

ROADMAP			
TITLE OF THE INITIATIVE	New start to address the challenges of work-life balance faced by working families		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	JUSTICE AND CONSUMERS, D2 & D1 EMPLOYMENT, D1 & D2 2015/JUST/012	DATE OF ROADMAP	August 2015
LIKELY TYPE OF INITIATIVE	Package with legislative and non-legislative actions		
INDICATIVE PLANNING	CWP 2016		
<p>This indicative roadmap is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives

Context

This new initiative would replace the 2008 Commission's proposal to revise the Maternity Leave Directive, as announced in the Commission Work Programme 2015. The proposal was evaluated and identified as a candidate for withdrawal in the 2014 REFIT exercise and withdrawal has been announced on 1 July 2015.

Issue

The main reason behind the initiative is to address the low participation of women in the labour market by modernising and adapting the current EU legal and policy framework to today's labour market to allow for parents with children or those with dependent relatives to better balance caring and professional responsibilities. The percentage of women in employment in 2014 was 63.5%, which is 11.5 percentage points (pp) off both the Europe 2020 target for total employment and the rate for men (75%). Women's employment is tightly linked to the distribution of work and family responsibilities between women and men as evidence demonstrates clearly that when having children, women tend to work less hours in the paid employment and spent more time in fulfilling the unpaid care responsibilities, while men tend to work more in paid positions. A higher proportion of women also work part-time where the pay gap is over 37 %, especially when they care for their children or for other dependant persons. The Ageing Report¹ forecast that, without additional measures, the employment rate of women is projected to rise to 67.3% in 2023 and 71.2% in 2060.

A new initiative aiming at increasing the participation of women in the labour market through better work-life reconciliation, appropriate protection and strengthened gender equality will therefore contribute to the priority of the Commission on growth and jobs in particular to achieve the employment headline target of Europe 2020. The latest Eurofound figures estimate the gender employment gap costs 325 billion euros to the EU, ie 2,5 % of the EU GDP. In most countries, **female labour market participation** remains below its potential due to a lack of possibilities to balance work and family responsibilities, including lack of affordable childcare, rigid working arrangements or absence of incentives for men to take more care responsibilities in their families. There is strong evidence that after having children many women drop out of the labour market entirely and those who continue to work often do so in part time although they would like to work full time or they work in jobs below their level of qualification.

This situation leads to a high risk of poverty for women and represents also a waste of resources for the EU economy and sub-optimal allocation of skills and competences acquired through education by women. There is therefore a strong economic case for supporting the participation of women-carers in the labour market, both by protective measures and work-life balance policies: they can help to boost employment, contribute to resolve emerging labour market shortages and address fiscal challenges arising from demographic ageing without imposing any specific preference on parents and those caring for depending relatives for organising their family life. They also contribute to reducing the risk of poverty and social exclusion of people with caring responsibilities. Finally, female workers should enjoy an appropriate level of protection at work, in particular to

¹ http://ec.europa.eu/economy_finance/publications/european_economy/2014/pdf/ee8_en.pdf

preserve their and their children's health or to be protected against abusive dismissal practices or other discriminatory treatments.

The problem to be addressed is women's under-representation in employment taking into account the reality of today's societies where increasing numbers of women wish to work, the increasing demand for formal care arrangements concerning children, the elderly and other relatives in need of care, and the fact that more men would like to take more care responsibilities in their families but don't feel encouraged to do so.

The participation of women in the labour market in the EU has not increased very significantly since 2006 and the employment rate is still lower than in other developed countries of the world.² There are significant differences across MS, with employment rates ranging from approximately 40% to around 75%.

The underrepresentation of women continues despite the fact that **women are increasingly well qualified, even out-performing men in terms of educational attainment**. Further compounding the problem, women are often trapped in low productivity, low-skilled and low-paid sectors and jobs and face **a high gender pay gap** (16%). Overall, women's lower pay, higher concentration in part-time work, and greater interruptions in their careers due to care contribute to a greater risk of poverty and social exclusion that increases further when they get older due to **a very large gender pension gap** (39%). Furthermore poverty risk among children is higher when only one parent is employed, resilience to economic downturns is weakened and families are worse off.

The current policy and legislative framework tends to discourage men **to take family-related leave**. Thus, women continue to interrupt their careers for longer periods which makes it more difficult for them the return to paid positions³. As long as women are the main users of family-related leave, this leads to a weaker position of women on the labour market as regards employability, pay⁴ and career development, as well as future pensions⁵ (including childless women, due to possible expected motherhood).

Families often face a **constrained choice** because of a **lack of formal care arrangements**. Progress towards the EU's 'Barcelona objectives' for providing adequate and affordable childcare⁶ is slow and uneven and many families still experience **difficulties in finding available, affordable, quality childcare** for a suitable number of hours. Long-term care services are also still underdeveloped in many Member States. Therefore, the current system entrenches the role of women as primary care-givers for children and elderly or frail relatives - a problem which is likely to get worse due to the effects of an ageing population and reduced public expenditure related to services (especially health, long-term care and childcare services). Lack of appropriate leave arrangements for fathers relative to mothers in many Member States⁷ further reinforces gender differences between work and care.

While some employers develop family-friendly policies in order to attract and retain highly-skilled women (and, increasingly, men), in general, **attitudes to the organisation of work tend to remain fixed around on-the-job presence for full-time hours (or more)**⁸.

Another problem to be addressed is the fertility rate below desired level, with negative consequences for the demographic structure of the EU population, the sustainability of the social protection systems and increased fiscal challenges in the EU. Due to past low fertility rates and longer life expectancy, our populations are becoming both smaller in numbers and older in age. This has a negative impact on public finances as well.

Parents and workers with caring responsibilities will be positively affected by this initiative. It is expected that the initiative will help increasing women's economic independence and reducing their exposure **to risk of poverty and social** exclusion in particular by addressing the pay and pension gaps between women and men. **Employers will also be affected** and potential cost increase for businesses as a consequence of measures promoting work-life balance will need to be taken into consideration, in particular for SMEs. However, companies should also see benefits as regards attraction and retention of workers with care responsibilities, reduction of absenteeism, increase in productivity of workers and reduction of skills mismatches. **There are also impacts for wider society**, including the benefits of the boost of employment, of the better allocation of resources and of addressing demographic change as well as of the related productivity, competitiveness and growth increases.

² Employment rate of women (20-64) in 2013: Switzerland: 76.6%, USA: 65.4%, Japan: 66.3%, cf. Eurostat 2014.

³ See, for instance, Olivier Thévenon, Anne Solaz (2013) *Labour Market Effects of Parental Leave Policies in OECD Countries*

⁴ The gender pay gap stands at 16.5% in 2014 for the EU as a whole (Eurostat).

⁵ The gender gap in pensions stands at 39% for the EU as a whole (ENEGE 2013).

⁶ In 2002, the Barcelona European Council set objectives 'to provide childcare by 2010 to at least 90 % of children between 3 years old and the mandatory school age and at least 33 % of children under 3 years of age'.

⁷ Despite evidence on the importance of early engagement of fathers in caring for children, paternity leave is still not available in all Member States.

⁸ The percentage of male employees working very long hours across OECD countries is 12%, compared with less than 5% for women.

Overall labour market participation and in particular also female labour market participation has been recognised as an issue at EU level and the EU has set a 75% employment rate as a headline target to be achieved by 2020. The low employment rate of women at EU level (63.5%) compared to men (75%) represents a waste of resources for the EU economy and sub-optimal allocation of skills and competences acquired by women with **negative effects on overall productivity and competitiveness.**

The deepening internal market and the reinforced level of economic governance call for more coordination of work-life balance policies, in order to address large divergences in terms of employment outcomes for women.

Moreover, the Treaties intended to create a competitive level-playing field between Member States and introduced the principle of equal pay and of gender equality on the labour market, to avoid any downward competition between Member States in labour and equal treatment matters. Member States may indeed hesitate to regulate in this area on their own, as they could perceive a risk of putting their own companies at a disadvantage with companies from other Member States, if the work-life balance benefits offered to employees are more generous than in other Member States. This perception represents a potential obstacle preventing Member States from taking adequate action.

If no action is taken at EU level, women will continue to bear the main responsibility for the care of their children and other relatives, which limits their involvement in the labour market despite their educational skills, weakens their labour market position and has negative consequences on their economic independence and poverty rates, as well as on economic growth. Furthermore when couples have to choose between being both in paid work or having children, many decide not to have children or to have only one, as the very low birth rates in most EU Member States illustrate. This will only exacerbate the demographic challenge.

Subsidiarity check

As this initiative concerns increasing participation of women in the labour market and improving working conditions, notably **ensuring equality between men and women with regard to labour market opportunities and treatment at work**, the legal basis could be Article 157(3) and 153(2) TFEU. Parts of the initiative could be the subject of an agreement negotiated by the social partners at EU level under Article 155 TFEU.

Action at EU level is necessary because without a common framework guaranteeing a competitive level playing field, individual Member States may hesitate to regulate in this area on their own, as it could influence their relative competitiveness compared to other Member States.

While respecting the national competences in this area, the substantial difference in women's employment rates between Member States today (from 40% to 75%) reflects the relative performance of their labour market and public services, that might put at risk the necessary **economic and social convergence within the single market** as a whole. It also shows that the current set of rules and incentives might not be sufficient or not sufficiently known, implemented and/or enforced in a way that triggers a significant and sustainable change in the labour market patterns and individual behaviours of women and men as regards the participation of women in the labour market and better share of family responsibilities.

The proposed EU action will not exceed what is necessary to achieve the objectives. Any undue interference with the equilibrium of different national systems (some of which do not strictly differentiate between different forms of family leave such as maternity and parental leave) can be avoided through sufficiently flexible solutions taking account of these differences. The options proposed are thus in line with the principle of subsidiarity, since the targeted interventions suggested are sufficiently flexible to be compatible with diverging domestic systems.

Main policy objectives

The initiative aims to **modernise current EU legal and policy framework and adapt it to today's labour market to allow for parents with children or workers with dependent relatives to better balance caring and professional responsibilities.** This would be expected to have a positive impact on women's labour market participation, given the extensive evidence that work-life reconciliation policies play a considerable role in removing obstacles to employment for women; it would help women to make better use of their skills and influence the economic situation of parents and women in particular. The initiative would help to deliver on the Commission's jobs and growth agenda, given that these policies would help to boost employment, productivity and competitiveness, and contribute to resolve emerging labour shortages and fiscal challenges arising from population ageing. This initiative will also positively tackle the demographic challenge.

What should be achieved is the modern and effective EU legal and policy framework which strengthens the work-life balance of parents and caring relatives in a comprehensive and coherent manner. Moreover, measures encouraging and enabling men and fathers to use more leave and flexible working arrangements will lead to

better redistribution of tasks and care responsibilities, enabling in turn women to participate more actively on the labour market. Work-life reconciliation policies are expected to improve working conditions and well-being of all employees and workers and contribute to the productivity.

B. Option Mapping

Given the range of policies that can support work-life reconciliation, the new initiative could contain **a mix of legislative and non-legislative measures in a consistent policy framework**, which, if combined, would cover the wide range of challenges faced by parents' and carers', especially women, as regards their participation on the labour market. It is necessary to ensure that measures support the equal economic independence of women and men and mutually reinforce each other, to improve their consistency and avoid unintended side-effects.

Three options are proposed below:

Option 1: Legislative measures⁹

This option includes better enforcement, amendments and where appropriate introduction of legislation concerning leave related measures and flexible working arrangements. It will start with an inventory of the existing legislation and an analysis of their level of implementation and enforcement in the Member States, enabling the identification of possible "gaps" in the existing set of rights and incentivising measures. On the basis of this analysis, one or a combination of the following initiatives could be considered under this option:

- **Generalisation of the existing rights to request flexible working arrangements to both parents and women and men with caring responsibilities and strengthening the enforcement of those rights.** The aim would be to promote and where appropriate to introduce various types of flexible working arrangements (e.g. teleworking, job-sharing, flexible working times) for both women and men in order to meet the needs of the carers and the employers, taking into account opportunities offered by modern working patterns and technology.
- **Inviting the Social Partners to assess their agreements on Parental Leave , the Fixed-term work and the Part-time work** established in accordance with Article 155 of the TFEU and implemented by EU Directives, in order to check whether some provisions need to be updated and adjusted to better achieve the objectives of enabling parents to balance professional and care responsibilities through appropriate parental leave arrangements and of protecting women and men against discriminatory treatment on the labour market. The ongoing evaluation of the Fixed-term and Part-time work Directives could support this assessment.
- **Better enforcement of and new incentives for take-up of parental leave by fathers. The option of paternity leave could also be considered.**
- **Improvements to the Maternity Leave Directive** related to the protection of pregnant women and mothers could be envisaged, taking duly into account how the situation evolved in the Member States since 2008 and avoiding bringing back issues that clearly caused a deadlock in the negotiations of the 2008 proposal for an amended Maternity leave Directive. Examples of possible measures to be considered could be provisions for breastfeeding mothers after return to work or improving protection against dismissal.
- **Introduction of Carers' Leave, i.e.** new provisions on carers' leave for elderly or ill dependants.
- **Strengthening the implementation and where needed the enforcement of Directive 2006/54 on equal treatment of men and women in matters of employment and occupation and of Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.** Having less women in lower-wage positions/ part time work will help to encourage a more equal share of care responsibilities between parents.

Choosing the specific mix of legal proposals requires a careful prior assessment of the costs that each proposal and the combination of them will carry for each Member State and the businesses and of the expected benefits.

In line with the recognition of the fundamental role of social partners and social dialogue for social and economic development, in case this option is pursued, Article 154 requires the Commission to carry out, before submitting any proposal in the social policy field, a consultation of management and labour on the possible direction of

⁹ Legislative acts adopted by legislative procedure.

Union action, followed by an in-depth consultation at a second stage. The EU social partners would have the possibility to open bilateral negotiations, during which period (which in principle should not exceed nine months) the Commission would refrain from presenting its own legislative proposal on the issue at hand. In the absence of social partners' negotiations or a positive outcome of those negotiations, the Commission could begin the process of assessing a series of legislative amendments.

Option 2: Non legislative measures

A Commission Communication could set out a comprehensive policy framework to address a wider range of policies that will support parents' participation in the labour market and a more equal use of leave and flexible work arrangements between men and women, complementing the current legal framework on leave arrangements and building on the policy guidance that has already been given in this field. This would include:

- (i) developing ambitious EU level **benchmarks**, possibly in the format of proposals for Council Recommendations along the model of the Youth Guarantee, on conditions for women participation in the labour market, to be defined with Member States and with the Social Partners. The benchmarks could build on existing objectives, such as the Barcelona targets on childcare. Further, it would encompass elements of a successful work-life reconciliation policy mix, in particular: **child and other dependant persons care infrastructure availability, accessibility and quality, incentives and disincentives in tax and benefit systems;**
- (ii) a **regular monitoring and public reporting** on the implementation of the framework in particular through the European Semester and **thematic reports;**
- (iii) a targeted use of the EU financial tools available to support Member States, such as the **European Social Fund**, to invest into projects and infrastructure necessary to encourage reconciliation of work-life balance of parents and carers (e.g. childcare/care facilities, introduction of flexible working arrangements, etc.).
- (iv) **engage in and facilitate a structured dialogue with the Member States, the social partners**¹⁰ and other actors of the labour market, such as the public employment services network, to identify, exchange and promote best practices supporting women's participation on the labour market through effective work-life balance measures, taking duly account of working carers and employers' needs; focus will also be on analysis of and best practices enabling men and fathers in particular to achieve work-life balance and to take up more leave and flexible arrangements;
- (v) engage in **targeted awareness raising campaign** aiming to foster an understanding of work-life reconciliation policies benefits; including support and promotion of networks of employers promoting work-life reconciliation-friendly arrangements.

Option 3: Legislative measures combined with the policy framework

This option **combines** option 1's legislative measures and option 2 on policy framework as presented above.

The baseline scenario consists of the current legal framework (principally the 1992 Maternity Leave Directive and the 2010 Parental Leave Directive) in combination with the existing policy coordination in the framework of the Europe 2020 strategy. Country-Specific Recommendations are issued to a number of Member States in the area of female labour market participation, including to increase the availability, affordability and quality of childcare services and to reduce the tax/benefit disincentives for second earners to work. Policy coordination as regards access to long-term care to support female labour market participation, as well as the role of parental leave arrangements, has received less coverage in the framework of Europe 2020 strategy. Existing policy measures also include the monitoring of childcare provision in line with the Barcelona objective. These objectives measure the total availability of formal childcare but do not consider if availability is part time or full time and does effectively allow parents to work. Quality criteria are not addressed either.

Existing EU legal and policy measures do not always mutually reinforce each other and unintended side-effects may occur. For example, a significant childcare gap exists in several Member states between the end of parental leave entitlements and the age from which access to childcare is ensured. Tax and benefit systems that give financial incentives for the spouse earning less to withdraw from the labour market or to work part-time may run counter to a higher take-up rate of parental leave by fathers.

In those Member States that are supporting the participation of women in the labour market improvements concerning women employment, women poverty and social exclusion and fertility rates are observed. However

¹⁰ In their 2015-2017 Work Programme "*Partnership for inclusive growth and employment*", the European Social Partners have identified "the promotion of better reconciliation of work, private and family life and gender equality to reduce the gender gap" as a priority area for action.

in many EU Member States there is insufficient action or prospect of action to deliver the progress needed to meet these common challenges. In terms of important societal developments, the demographic challenge is only going to get worse if no attempt is made to tackle it; while in terms of technology, the digital revolution offers opportunities for improving work-life balance that are currently not being harnessed.

Evidence in the Member States shows that the exclusive use of non-regulatory instruments is alone not enough as it would not provide a sufficient leverage to ensure compliance by the Member States on increasing women's participation in the labour market as well as on promoting more equal share of family responsibilities between men and women. Existing legislation contains a number of gaps (set out above). These legislative gaps cannot be addressed by improving implementation and enforcement, but by updating and improving the legislation itself.

Parents and workers with caring responsibilities will be targeted as well as employers. Differentiated scope could certainly be an option for consideration in the development of any future legislative initiative. For example, consideration could be given to whether to exclude micro-enterprises from the scope of some obligations on flexible work arrangements as they could impose a disproportionate burden on the organisation of the business. The precise nature of the obligation can be modulated or qualified to take into account the specific needs of micro-businesses and SMEs more generally, while still ensuring sufficient coverage of the benefits to employees, businesses and society.

Proportionality check

Any legislative proposal will set only the objectives to be achieved and will leave the means of implementation to the Member States and the social partners, as appropriate. The objectives set will be neither more detailed nor more onerous than is required to solve the problems. They will primarily take the form of amendments to the scope or extent of already existing rights, and will thus enable more choice and more equality for men and women, including by providing increased incentives for men to make use of rights already used by women.

C. Data collection and Better Regulation instruments

Data collection

The Commission has available large amount of information and data relating to the different elements of the new start to address women's under-representation in employment and the challenges of work-life balance faced by working women and men. This has been collected by the Commission as part of the monitoring of existing legislation and of the monitoring of the EU2020 targets in the context of European Semester. Also Eurostat, MISSOC and the European Institute on Gender Equality have collected statistical data on this area. The Commission has carried out studies e.g. on the parental leave directive, on paternity leave and on carer's leave. Also other institutions like the EP have presented recently a broad study on length and compensation rates of different leaves (maternity leave, paternity leave, parental leave).

Consultation approach

A public consultation would be an integral part of the Commission's preparation process, including representatives of SMEs and micro-businesses, the European Parliament, Member States and stakeholders and non-governmental organisations active in the field of work-life balance and gender equality.

Moreover, Article 154 obliges the Commission to carry out, before submitting any proposal in the social policy field, a consultation of management and labour on the possible direction of Union action, followed by an in-depth consultation at a second stage. The EU social partners would have the possibility to open bilateral negotiations, during which period (which in principle should not exceed nine months) the Commission would refrain from presenting its own legislative proposal on the issue at hand. In the absence of negotiations between social partners or a positive outcome thereof, the Commission would begin the process of preparing a series of legislative amendments, as outlined above.

Will an Implementation plan be established?

Yes No

The details will be decided at a later stage on the basis of the legislative measures to be considered.

Will an impact assessment be carried out for this initiative and/or possible follow-up initiatives?

The preparation of IA work (such as setting up an Inter-Service Group and drafting the terms of reference for an external study as appropriate) would start in parallel with the social partner consultation. The results of that consultation and in particular the decision of the social partners on whether and in which areas they intend to negotiate on possible solutions will obviously feed into the process and influence how the IA work will be then carried out. It is likely to focus on possible areas for action in which the social partners do not wish to negotiate. The Inter-Service Group would be set up in autumn 2015. DGs Justice and Consumers, Employment and Social affairs and Health would be Members, besides the Secretariat-General and Legal-Service.