



Brussels, 26.4.2017  
COM(2017) 253 final

2017/0085 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

{SWD(2017) 202 final}

{SWD(2017) 203 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Following the withdrawal of the Commission's 2008 proposal to revise Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (hereinafter the Maternity Leave Directive), the Commission announced its intention to prepare a new initiative that would undertake **a broader approach** taking account the developments in society in the past decade.<sup>1</sup>

This proposal for a Directive is part of a package of measures to deliver on the Commission's commitment. The package aims at addressing women's under-representation in employment and support their career progression through improved conditions to reconcile their working and private duties. It builds on the existing rights and policies and does not diminish the level of protection offered by the EU acquis and preserves the existing rights granted under the existing European Union law. It additionally improves existing rights and introduces new ones for both women and men, thereby addressing the equal treatment and opportunities in the today's labour market, promoting non-discrimination and fostering gender equality.

In 2015, the employment rate of women (age 20-64) reached 64.3%, compared to 75.9% of men. **The gender employment gap** in the labour market is most acute for parents and people with other caring responsibilities. On average in 2015, the employment rate of women with one child under 6 years of age is nearly 9% less than women without young children, and in several countries this difference goes over 30%<sup>2</sup>. Similarly, women are much more likely to assume the role of informal carers for elderly or dependent relatives than men<sup>3</sup>. Women are also far more likely to work part-time due to caring responsibilities. This contributes substantially to the **gender pay gap** (amounting to 28% in some Member States), which over the working life accumulates into **gender pension gap** (on average 40% in the EU) and results in higher risk of female poverty and social exclusion, especially in old age. The projections on the baseline scenario show that the above challenges will not be sufficiently addressed without EU action. The gender employment gap is expected to still amount to 9 percentage points in 2055.

**One of the main causes for this problem is an inadequate work-life balance policy.** Unbalanced design of leave between genders, insufficient incentives for men to take leave to care for children and/or dependent relatives, limited possibilities to make use of flexible working arrangements, insufficient formal care services and economic disincentives have all been shown to exacerbate the female employment challenges.

**The current legal framework at the Union and Member States' level provides limited provisions for men to assume an equal share of caring responsibilities with women.** For

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<sup>1</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach.*

<sup>2</sup> Gender gaps in employment are 24.7 pp among those with 1 child below 6 years of age, 25.6 pp among those with 2 children (youngest below 6 years of age) and 35.4 pp for those with three children or more.

instance, there is currently no EU legislation providing for paternity leave or leave to take care of ill or dependant relative, with exception of absence for force majeure. In many Member States, there is a lack of paid leave arrangements for fathers compared to mothers. The imbalance in the design of work-life balance provisions between women and men can thus reinforce gender differences in work and care. Conversely, fathers' use of work-life balance arrangements such as leaves has been shown to have a positive impact on their involvement in bringing up children later on, reducing the relative amount of unpaid family work undertaken by women and leaving women more time for paid employment.

The **general objective** of this Directive is to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work. Through adapting and modernising the EU legal framework, the Directive will allow parents and people with caring responsibilities to reconcile better their work and caring duties. The Directive builds on the existing rights and strengthens them in places or introduces new rights. It does maintain the level of protection already offered by the EU *acquis*.

The **specific objectives** of the Directive are defined as follows:

- to **improve access to work-life balance arrangements** – such as leaves and flexible working arrangements;
- to increase take-up of family-related leaves and flexible working arrangements by men.

The availability of leaves and flexible working arrangements has been shown to strongly mitigate the effect of caring responsibilities on women's employment outcomes. By providing parents and carers with greater choice in how to organise work and caring responsibilities it will help avoid that they drop out of the labour market altogether. Moreover, as opportunities and incentives for men to make use of work-life balance arrangements are generally scarce and their take-up is accordingly low in most Member States, improving the gender-balanced design of these arrangements can help rebalancing the distribution of care within the household<sup>3</sup>.

This proposal is foreseen to strongly benefit individuals, companies and the wider society. While parents and carers will profit from work-life balance better adapted to the needs of today's families, an increase in women employment, their higher earnings and career progression will positively impact them and their families' economic prosperity, social inclusion and health. Companies will benefit from a wider talent pool, a more motivated and productive labour force as well as less absenteeism. The rise in female employment will also contribute in addressing the challenge of demographic ageing and ensuring Member States' financial stability.

- **Consistency with existing provisions in the policy area**

The EU *acquis* contains several acts of secondary legislation that are relevant to the policy field in which this proposal is framed. The most important ones are the following:

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<sup>3</sup> OECD (2013) Closing the Gender Gap.

- *Directive 2010/41/EU of the European Parliament and of the Council, of 7 July 2010, on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, of 15.07.2010, p. 1).*

This Directive lays down a framework for putting into effect in the Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity. It notably ensures that female self-employed workers and female spouses and life are granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

- *Directive 2006/54/EC of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, of 26.07.2006, p. 23).*

This Directive aims to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in employment and occupation and contains provision on equal pay, equal treatment in occupational social security schemes, equal treatment as regards access to employment, vocational training, promotion and working conditions, accompanied by rules on remedies and enforcement and promoting equal treatment through dialogue.

*Council Directive 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, of 28.11.1992, p. 1).*

It sets out the basic rights of women before and after pregnancy, including the right to 14 weeks of paid maternity leave. It also sets out measures to ensure the occupational health and safety of pregnant women and provides for special protection against dismissal from the beginning of the pregnancy until the end of maternity leave.

- *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, of 20.01.1998, p.9).*

It prohibits discrimination against part-time workers and provides that employers should give consideration to workers' request for part-time work. However, the Directive does not provide for the right to request other types of flexible working arrangements that are important for work-life balance.

- *Council Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, of 18.03.2010, p. 13).*

This Directive ("the Parental Leave Directive") provides workers with an individual right to parental leave of at least four months on the grounds of the birth or adoption of a child. At least one month of parental leave is to be provided on a non-transferable basis. The Directive does not impose any obligations in relation to pay during parental leave and leaves it to the Member States or Social Partners to define the detailed rules and conditions for such leave. The Parental Leave Directive

provides for protection against dismissal and less favourable treatment on the ground of applying for or taking parental leave, although the detailed arrangements for protection are not specified.

*Council Recommendation 92/241/EEC, of 31 March 1992, on childcare (OJ L 123, of 8.05.1992, p. 16).*

It recommends to the Member States to take initiatives to provide for special leave for working parents, to encourage increased participation of men in childcare responsibilities, to create the working environment that support working parents and to provide affordable and quality childcare services.

*Commission Recommendation 2013/112/EU of 20 February 2013 Investing in children: breaking the cycle of disadvantage (OJ L 59, 2.3.2013, p. 5–16)*

It recommends to the Member States to support parents' access to the labour market and make sure that work pays for them. The Recommendation puts also emphasis on the need to improve access to affordable early childhood education and care services and to provide adequate income support such as child and family benefits.

The content of the above-mentioned acts has been duly analysed and taken into account during this proposal's preparation process. As a result, the proposal is, on the hand, coherent with the existing provisions and, on the other hand, introduces legislative developments there where it has been considered that the current legislation is insufficient and needs to evolve according to societal changes.

*A Commission Staff Working Document reports on the public consultation accompanying the document Commission Communication on the European Pillar of Social Rights<sup>4</sup>*

The report takes stock of the results of the public consultations on the European Pillar of Social Rights. Regarding work-life balance, there was wide consensus that gender equality and work-life balance should be supported through a revised and coherent legislative framework covering maternity leave, paternity leave, parental leave and carer's leave, encouraging equal take-up of leave arrangements by men and women in order to improve women's access to and position on the labour market.

As regards the 2010 Parental Leave Directive, this proposal aims at repealing the entire act and replacing it by the provisions contained in the present text, while preserving the existing rights and obligations. As explained in the preamble, nothing in the proposed Directive should be interpreted as diminishing previously existing rights under the Parental Leave Directive. This Directive builds on those rights and strengthens them. The Parental Leave Directive should be repealed because, on the one hand, of the specific legal nature and legal basis (article 155(2) TFEU) of the Parental Leave Directive, which puts into effect an agreement by the European social partners, and, on the other hand, for reasons of transparency, simplification (single act to regulate in a comprehensive way specific rights related to work-life balance), legal certainty and enforceability of rights.

- **Consistency with other Union policies**

This initiative will contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities and equal treatment at work and of promoting a

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<sup>4</sup> SWD(2017) 206

high level of employment in the EU. According to the Treaty, the EU aims to eliminate inequalities and promote equality between men and women in all its activities. Gender equality lies at the heart of EU policies: since the gender gap in employment rates of women with children and men with children is wide, bridging that gap is vital if the EU target for employment rate is to be met. Reducing the gap is also crucial to achieving greater gender equality.

It would equally contribute to the Commission's priorities on jobs and growth, as outlined in President Juncker's political guidelines for the European Commission. This initiative is also linked to the European Pillar of Social Rights initiative, which seeks to strengthen the social dimension of the Union and enhance Member States' upward convergence in social performance.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposal is based on Article 153 of the Treaty on the Functioning of the European Union (TFEU). More precisely:

- Article 153(1)(i) TFEU foresees that "*(W)ith a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (...)*

*(i) equality between men and women with regard to labour market opportunities and treatment at work;"*

- Article 153(2)(b) TFEU establishes that "*(T)o this end, the European Parliament and the Council: (...)*

*(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.*

*The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions. (...)"*

### **• Subsidiarity**

There is already an EU legislative framework in place in relation to work-life balance policies including Council Directive 2010/18/EU, of 8 March 2010. This illustrates the common agreement that EU-level action in this area is necessary, in line with the principle of subsidiarity.

As explained in section 1, those existing legislative measures are not sufficient to address the challenges of combining properly work and family obligations in today's economic and social environments and ensuring equality between men and women with regard to labour market opportunities and treatment at work.

The burden of care still falls mainly on women, as the current legal framework is insufficient in encouraging and facilitating a more equal share of family and work responsibilities

between men and women. In relation to paternity leave, carers' leave (where currently no EU-level provisions exist) and flexible working arrangements there are many Member States where there are either no measures, or where measures in place are insufficient. Furthermore, when Member States do have legal provisions in place, they vary with regard to conditions (e.g. pay) resulting in uneven rights, unequal protection of EU citizens across the EU and differences in the functioning of labour markets.

Therefore, the modernisation of the existing legal framework aiming at providing common minimum standards for work-life balance policies can only be achieved by EU-level action rather than by the individual Member States alone.

The analysis of the problem to be addressed and the information currently available on the subject matter clearly show that:

- it is only when EU legislation is in place that there is also legislation in place in every Member State;
- only EU action will ensure that sufficient progress is achieved in all Member States;
- only EU-level intervention has the potential to mitigate trends currently present in some Member States to reduce work-life balance provisions;
- only EU-level action will address differences between existing national legal provisions on paternity, parental and carers' leaves and on flexible working arrangements; whilst EU-level action will not prevent Member States from offering higher levels of protection.
- only EU level action will provide common minimal requirements for work life balance supporting equality between men and women with regard to labour market opportunities and treatment at work; Common minimum standards are particularly relevant in the context of free movement of workers and the freedom of providing services in the EU Internal Market.

In view of the arguments above, it is justified to undertake EU legislative and policy action in this field.

- **Proportionality**

Having established the added-value for intervention at EU-level, the legal instrument chosen, which provides for minimum standards, to implement it (see below) ensures that the degree of intervention will be kept to the minimum necessary in order to ensure that the objectives of the proposal are reached.

The Directive respects well-established national arrangements for leaves and flexible working arrangements and the possibility for the Member States and the social partners to determine the specific provisions thereof. Member States who have already in place more favourable provisions than those put forward in this Directive will not have to change their legislation. Member States may also decide to go beyond the minimum standards set out in this Directive.

The Directive fully respects the freedom and preferences of individuals and families to organise their lives and does not impose on them any obligation to use the benefit of its provisions.

Therefore the planned Union action leaves as much scope for individual and national decisions as possible, whilst still achieving the objectives of increasing female labour market participation and gender equality. The principle of proportionality is observed considering the size and nature of identified problems.

- **Choice of the instrument**

Article 153(2)(b) in combination with 153 (1)(i) TFEU foresees explicitly that the Directive will be the legal instrument used in order to establish minimum requirements to be gradually implemented by Member States.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

As part of the Impact Assessment work, the available information on the functioning of the current framework on work-life balance was consolidated and assessed.

This analysis was done on the basis of:

- a study by the external contractor, commissioned mid-2016 for the purposes of preparing the Impact Assessment, as well as a light evaluation of the Work-Life balance framework;
- available relevant research such as reports of the European Commission and other European Institutions as well as the European Network of Legal Experts, and, where available, national reports and information compiled by Equality bodies;
- data collected through mapping of work-life balance legislation at Member State level as well as collection of stakeholders' views.

Two of the Directives mentioned above, namely the Maternity Leave Directive (92/85/EEC) and the Parental Leave Directive (2010/18/EU), were evaluated in terms of effectiveness, efficiency, coherence, relevance and EU added value.

The evaluation concluded that the existing framework is not, to a large extent, an effective tool to achieve the pursued objectives which, consequently, have not been fully reached.

As regards the Parental Leave Directive (2010/18/EU) the objective of achieving work-life balance through a more equal share of work and care between men and women has not been sufficiently achieved. The current design of parental leave does not lead to an equal uptake between the parents, with a vast majority of women taking leave. This is mainly owing to a lack of payment during leave in many Member States and the rule allowing parents to transfer most of their entitlement to the other parent. In practice men often transfer their share of parental leave to women.

- **Stakeholder consultations**

An open **public consultation** was carried out between November 2015 and February 2016 to seek the views of various stakeholders and citizens<sup>5</sup>. A wide range of stakeholders shared their opinions: Member States; social partner organisations; civil society organisations;

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<sup>5</sup> [http://ec.europa.eu/justice/newsroom/gender-equality/opinion/1511\\_roadmap\\_reconciliation\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/1511_roadmap_reconciliation_en.htm)



equality bodies; and other organisations, as well as individuals. There was at least one response received from each Member State. In total 786 contributions were received, with 229 from organisations and 557 from individuals. The main results when it comes to policy options for the future were:

- converge of views across stakeholders regarding the importance on EU actions in the area of work-life balance;
- converge of views on the need to improve the possibilities and/or incentives for parents and others with dependents to take-up caring responsibilities and work-life balance measures;
- converge of views on the necessity to provide available and affordable childcare;
- converge of views on further EU-level policy guidance, monitoring and exchange of good practice;
- certain converge of views on the need of legislative actions by the EU.

The **EU Advisory Committee on equality between women and men** was also consulted and presented its views in a Committee meeting on 8 December 2016.

Pursuant to the TFEU, the Commission undertook a two-stage consultation with the **social partners** on the challenges related to work-life balance. While the social partners have largely agreed with the challenges related to work-life balance and the objective of improving women's labour market participation, their views were mixed on the need for further legislative action and there was no agreement among social partners to enter into direct negotiations to conclude an agreement at Union level. It is however important to improve protection in this area by modernising and adapting the current legal framework, while taking into account the outcome of those consultations. **Trade unions** indicated the desire for EU-level legislation on paternity leave and carers' leave; increasing the length, pay and dismissal protection for maternity leave; a right to request flexible working arrangements; and amending the parental leave directive to extend the length and non-transferability as well as introduce payment for the leave. Trade unions underlined that these measures should be combined with available, accessible, affordable and quality formal care services. **Employers' organisations** were not supportive to further EU legislative action, but they supported non-legislative measures for the development of formal care services.

The **European Parliament** has called for prolonging paid maternity leave and protection against dismissal, extending the duration of parental leave and introducing pay; introducing paternity leave and carers' leave; updating the Barcelona targets for childcare and introducing targets for long-term care services.

Many other **stakeholders** have also called for increased EU legislative and non-legislative action in the area of work-life balance.

- **Collection and use of expertise**

The Commission awarded a contract for the analysis of the costs and benefits of possible EU measures to facilitate work-life balance for parents and caregivers.

The Commission additionally drew on its existing contracts to gather evidence that was used to support this impact assessment. This included:

- a thematic report prepared by the European Social Policy Network (ESPN) on work-life balance measures for people with dependent relatives;

- a review of the available literature on the costs and benefits of work-life balance measures undertaken by researchers at the London School of Economics;
- a number of other relevant studies at national, European and international level, including the evidence provided by EIGE.

In addition, the European Network of Equality Bodies prepared a survey of their members on reported incidents of workplace discrimination and dismissals related to parenthood.

- **Impact assessment**

According to Better Regulation requirements, a Commission inter-service steering group (ISG), chaired by the Secretariat-General, was established in September 2015 to work in the preparation of this initiative. The ISG met 5 times in the period from September 2015 to March 2017.

The Impact Assessment was presented to and discussed with the Regulatory Scrutiny Board (RSB) on 18 January 2017. A revised version of the Impact Assessment, duly addressing the issues raised by the RSB, was resubmitted on 8 March 2017. On 20 March, the RSB issued a positive opinion with comments which have been taken into account in the final impact assessment.

Throughout the Impact Assessment work, a range of non-legislative and legislative measures were considered across all areas shown to be important for addressing women's underrepresentation in the labour market, namely: maternity leave, paternity leave, parental leave, carers' leave, flexible work arrangements.

Following an assessment of the effectiveness, efficiency and coherence of each option, a preferred combination of options was identified. The preferred combination includes:

- **Maternity leave:** non-legislative measures to enhance the enforcement of current legislation on dismissal protection, raise awareness on the dismissal of pregnant women and give policy guidance on facilitating successful transitions between maternity leave and employment (including breastfeeding facilities and breaks).
- **Paternity leave:** introduction of an individual entitlement of 10 working days, paid at least at sick-pay level.
- **Parental leave:** revision of currently existing entitlement in order to provide for (i) the right for flexible uptake (i.e., part-time, piecemeal), (ii) 4 months leave non-transferable between parents, and (iii) payment of 4 months at, at least, sick-pay level.
- **Carers' leave:** introduction of an individual entitlement of 5 days per year, paid at, at least, sick pay level.
- **Flexible working arrangements:** right for parents of children up to 12 and carers to request flexibility in working hours, schedule or place of work for a set period of time, with no obligation for the employer to grant the requested change.

With regard to the expected impact of the combination of preferred options, the quantitative analysis carried out in the Impact Assessment shows that the combination of preferred options has a positive impact on GDP (+ € 840 billion, NPV 2015-2055), employment (+ 1.6 million in 2050) and the labour force (+ 1.4 million in 2050). The analysis shows that the increases in employment and labour force participation will mainly concern women. Real incomes are also expected to increase by 0.52% in 2050. Although relatively small, the combination represents

a cost for companies. However, the majority of this cost is driven by the flexible working arrangements option which assumes a very high level of demand for and accommodation of flexible working arrangements although employers can refuse requests for flexible working, particularly where it would cause an excessive cost to the company. The total cost for companies of the combination could hence be significantly lower.

It should also be taken into account that the preferred options of the combination have strong synergies and that the costs of the combination of preferred options could be lower than the sum of the individual costs for each option.

- **Fundamental rights**

Equality between men and women is a fundamental principle of the European Union. Under Article 3(3), paragraph 2, of the Treaty on the European Union (TEU)<sup>6</sup>, promoting equality between women and men is one of the European Union's aims. Article 8 of the Treaty on the Functioning of the European Union (TFEU) further states that the Union shall aim to eliminate inequalities and to promote equality between women and men in all its activities.

The proposal also facilitates the exercise of the rights recognised in Articles 23<sup>7</sup> and 33<sup>8</sup> of the Charter of Fundamental Rights, which specifically refer to equality between men and women and to the reconciliation of family and professional life.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not require additional resources from the European Union's budget.

#### **5. OTHER ELEMENTS**

- **Monitoring, evaluation and reporting arrangements**

Member States must transpose the Directive two years after the adoption and communicate to the Commission the national execution measures via the MNE-Database. In line with Article 153(4) TFEU they may entrust the social partners with doing it via an agreement.

To assess the effectiveness in achieving the general and specific objectives of the initiative, the Commission has identified core progress indicators to monitor successful

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<sup>6</sup> *"It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child."*

<sup>7</sup> *"Article 23 – Equality between men and women*

*Equality between men and women must be ensured in all areas, including employment, work and pay.*

*The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."*

<sup>8</sup> *"Article 33 – Family and professional life*

*"1. The family shall enjoy legal, economic and social protection.*

*2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child."*

implementation<sup>9</sup>. These indicators will be regularly monitored by the Commission and serve as the basis for the evaluation of the initiative. On the basis of these indicators and the information to be provided by Member States, the Commission can regularly report progress to other key EU institutions, including the European Parliament, Council, and European Economic and Social Committee. The Commission will in any event evaluate the impact of the legislative proposals five years after the entry into force and draw up an evaluation report.

The Commission will also continue to regularly monitor female employment and Member States' work-life balance provisions, including in the European Semester's annual Joint Employment Report and Country Reports.

- **Detailed explanation of the specific provisions of the proposal**

*Article 1 – Subject matter*

This provision indicates the subject matter of the Directive and enumerates the individual rights for which minimum requirements are laid down at Union level.

*Article 2 – Scope*

This provision defines who are the individuals entitled to benefit from the rights regulated in this Directive.

*Article 3 – Definitions*

This provision defines a number of terms and concepts in order to make clear upfront how they should be understood when they are mentioned in the text of the Directive.

*Article 4 – Paternity leave*

There are currently no minimum standards for paternity leave at EU level.

This provision introduces the right for fathers to take paternity leave in the form of a short period of leave, not less than 10 working days, on the occasion of the birth of their child. This leave is intended to be taken around the time of the birth and it has to be clearly linked to this event.

Introducing the right to paternity leave should help address the problem of unequal possibilities for women and men to take leave around the time of the birth of a child and to encourage men to bear a more equal share of caring responsibilities, thereby allowing for the early creation of a bond between fathers and children.

In order to avoid any discrimination between married and unmarried couples and between heterosexual and homosexual couples, the right to paternity leave should be without prejudice to marital or family status as defined in national law.

*Article 5 – Parental leave*

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<sup>9</sup> The core indicators chosen are mainly derived from comparative data sources (Eurostat, OECD) but where indicators do not exist, information can be taken from national data. The detailed list of indicators can be found in the Impact Assessment.

The Parental Leave Directive (2010/18/EU) already provides for individual rights of at least four months to parental leave on the grounds of the birth or adoption of a child to take care of that child. This provision therefore builds on the existing rights for parents and improves those rights for both women and men.

Following the analysis done in the preparatory phase, it is considered that the current Parental leave Directive has been insufficient in enabling both parents to make equal use of their entitlements. Given that it does not guarantee an allowance during parental leave, many families may not afford to do so. The Directive has also not succeeded in promoting a greater involvement of fathers in caring responsibilities. Evidence shows that the majority of fathers do not avail themselves of their right to parental leave and transfer a considerable proportion of their leave entitlement to mothers. This has led to striking differences between average take-up rates of parental leave between mothers and fathers, which for the later remains still too low in many Member States.

This provision aims at tackling the shortcomings identified by (i) establishing a minimum period of parental leave of at least four months of parental leave which cannot be transferred between parents, (ii) introducing more flexibility as regards the forms in which the parental leave can be taken (full-time or part-time basis, or in other flexible forms), given that flexibility makes it more likely that parents, in particular fathers, will take up their entitlement to such leave. Another provision in this Directive address the issue of remuneration during leave as this has a major impact on the take up of leave by fathers.

The provision leaves it for Member States to decide on (i) the length of the notice period to be given by the worker, (ii) on whether or not the right to parental leave may be subject to a period of work qualification and/or a length of service qualification, and (iii) defining the circumstances in which the employer may be allowed to postpone the granting of parental leave by a reasonable period. Finally, this provision aims at ensuring that Member States should assess the need for adjusting the conditions of access and detailed arrangements of parental leave to the specific needs of parents in particularly disadvantaged situations related to disability or long-term illness and adoptive parents.

#### *Article 6 – Carers' leave*

This provision introduces the new annual right for workers to take a period of leave from work in the event of serious illness or dependency of a relative, as defined by the Directive itself. In order to protect the employer from abuse of this right, proof of the illness or the dependency situation may be required prior to granting of the leave.

The rationale behind the introduction of this right is that improving the possibilities for workers to take a short period of time off to care for a relative can help to improve their work-life-balance and, at the same time, avoid them dropping out of the labour market entirely.

#### *Article 7 – Time off from work on grounds of force majeure*

This provision maintains the existing workers' right to take time off work in case of *force majeure*.

This right, already foreseen by the Parental Leave Directive<sup>10</sup>, can be used by all workers (not only parents or care-givers within the meaning of this Directive) for urgent family reasons.

#### *Article 8 – Adequate income*

The Parental Leave Directive (2010/18/EU) does not establish minimum requirements in relation to an adequate allowance.

This provision establishes the right for workers making use of the different types of leave to receive an adequate allowance during the minimum period of leave foreseen in this Directive. The level of the allowance should be at least equivalent to the level of sick pay.

#### *Article 9 – Flexible working arrangements*

The Parental Leave Directive already provides for the possibility to ask for two types of flexible working arrangements (working patterns and working hours) for parents returning from parental leave. The current proposal extends these two existing forms to a third form of flexible working arrangement (remote working possibilities) and further extends the personal scope of those rights to all carers and workers with children up to a given age, which shall be at least twelve.

In order to encourage working parents with young children and carers to remain in the labour market, they should be able to adapt their working schedules to their personal needs and preferences.

This provision therefore introduces the possibility for the above-mentioned workers to make use of (i) reduction in working hours, (ii) flexible work schedules, and (iii) remote working possibilities.

In order to take account of the needs of employers and workers, this provision gives Member States the possibility to limit the duration of flexible working arrangements. This possibility is notably relevant to part-time work. While it has proved useful in allowing some women to remain in the labour market after having children, it has also been seen that long periods of reduced working hours may lead to lower social security contributions translating into reduced or non-existing pension entitlements later on.

#### *Article 10 – Employment rights*

The Parental Leave Directive (2010/18/EU) already provides for certain employment rights and ensures non-favourable treatment so that workers can exercise their right to parental leave<sup>11</sup>. This includes the right to return to the same job or, if that is not possible, to an equivalent or similar job, the right to maintain rights acquired or in the process of being acquired by the worker on the date on which parental leave starts. Finally, it also encourages workers and employers to maintain contact during the period of leave and to make arrangements for any appropriate reintegration measures.

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<sup>10</sup> Clause 7

<sup>11</sup> Clause 5.

The provision of leave is intended to support working parents and carers during specific periods of time; this is aimed at maintaining and promoting their continued labour market attachment while facing their responsibilities at home.

In order to make that possible, this provision builds on the existing rights and equally foresees the minimum protection of the employment rights of parents and carers through allowing them to return to their (equivalent) job, to benefit from any improvement of working conditions during their absence, to maintain their acquired rights and to maintain their employment relationship while being on leave.

#### *Article 11 – Non-discrimination*

The Parental Leave Directive already protects workers against less favourable treatment on the grounds of an application for, or the taking of, parental leave. Moreover, Articles 19 (1) of Directive 2006/54/EC puts the burden of proof on the employer in case of breach of the principle of equal treatment. Article 19(4) of Directive 2006/54 specifies that this rule on the burden of proof also applies to the Parental Leave Directive; the reference in Directive 2006/54 to the Parental Leave Directive remains intact as this Directive prescribes that references to the Parental Leave Directive shall be construed as references to the present Directive.

The protection provided at present in the Parental Leave Directive is maintained and extended so that workers making use of other kinds of leave or of flexible working arrangements are also protected against less favourable treatment and discrimination on the grounds of having applied for or used the certain rights granted by this Directive.

#### *Article 12 – Protection from dismissal and burden of proof*

The Parental Leave Directive (2010/18/EU) already provides protection against dismissal on the grounds of an application for, or the taking of, parental leave.

This provision aims at maintaining the existing protection of workers and extending it, by providing protection from dismissal for workers making use of paternity<sup>12</sup>, parental leave<sup>13</sup>, carers' leave and flexible working arrangements from dismissal during the period in which they apply for, or make use of these rights.

If, in spite of this protection, a worker considers that he or she has been dismissed on the grounds of applying for or enjoying the rights referred to in Articles 4, 5, or 6, or of exercising the right to request flexible working arrangements referred to in Article 9, this provision places on the employer the burden to prove that the dismissal was due to other objective reasons.

#### *Article 13 – Penalties*

This provision requires Member States to provide for effective, proportionate and dissuasive penalties, be it fines and/or compensations, for breaches of the obligations under this Directive, and to make sure that they are applied.

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<sup>12</sup> Article 16 of Directive 2006/54 concerns protection from dismissal in case of paternity leave envisaged under national law.

<sup>13</sup> See Clause 5(4) of the Parental Leave Directive.

#### *Article 14 – Protection against adverse treatment or consequences*

This provision requires Member States to provide workers complaining about breaches of national provision adopted pursuant to this Directive with adequate judicial protection against any adverse treatment or consequences by the employer, without which the effective implementation of the principle of equal treatment would not be possible.

#### *Article 15 – Equality bodies*

Directive 2006/54/EC already provides that the Member States shall designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, including any less favourable treatment of a woman related to pregnancy or maternity.

This provision establishes that national equality bodies should be competent in the areas covered in this Directive. This should reinforce, on the one hand, the level of protection of rights provided for in this Directive and, on the other hand, the monitoring of its implementation.

#### *Article 16– Level of protection*

In light of the existing EU acquis which has been transposed in Member States and the case law of the Court of Justice of the European Union, notably in relation to parental leave, it should be emphasized that the present proposal preserves the existing rights granted under the existing European gender equality directives, and builds upon them to improve rights for both women and men.

This is a standard provision allowing Member States to provide a higher level of protection than that guaranteed by the Directive.

#### *Article 17 – Dissemination of information*

This provision aims at ensuring awareness-raising in Member States on the rights granted by this Directive, as well as other already existing rights in the same field.

#### *Article 18 - Reporting and review*

This is a standard provision establishing the obligation for Member States to communicate to the Commission information concerning the application of this Directive, for the Commission to report to the co-legislator on this point and, if it considers necessary, make proposals to revise and update the Directive.

#### *Article 19– Repeal*

The annex to the Parental Leave Directive (2010/18/EU) contains the text of a framework agreement between the social partners laying down specific provisions for parental leave. Since the social partners could not reach an agreement regarding the renegotiation of that framework agreement in order to introduce the necessary improvements to the current parental leave regime, the Commission decided to propose legislative changes on its own initiative.



Taking into account that an amendment of an act is to be done using the same legal basis that was used for adopting the original act, which is not possible in this case because of the specific legal basis used for the legislation based on social partners' agreements, it is considered that the most appropriate legal option available is the repeal and replacement of the Parental Leave Directive. A single comprehensive act in the area concerned is also considered to be the best option for reasons of transparency, simplification legal certainty and enforceability of rights.

It should be noted that the present proposal does not reduce in any way currently existing rights, but builds on the existing EU *acquis* and aims at extending or reinforcing the rights of working parents and carers.

Consequently, this provision stipulates the date on which Directive 2010/18/EU is repealed, while at the same time specifying that all references to the repealed Directive shall be construed as references to the new one.

#### *Article 20– Transposition*

This provision establishes the maximum period that Member States have in order to transpose the Directive into national law and communicate the relevant texts to the Commission. This period is set at two years. Moreover, it highlights that pursuant to Article 153(3) TFEU Member States may entrust the Social Partners with the implementation of the Directive, where Social Partners request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

#### *Article 21 – Entry into force*

This is a standard provision stipulating that the Directive is to enter into force on the twentieth day following its publication in the Official Journal.

#### *Article 22 – Addresses*

This is a standard provision on addresses, making clear that the Directive is addressed to the Member States.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

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 Article 153 (1) (i) and (2)(b) 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>14</sup>,

Having regard to the opinion of the Committee of the Regions<sup>15</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 153(1)(i) of the Treaty on the Functioning of the European Union enables the Union to support and complement the activities of the Member States, in the field of equality between men and women with regard to labour market opportunities and treatment at work.
- (2) Equality between men and women is a fundamental principle of the Union. According to Article 3 of the Treaty on European Union the promotion of equality between women and men is one of the Union's aims. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union requires equality between women and men to be ensured in all areas, including employment, work and pay.
- (3) Article 33 of the Charter of Fundamental Rights of the European Union provides for the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child, to reconcile family and professional life.
- (4) The Union is party to the United Nations' Convention on the Rights of People with Disabilities. The provisions of that Convention are thus, from the time of its entry into force, an integral part of the European Union legal order and Union legislation must as far as possible be interpreted in a manner that is consistent with the Convention. The Convention provides, among other things, in its Article 7 that Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
- (5) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, making it easier for men to share caring responsibilities on an equal basis with women, and closing gender gaps

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<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C , , p. .

in earnings and pay. Such policies should take into account demographic changes including the effects of an ageing population.

- (6) At Union level, several Directives in the fields of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular Directive 2006/54/EC of the European Parliament and of the Council<sup>16</sup>, Directive 2010/41/EU of the European Parliament and of the Council<sup>17</sup>, Council Directive 92/85/EEC<sup>18</sup>, Council Directive 97/81/EC<sup>19</sup> and Council Directive 2010/18/EU<sup>20</sup>.
- (7) Work-life balance remains however a considerable challenge for many parents and workers with caring responsibilities, with a negative impact on female employment. A major factor contributing to the underrepresentation of women in the labour market is the difficulty of balancing work and family obligations. When they have children, women tend to work less hours in paid employment and spend more time fulfilling unpaid care responsibilities. Having an ill or dependent relative has also been shown to have a negative impact on female employment, leading some women to drop out of the labour market entirely.
- (8) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. Lack of paid paternity and parental leave in many Member States contributes to the low take-up of such leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender differences between work and care. Conversely, use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.
- (9) The Commission has undertaken a two-stage consultation with the social partners on the challenges related to work-life balance, in line with Article 154 of the Treaty on the Functioning of the European Union. There was no agreement among social partners to enter into negotiations on those matters, including on the parental leave. It is however important to take action in this area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the open public consultation carried out to seek the views of various stakeholders and citizens.

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<sup>16</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

<sup>17</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

<sup>18</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

<sup>19</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 - Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9).

<sup>20</sup> Council Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, of 18.03.2010, p. 13).

- (10) It is appropriate to repeal and replace Directive 2010/18/EU which currently regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds, in particular, upon the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights.
- (11) This Directive lays down minimum requirements related to paternity, parental and carers' leave and to flexible working arrangements for parents and workers with caring responsibilities. By facilitating the reconciliation of work and family life for parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.
- (12) This Directive should apply to all workers who have employment contracts or other employment relationships. As is currently the case under Clause 2(3) of the Annex to Directive 2010/18/EU, this should include contracts relating to employment or employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.
- (13) In order to encourage a more equal sharing of caring responsibilities between women and men, the right to paternity leave for fathers to be taken on the occasion of the birth of a child should be introduced. In order to take account of differences among Member States, the right to paternity leave should be irrespective of marital or family status as defined in national law.
- (14) As the majority of fathers do not avail themselves of their right to parental leave or transfer a considerable proportion of their leave entitlement to mothers, in order to encourage the second parent to take parental leave, this Directive, while maintaining the right of each parent to at least four months of parental leave currently provided for by Directive 2010/18/EU, extends from one to four months the period of parental leave which cannot be transferred from one parent to the other.
- (15) In order to provide greater possibility for parents to use parental leave as their children grow up, the right to parental leave should be granted until the child is at least twelve years old. Member States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and to decide whether the right to parental leave may be subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating the period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether they define if the employer may be allowed to postpone the granting of parental leave under certain circumstances. In such cases, the employer should provide justification for the postponement.

Given that flexibility makes it more likely that second parents, in particular fathers, will take up their entitlement to such leave, workers should be able to request to take parental leave on a full-time or part-time basis or in other flexible forms. It should be up to the employer whether or not to accept such a request for parental leave in other flexible forms than full-time. Member States should also assess if the conditions and detailed arrangements of parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

- (16) In order to facilitate the return to work following parental leave, workers and employers should be encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and practice
- (17) In order to provide greater opportunities to remain in the work force for men and women carrying of elderly family member and/or other relatives in need of care, workers with a seriously ill or dependant relative should have the right to take time off from work in the form of carers' leave to take care of that relative. To prevent abuse of that right, proof of the serious illness or dependency may be required prior to granting of the leave.
- (18) In addition to the right to carers' leave provided for in this Directive, all workers should maintain their right to take time off from work on the grounds of force majeure for urgent and unexpected family reasons, currently provided for by Directive 2010/18/EU, under the conditions established by the Member States.
- (19) To increase the incentives for workers with children and caring responsibilities, men in particular, to take the periods of leave provided for in this Directive, they should have the right to an adequate allowance while on leave. The level of the allowance should be at least equivalent to what the worker concerned would receive in case of sick leave. Member States should take into account the importance of the continuity of the entitlements to social security, including healthcare.
- (20) In accordance with Directive 2010/18/EU Member States are required to define the status of the employment contract or employment relationship for the period of parental leave. In accordance with the case-law of the Court of Justice of the European Union, the employment relationship between the worker and his employer is therefore maintained during the period of leave and, as a result, the beneficiary of such leave, remains, during that period, a worker for the purposes of Union law. When defining the status of employment contract or employment relationship during the period of the leaves covered by this Directive, including as regards entitlements to social security, the Member States should therefore ensure that the employment relationship is maintained.
- (21) In order to encourage working parents and carers to remain in the work force, those workers should be able to adapt their working schedules to their personal needs and preferences. Working parents and carers should therefore be able to request flexible working arrangements, meaning the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for caring purposes. In order to address the needs of workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including a reduction in working hours. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children, long periods of reduced working hours may lead to lower social security contributions translating into reduced or non-existing pension entitlements. The ultimate decision as to whether or not to accept a worker's request for flexible working arrangements should lie with the employer, Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore not only have the right to return to their original working patterns at the end of a given agreed period, but should also be able to request to do so at any time where a change in the underlying circumstances so requires.

- (22) Leave arrangements are intended to support working parents and carers during a specific period of time, and are aimed at maintaining and promoting their continued attachment to the labour market. It is therefore appropriate to make express provision for the protection of the employment rights of workers taking leave covered by this Directive and in particular their right to return to the same or an equivalent post, and not to suffer any detriment in their terms and conditions as a result of their absence. Workers should retain their entitlement to relevant rights already acquired, or in the process of being acquired, until the end of such leave.
- (23) Workers exercising their rights to leave or to request flexible working arrangements should be protected against discrimination or any less favourable treatment on that ground.
- (24) Workers exercising their rights to take leave or to request flexible working arrangements provided for in this Directive should enjoy protection from dismissal and any preparations for a possible dismissal on the grounds that they applied for, or have taken such leave or have exercised the right to request such flexible working arrangements. Where workers consider that they have been dismissed on those grounds, they should be able to ask the employer to provide duly substantiated grounds for the dismissal.
- (25) The burden of proof that there has been no dismissal on the grounds that workers have applied for, or have taken, leave referred to in Article 4, 5 or 6 or have exercised the right to request flexible working arrangements referred to in Article 9 should fall on the employer when workers establish, before a court or other competent authority, facts from which it may be presumed that they have been dismissed on such grounds.
- (26) Member States should provide for effective, proportionate and dissuasive penalties in the event of breaches of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. The effective implementation of the principle of equal treatment requires adequate judicial protection of workers against adverse treatment or adverse consequences resulting from a complaint or proceeding relating to the rights under this Directive. Victims may be deterred from exercising their rights on account of the risk of retaliation and therefore should be protected from any adverse treatment where they exercise their rights provided for by this Directive. Such protection is particularly relevant as regards workers' representatives in the exercise of their function.
- (27) With a view to further improving the level of protection of rights provided for in this Directive, national equality bodies should also be competent in the areas covered in this Directive.
- (28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union legislation in this field nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.
- (29) In particular, nothing in this Directive should be interpreted as diminishing previously existing rights under Directive 2010/18/EU and Directive 2006/54/EC, including its Article 19. All references to the repealed Directive 2010/18/EU should be construed as references to this Directive.

- (30) This Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Member States are therefore invited to assess the impact of their transposition act on SMEs in order to make sure that SMEs are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden.
- (31) The Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (32) Since the objectives of this Directive, namely to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work across the Union, cannot be sufficiently achieved by the Member States, but can 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 those objectives.

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Subject matter**

This Directive lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work through facilitating the reconciliation of work and family life for working parents and carers.

To that end, it provides for individual rights related to:

- (a) paternity leave, parental leave and carers' leave;
- (b) flexible working arrangements for working parents and carers.

#### *Article 2*

##### **Scope**

This Directive applies to all workers, men and women, who have an employment contract or employment relationship.

#### *Article 3*

##### **Definitions**

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

- (a) "paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child;
- (b) "parental leave" means leave from work on the grounds of the birth or adoption of a child to take care of that child;
- (c) "carer" means a worker providing personal care or support in case of a serious illness or dependency of a relative;

- (d) "relative" means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law;
- (e) "dependency" means a situation in which a person is, temporarily or permanently, in need of care due to disability or a serious medical condition other than serious illness;
- (f) "flexible working arrangements" means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours.

#### *Article 4*

### **Paternity leave**

1. Member States shall take the necessary measures to ensure that fathers have the right to take paternity leave of at least ten working days on the occasion of the birth of a child.
2. The right to paternity leave referred to in paragraph 1 shall be granted irrespective of marital or family status as defined in national law.

#### *Article 5*

### **Parental leave**

1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least twelve.
2. Where Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that at least four months of parental leave cannot be transferred.
3. Member States shall establish the period of notice to be given by workers to employers when exercising the right to parental leave. In doing so, Member States shall take into account the needs of both employers and workers. Member States shall ensure that the worker's request specifies the intended beginning and end of the period of leave.
4. Member States may make the right to parental leave subject to a period of work qualification or a length of service qualification which shall not exceed one year. In the case of successive fixed-term contracts, within the meaning of Council Directive 1999/70/EC<sup>21</sup>, with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.
5. Member States may define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, may be allowed to postpone the granting of parental leave by a reasonable period of time on the grounds that it would seriously disrupt the good functioning of the establishment. Employers shall justify any postponement of parental leave in writing.
6. Member States shall take the necessary measures to ensure that workers have the right to request parental leave also on a part-time basis, in blocks separated by periods of work or in other flexible forms. Employers shall consider and respond to such requests, taking into

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<sup>21</sup> Council Directive 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).



account the needs of both employers and workers. Employers shall justify any refusal of such a request in writing.

7. Member States shall assess the need for the conditions of access and detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents having a disability and parents with children with a disability or long-term illness.

#### *Article 6*

### **Carers' leave**

Member States shall take the necessary measures to ensure that workers have the right to carers' leave of at least five working days per year, per worker. Such right may be subject to appropriate substantiation of the medical condition of the worker's relative.

#### *Article 7*

### **Time off from work on grounds of force majeure**

Member States shall take the necessary measures to ensure that workers have the right to time off from work on grounds of force majeure for urgent family reasons in cases of illness or accident making the immediate presence of the worker indispensable. Member States may limit the right to time off from work on grounds of force majeure to a certain amount of time per year or per case, or both.

#### *Article 8*

### **Adequate income**

In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4, 5 or 6 will receive a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of sick leave.

#### *Article 9*

### **Flexible working arrangements**

1. Member States shall take the necessary measures to ensure that workers with children up to a given age, which shall be at least twelve, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

2. Employers shall consider and respond to requests for flexible working arrangements referred to in paragraph 1, taking into account the needs of both employers and workers. Employers shall justify any refusal of such a request.

3. When flexible working arrangements referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern

whenever a change of circumstances so justifies. Employers shall be obliged to consider and respond to such requests, taking into account the needs of both employers and workers.

#### *Article 10*

### **Employment rights**

1. Rights acquired or in the process of being acquired by workers on the date on which leave referred to in Article 4, 5 or 6 starts shall be maintained until the end of such leave. At the end of such leave, those rights, including any changes arising from national law, collective agreements or practice, shall apply.
2. Member States shall ensure that, at the end of leave referred to in Article 4, 5 or 6, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.
3. Member States shall define the status of the employment contract or employment relationship for the period of leave referred to in Article 4, 5 or 6, including as regards entitlements to social security, while ensuring that the employment relationship is maintained during that period.

#### *Article 11*

### **Non-discrimination**

Member States shall take the necessary measures to prohibit less favourable treatment of workers on the ground that they have applied for, or have taken, leave referred to in Article 4, 5 or 6, or on the ground that they have exercised their right to flexible working arrangements referred to in Article 9.

#### *Article 12*

### **Protection from dismissal and burden of proof**

1. Member States shall take the necessary measures to prohibit the dismissal and all preparations for dismissal of workers, on the grounds that they have applied for, or have taken, leave referred to in Article 4, 5 or 6, or have exercised the right to request flexible working arrangements referred to in Article 9.
2. Workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave referred to in Article 4, 5 or 6 or of exercising the right to request flexible working arrangements referred to in Article 9 may request the employer to provide duly substantiated grounds for the dismissal. The employer shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when workers referred to in paragraph 2 establish, before a court or other competent authority, facts from which it may be presumed that there have been such dismissal, it shall be for the respondent to prove that the dismissal was based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Member States need not 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 procedures, unless otherwise provided by the Member States.

### *Article 13*

#### **Penalties**

Member States shall lay down rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. Member States shall take all measures necessary to ensure that those penalties are applied. Penalties shall be effective, proportionate and dissuasive. They may take the form of a fine. They may also comprise payment of compensation.

### *Article 14*

#### **Protection against adverse treatment or consequences**

Member States shall introduce measures necessary to protect workers, including workers who are employees' representatives, from any adverse treatment by the employer or adverse consequences resulting from a complaint lodged within the undertaking or any legal proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

### *Article 15*

#### **Equality bodies**

Member States shall ensure that the body or bodies designated, pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of parents and carers without discrimination on grounds of sex are also competent for issues falling within the scope of this Directive.

### *Article 16*

#### **Level of protection**

Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive. They shall however ensure that at least four months of parental leave remain non-transferable in accordance with Article 5(2).

### *Article 17*

#### **Dissemination of information**

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1 of this Directive, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

## *Article 18*

### **Reporting and review**

1. At the latest, by five years after the entry into force of this Directive, Member States shall communicate to the Commission all relevant information concerning the application of this Directive necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.
2. On the basis of the information provided by Member States pursuant to paragraph 1, the Commission shall submit to the European Parliament and the Council a report in which it reviews the application of this Directive, accompanied, if appropriate, by a legislative proposal.

## *Article 19*

### **Repeal**

Directive 2010/18/EU is repealed with effect from two years following the date of entry into force of this Directive. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in the Annex.

## *Article 20*

### **Transposition**

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, at the latest two years after the entry into force. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

## *Article 21*

### **Entry into force**

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

## *Article 22*

## **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*