating processes.

## Research objective

To determine if the V AENC is having an effective impact on collective bargaining published from June 2023 to August 2024.

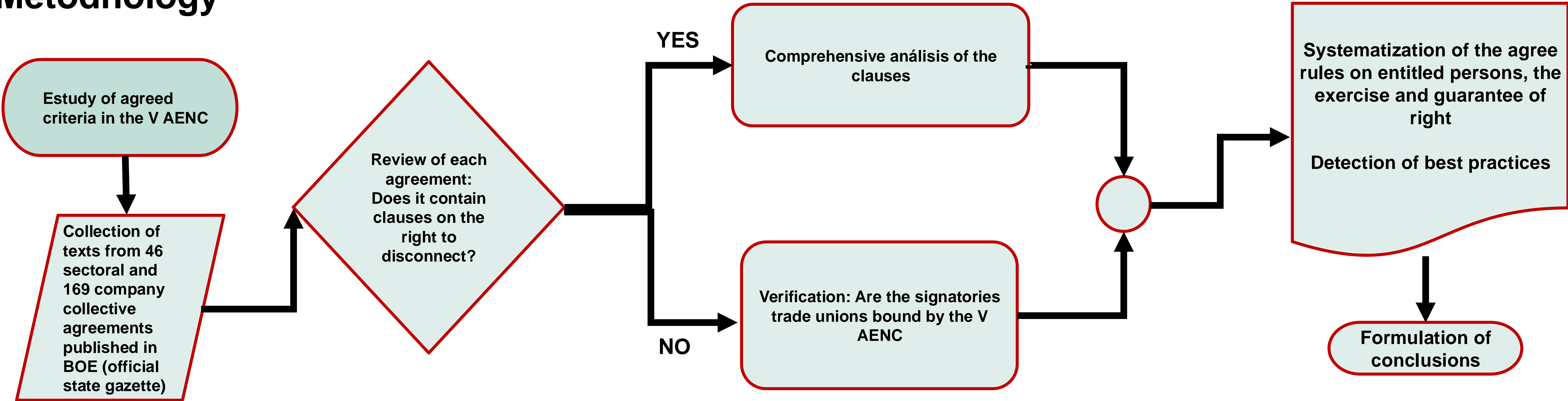


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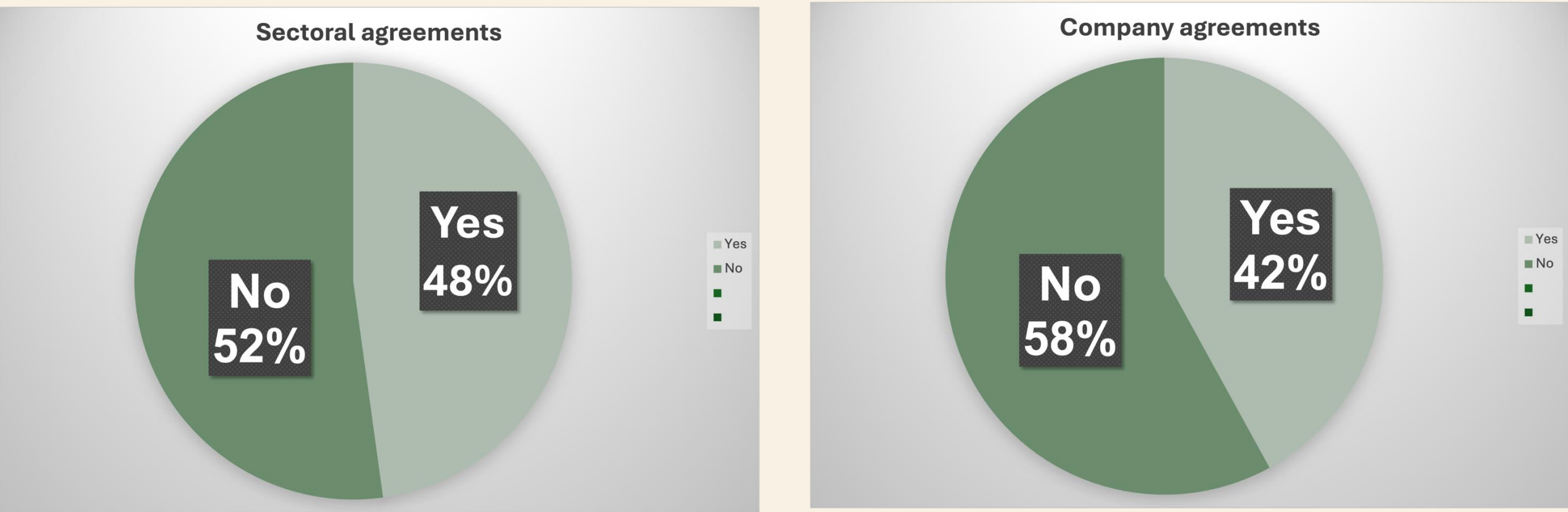
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## Methodology



## Results

Percentage of collective agreements that regulate the right to disconnect



Some agreements only mention the right, referring to legal provisions. Others simply state that it will be regulated by a joint committee of the management and employee representatives. A significant number refer to company policy or a protocol agreed upon with employee representatives.

Most collective agreements link the right to digital disconnection with the aim of ensuring the limits of working time, and some with respect to other rights such as leave or sick leave. To a lesser extent, it is presented as a contribution to an effective work-life balance.

There are very few agreements that regulate this right to reduce technological fatigue or stress, improving the work environment and the quality of work, even though the V AENC highlights that dimension of the right.

Although most agreements recognize the right for all workers, there is still a tendency to regulate the matter only within the clauses dedicated to remote work. Some of them establish that the right will be not applied to personnel subject to special availability or similar situations.

Collective agreements specify the V AENC’s reference to the right not to attend to digital devices and tools that could extend the working day beyond its limits, mentioning phones, emails, corporate mobile applications, company chat, and any type of messaging.

While the V AENC establishes as a limit the concurrence of justified “force majeure” (circumstances that may pose a serious risk to people or a potential business detriment requiring urgent and immediate measures), many collective agreements avoid this concept. Some exemplify the concept: urgent need to cover a job position due to illness or accident of the person who usually covers it or of a dependent needing assistance or any unforeseen events; significant maintenance incidents at workplace that imply changes in the daily course of activity; the closure of the workplace for any reason.

At the moment, there are few agreements that include the good practices proposed by the V AENC; that is, the programming of automatic responses during absence periods and the use of delayed sending of communications to be made within the recipient’s working hours.

It is noted that some agreements stipulate that attendance at meetings, both in-person and telematic, will be within working hours and that their call will indicate the end time to avoid prolongation. Some others forbid communications from 7:00 PM to 8:00 AM the next day.

There are few agreements that include the guarantees of the AENC, stating that exercising the right will not entail sanctions or prejudice in the evaluation of performance or promotion of the worker.

## Conclusions

1. The right to digital disconnection is not yet among the topics to which employee and employer’s representatives give the greatest relevance in collective bargaining.
2. In a significant number of sectors and companies, the legal mandate to agree on the regulation of this right has been fulfilled, but in some agreements, it has been done insufficiently. They refer the determination of basic aspects to other instruments outside the agreement, making it difficult to determine if it has been achieved and, in any case, providing it with less transparency and guarantee.
3. Although many collective agreements show that the criteria of the V AENC have served as a guide to establish the legal regime of the right, it would be desirable for all to more faithfully reproduce its provisions, offering detailed regulation and adopting the good practices proposed by social dialogue.
4. The results of collective bargaining reveal that there is still insufficient training and awareness about the connection between the right to digital disconnection and the prevention of psychosocial occupational risks.