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## INFORMATION NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: 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  
- Outcome of the European Parliament's first reading,  
(Brussels, 3 to 4 April 2019)

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## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, David CASA (EPP, MT), presented a compromise amendment (amendment 102) to the proposal for a Directive on behalf of the Committee on Employment and Social Affairs. This amendment had been agreed during the informal contacts referred to above.

In addition, the GUE tabled 6 amendments (amendments 96-101).

## II. VOTE

When it voted on 4 April 2019, the plenary adopted the compromise amendment (amendment number) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

## **Work-life balance for parents and carers \*\*\*I**

**European Parliament legislative resolution of 4 April 2019 on the 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 (COM(2017)0253 – C8-0137/2017 – 2017/0085(COD))**

### **(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0253),
  - having regard to Article 294(2), and Article 153(1)(i) and (2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0137/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Netherlands Senate, the Netherlands House of Representatives, the Polish Sejm and the Polish Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 6 December 2017<sup>3</sup>,
  - having regard to the opinion of the Committee of the Regions of 30 November 2017<sup>4</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 18 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Women's Rights and Gender Equality and the Committee on Legal Affairs (A8-0270/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national

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<sup>3</sup> OJ C 129, 11.4.2018, p.44.

<sup>4</sup> OJ C 164, 8.5.2018, p. 62.

parliaments.

**Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Directive (EU) 2019/... 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 point (b) of Article 153(2), in conjunction with point (i) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Having regard to the opinion of the Committee of the Regions<sup>6</sup>,

Acting in accordance with the ordinary legislative procedure<sup>7</sup>,

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<sup>5</sup> OJ C 129, 11.4.2018, p. 44.

<sup>6</sup> OJ C 164, 8.5.2018, p. 62.

<sup>7</sup> Position of the European Parliament of 4 April 2019.

Whereas:

- (1) Point (i) of Article 153(1) of the Treaty on the Functioning of the European Union (*TFEU*) provides that the Union is to support and complement the activities of the Member States in the area 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. The second subparagraph of Article 3(3) of the Treaty on European Union (TEU) provides that the Union is to promote equality between women and men. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union (the Charter) requires equality between men and women to be ensured in all areas, including employment, work and pay.
- (3) Article 33 of the Charter 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 has ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities. That Convention is thus an integral part of the Union legal order, and Union legal acts must, as far as possible, be interpreted in a manner that is consistent with the Convention. The Convention provides, *in particular* in Article 7(1), that parties thereto are to 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) *The Member States have ratified the 1989 United Nations Convention on the Rights of the Child. Article 18(1) of the Convention provides that both parents have common responsibilities for the upbringing and development of the child and that the best interests of the child should be the parents' basic concern.*
- (6) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, *the equal sharing of caring responsibilities between men and* women, and the closing of the gender gaps in earnings and pay. Such policies should take into account demographic changes including the effects of an ageing population.

- (7) *In light of the challenges that arise from demographic change, together with the resultant pressure on public expenditure in some Member States, the need for informal care is expected to increase.*
- (8) At Union level, several directives in the areas of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular *Directives 2006/54/EC<sup>8</sup> and 2010/41/EU<sup>9</sup>* of the European Parliament and of the Council, and Council *Directives 92/85/EEC<sup>10</sup>, 97/81/EC<sup>11</sup> and 2010/18/EU<sup>12</sup>.*
- (9) *The principles of gender equality and work-life balance are reaffirmed in Principles 2 and 9 of the European Pillar of Social Rights, which was proclaimed by the European Parliament, the Council and the Commission on 17 November 2017.*

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<sup>8</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>9</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>10</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>11</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>12</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, 18.3.2010, p. 13).

- (10) However, work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, *in particular because of the increasing prevalence of extended working hours and changing work schedules, which has* a negative impact on women's 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 are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities. Having a sick or dependent relative has also been shown to have a negative impact on women's employment and results in some women *dropping* out of the labour market entirely.

- (11) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. The lack of paid paternity and parental leave in many Member States contributes to the low take-up of leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender *stereotypes and* differences between work and care. ***Policies on equal treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles, and the social partners are encouraged to act upon their key role in informing both workers and employers and raising their awareness of tackling discrimination. Furthermore, the*** 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.

- (12) *In implementing this Directive, Member States should take into consideration that the equal uptake of family-related leave between men and women also depends on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are crucial for the purpose of allowing parents, and other persons with caring responsibilities to enter, remain in, or return to the labour market. Removing economic disincentives can also encourage second earners, the majority of whom are women, to participate fully in the labour market.*
- (13) *In order to assess the impact of this Directive, the Commission and the Member States should continue to cooperate with one another in order to develop comparable statistics that are disaggregated by sex.*
- (14) The Commission has consulted management and labour in a two-stage process with regard to challenges related to work-life balance, in accordance with Article 154 *TFEU*. There was no agreement among the social partners to enter into negotiations with regard to those matters, including with regard to parental leave. It is, however, important to take action in that area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the public consultation carried out to seek the views of stakeholders and citizens.

- (15) Directive 2010/18/EU regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds on the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights. Directive 2010/18/EU should be repealed and replaced by this Directive.
- (16) This Directive lays down minimum requirements related to paternity leave, parental leave and carers' leave, and to flexible working arrangements for workers who are parents, or carers. By facilitating the reconciliation of work and family life for such 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.
- (17) This Directive applies to all workers who have employment contracts or other employment relationships, **including** contracts relating to **the** employment or the employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, as previously provided for by **Directive 2010/18/EU**. ***Taking into account the case-law of the Court of Justice of the European Union (Court of Justice) regarding the criteria for determining the status of a worker, it is for Member States to define employment contracts and employment relationships.***

- (18) *Member States have the competence to define marital and family status, as well as to establish which persons are to be considered to be a parent, a mother and a father.*
- (19) In order to encourage a more equal sharing of caring responsibilities between women and men, *and to allow for the early creation of a bond between fathers and children, a right to paternity leave for fathers or, where and in so far as recognised by national law, for equivalent second parents, should be introduced. Such paternity leave should be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of providing care. Member States are also able to grant paternity leave in the case of a stillbirth. It is for Member States to determine whether to allow part of the paternity leave to be taken before the birth of the child or to require all of it to be taken thereafter, the time frame within which paternity leave is to be taken, and whether and under which conditions to allow paternity leave to be taken on a part-time basis, in alternating periods, such as for a number of consecutive days of leave separated by periods of work, or in other flexible ways. Member States are able to specify whether paternity leave is expressed in working days, weeks or other time units, taking into account that ten working days correspond to two calendar weeks.* In order to take account of differences between Member States, the right to paternity leave should be granted irrespective of marital or family status, as defined by national law.

- (20) As most fathers do not avail themselves of their right to parental leave, or transfer a considerable proportion of their leave entitlement to mothers, this Directive extends from one to *two* months the *minimum* period of parental leave which cannot be transferred from one parent to the other in order to encourage *fathers* to take parental leave, while maintaining the right of each parent to take at least four months of parental leave as provided for in Directive 2010/18/EU. ***The purpose of ensuring that at least two months of parental leave is available to each parent exclusively and that cannot be transferred to the other parent, is to encourage fathers to make use of their right to such leave. It also promotes and facilitates the reintegration of mothers in the labour market after they have taken a period of maternity and parental leave.***

- (21) *A minimum period of four months of parental leave is guaranteed under this Directive for workers who are parents. Member States are encouraged to grant the right to parental leave to all workers who exercise parental responsibilities in accordance with national legal systems.*
- (22) 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 should be able to decide whether the right to parental leave is 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 such a period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether *to* allow employers to postpone the granting of parental leave under certain circumstances, subject to the requirement that the employers should provide reasons for such a postponement *in writing*.

- (23) Given that flexibility makes it more likely that *each parent*, in particular fathers, will take up their entitlement to parental leave, workers should be able to request that parental leave be granted on a full-time or a part-time basis, *in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work*, or in other flexible ways. The employer should be able to accept or refuse such a request for parental leave in ways other than on a full-time basis. Member States should assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.
- (24) The period within which workers should be entitled to take parental leave should be linked to the age of the child. That age *should be set in such a way as to enable both parents to effectively take up their full entitlement to parental leave under this Directive*.

- (25) In order to facilitate the return to work following a period of parental leave, workers and employers are encouraged to maintain *voluntary* contact during the period of leave and can make arrangements for any appropriate measures to facilitate reintegration into the work place. Such contact and arrangements are to be decided between the parties concerned, taking into account national law, collective agreements or practice. *Workers should be informed of promotion processes and internal vacancies and should be able to participate in such processes and to apply for such vacancies.*
- (26) *Studies demonstrate that Member States that provide a significant portion of parental leave to fathers and that pay the worker a payment or allowance during that leave at a relatively high replacement rate, experience a higher take-up rate by fathers and a positive trend in the rate of employment of mothers. It is therefore appropriate to allow such systems to continue provided that they meet certain minimum criteria, instead of providing the payment or allowance for paternity leave as provided for in this Directive.*

- (27) In order to provide men and women with caring responsibilities with greater opportunities to remain in the *workforce*, *each worker should have the right to carers' leave of five working days per year*. Member States may decide that such leave can be taken in *periods of one or more working days per case*. In order to take account of divergent national systems, Member States should be able to allocate carers' leave on the basis of a period other than a year, by reference to the person in need of care or support, or by case. A continued rise in care needs is predicted, because of an ageing population and, consequentially, the concomitant increase in the prevalence of age-related impairments. The rise in care needs should be taken into account by Member States when they develop their care policies, including with regard to carers' leave. Member States are encouraged to make the right to carers' leave available with regard to additional relatives, such as grandparents and siblings. Member States can require prior medical certification of the need for significant care or support for a serious *medical reason*.

- (28) In addition to the right to carers' leave provided for in this Directive, all workers should retain their right to take time off from work *without the loss of employment rights that have been acquired or that are in the process of being acquired*, on the grounds of force majeure for urgent and unexpected family reasons, *as* provided for in Directive 2010/18/EU, in accordance with the conditions established by the Member States.
- (29) To increase incentives to workers who are parents ■ , and to men in particular, to take the periods of leave provided for in this Directive, ■ workers should be provided with a right to an adequate allowance while on leave.
- (30) *Member States should therefore set a level for the payment or allowance with respect to the minimum period of paternity leave that is at least equivalent to the level of national sick pay. Since granting rights to paternity and maternity leave pursue similar objectives, namely creating a bond between the parent and the child, Member States are encouraged to provide for a payment or an allowance for paternity leave that is equal to the payment or allowance provided for maternity leave at national level.*
- (31) *Member States should set the payment or allowance for the minimum non-transferable period of parental leave guaranteed under this Directive at an adequate level. When setting the level of the payment or allowance provided for the minimum non-transferable period of parental leave, Member States should take into account that the take-up of parental leave often results in a loss of income for the family and that first earners in a family are able to make use of their right to parental leave only if it is sufficiently well remunerated, with a view to allowing for a decent living standard.*
- (32) *Although Member States are free to decide whether to provide a payment or an allowance for carers' leave, they are encouraged to introduce such a payment or an allowance in order to guarantee the effective take-up of the right by carers, in particular by men.*

(33) *This Directive is without prejudice to the coordination of social security systems under Regulations (EC) No 883/2004<sup>13</sup> and (EU) No 1231/2010<sup>14</sup> of the European Parliament and of the Council and Council Regulation (EC) No 859/2003<sup>15</sup>. The Member State competent for the social security of a worker is determined by those Regulations.*

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<sup>13</sup> *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).*

<sup>14</sup> *Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).*

<sup>15</sup> *Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).*

- (34) In order to encourage workers who are parents, and carers to remain in the work force, such workers should be able to adapt their working schedules to their personal needs and preferences. *To that end and with a focus on workers' needs, they have the right* to request flexible working arrangements for the purpose of ■ adjusting their working patterns, including, *where possible*, through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for the purposes of providing care. ■

- (35) *In order to address the needs of both workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including any reduction in working hours or any remote working arrangements. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children or caring for relatives with care or support needs, long periods of reduced working hours can lead to lower social security contributions and thus reduced or non-existing pension entitlements.*
- (36) *When considering requests for flexible working arrangements, employers should be able to take into account, inter alia, the duration of the flexible working arrangements requested and the employers' resources and operational capacity to offer such arrangements. The employer should be able to decide whether to accept or refuse a worker's request for flexible working arrangements. Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore have the right not only to return to their original working pattern at the end of a mutually agreed period, but should also be able to request to do so earlier where required on the basis of a change in the underlying circumstances.*

- (37) *Notwithstanding the requirement to assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations, Member States are encouraged to assess whether conditions for access to, and the detailed arrangements for, exercising the right to paternity leave, carers' leave and flexible working arrangements should be adapted to particular needs, such as of those of single parents, adoptive parents, parents with a disability, parents of children with a disability or a long-term illness, or parents in particular circumstances, such as those related to multiple births and premature births.*
- (38) Leave arrangements are intended to support workers who are parents, and carers during a specific period of time, and aim to maintain and promote the workers' continued attachment to the labour market. It is therefore appropriate to make express provision for the protection of the employment rights of workers who take the types of leave covered by this Directive. In particular, this Directive protects the right of workers to return to the same or to an equivalent post after taking such leave and the right not to be subject to any detriment in the terms and conditions of their contract of employment or employment relationship as a result of taking such leave. Workers should retain their entitlement to relevant rights that are already acquired, or that are in the process of being acquired, until the end of such leave.
- (39) *As provided for in* 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. *According to* the case-law of the Court of Justice, the employment relationship between the worker and the employer is 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 *the* employment contract or employment relationship during the period of the types of leave covered by this Directive, including with regard to the entitlement to social security, the Member States should therefore ensure that the employment relationship is maintained.

- (40) Workers who exercise their right to take leave or to request flexible working arrangements as provided for in this Directive should be protected against discrimination or any less favourable treatment on that ground.
- (41) Workers who exercise their right to take leave or to request flexible working arrangements as provided for in this Directive should enjoy protection from dismissal and any *preparatory steps* for a possible dismissal on the grounds that they have applied for, or have taken, such leave or that they have exercised their right to request such flexible working arrangements *in accordance with the case law of the Court of Justice, including its judgement in Case C-460/06*<sup>16</sup>. Workers *who* consider that they have been dismissed on the basis that they have exercised such rights should be able to ask the employer to provide duly substantiated grounds for the dismissal. Where a *worker has applied for, or has taken, paternity leave, parental leave or carers' leave as referred to in this Directive, the employer should provide the grounds for dismissal in writing.*
- (42) The burden of proving that there has been no dismissal on the grounds that workers have applied for, or have taken, paternity leave, parental leave or carers' leave as referred to in this Directive ■ should be on the employer where a worker has established, before a court or another competent authority, facts capable of giving rise to a presumption that the worker has been dismissed on such grounds.

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<sup>16</sup> Judgment of the Court of Justice of 11 October 2007, *Nadine Paquay v Société d'architectes Hoet + Minne SPRL*, C-460/06, ECLI:EU:C:2007:601.

- (43) Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the rights which are within its scope. Such ***penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.***
- (44) The effective implementation of the principles of equal treatment ***and equal opportunities*** requires the adequate judicial protection of workers against adverse treatment or adverse consequences resulting from a complaint or from proceedings relating to the rights under this Directive. It is possible that victims are 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 in this Directive. Such protection is particularly relevant as regards the representatives of workers in the exercise of their functions.
- (45) With a view to further improving the level of protection of the rights provided for in this Directive, national equality bodies should **█** be competent in regard to issues ***relating to discrimination that fall within the scope of this Directive, including the task of providing independent assistance to victims of discrimination in pursuing their complaints.***

- (46) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining provisions that are more favourable to workers. *Allowing one parent to transfer to the other parent more than two months out of the four months of parental leave provided for in this Directive does not constitute a provision that is more favourable to the worker than the minimum provisions laid down in this Directive.* Rights that are already acquired on the date of entry into force of this Directive should continue to apply unless this Directive provides for more favourable provisions. The implementation of this Directive should neither be used to reduce existing Union law rights, nor constitute valid grounds for reducing the general level of protection provided to workers, in the areas covered by this Directive.
- (47) In particular, nothing in this Directive should be interpreted as reducing the rights provided for in Directives 2010/18/EU, 92/85/EEC and 2006/54/EC, including Article 19 of Directive 2006/54/EC.

- (48) *Micro, small and medium-sized enterprises (SMEs) as defined in the Annex to Commission Recommendation 2003/361/EC<sup>17</sup>, which represent the large majority of enterprises in the Union, can have limited financial, technical and human resources. In implementing this Directive, Member States should strive to avoid imposing administrative, financial or legal constraints in a manner which would amount to a disincentive to the creation and development of SMEs or an excessive burden to employers. Member States are therefore invited to thoroughly assess the impact of their implementing measures on SMEs in order to ensure the equal treatment of all workers, that SMEs are not disproportionately affected by the measures, with particular focus on microenterprises, and that any unnecessary administrative burden is avoided. Member States are encouraged to provide incentives, guidance and advice to SMEs to assist them in complying with their obligations pursuant to this Directive.*
- (49) *Any kind of family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, that is available under national law or collective agreements should count towards fulfilling the requirements of one or more of the types of leave provided for in this Directive and in Directive 92/85/EEC, provided that the minimum requirements of those directives are fulfilled and that the general level of protection provided to workers in the areas covered by them is not reduced. In implementing this Directive, Member States are not required to rename or otherwise change the different types of family-related leave that are provided for under national law or collective agreements and which count towards compliance with this Directive.*

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<sup>17</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.03, p. 36).

- (50) **█** Member States *are encouraged, in accordance with national practice, to promote a social dialogue with the social partners with a view to fostering the reconciliation of work and private life, including by promoting work-life balance measures in the workplace, establishing voluntary certification systems, providing vocational training, raising awareness, and carrying out information campaigns. In addition, Member States are encouraged to engage in a dialogue with relevant stakeholders, such as non-governmental organisations, local and regional authorities and service providers, in order to promote work-life balance policies in accordance with national law and practice.*
- (51) *The social partners should be encouraged to promote voluntary certification systems assessing work-life balance at the workplace.*

(52) 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 rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. 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, by facilitating the reconciliation of work and family life for workers who are parents, or carers.

To that end, this Directive provides for individual rights related to *the following*:

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

## Article 2

### Scope

This Directive applies to all workers, men and women, who have an employment contract or employment relationship *as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice.*

## Article 3

### Definitions

1. For the purposes of this Directive, the following definitions **■** apply:
  - (a) ‘paternity leave’ means leave from work for fathers *or, where and in so far as recognised by national law, for equivalent second parents*, on the occasion of the birth of a child for the purposes of providing care;
  - (b) ‘parental leave’ means leave from work *for parents* on the grounds of the birth or adoption of a child to take care of that child;
  - (c) ‘carers’ leave’ means *leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State;*

- (d) ‘carer’ means a worker providing personal care or support *to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State*;
- (e) ‘relative’ means a worker’s son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership;
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- (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 reduced working hours.

2. The reference to working days in Articles 4 and 6 shall be understood as referring to the full-time working pattern, as defined in the Member State in question.

A worker's entitlement to leave may be calculated proportionally to the worker's working time, in accordance with the working pattern specified in the worker's contract of employment or employment relationship.

## Article 4

### Paternity leave

1. Member States shall take the necessary measures to ensure that fathers *or, where and in so far as recognised by national law, equivalent second parents*, have the right to 10 paternity leave of 10 working days that is to *be taken* on the occasion of the birth of *the worker's child*. *Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.*
2. *The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.*
3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.

## Article 5

### Parental leave

1. Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of **■**-four months that is to be taken before the child reaches a specified age, *up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.*
2. **■** Member States **■** shall ensure that *two* months of parental leave cannot be transferred.
3. Member States shall establish *a reasonable* period of notice that is to be given by workers to employers where they exercise their right to parental leave. In doing so, Member States shall take into account the needs of both the employers and the workers.

Member States shall ensure that the worker's request for parental leave 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 to* 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>18</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 establish the circumstances in which an employer, following consultation in accordance with national law, collective agreements or practice, is allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer. Employers shall provide reasons for such a postponement of parental leave in writing.
6. Member States shall take the necessary measures to ensure that workers have the right to request that they take parental leave *in flexible ways. Member States may specify the modalities of application thereof.* The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing *within a reasonable period after the request.*

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<sup>18</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p.43).

7. *Member States shall take the necessary measures to ensure that when considering requests for full-time parental leave, employers shall, prior to any postponement in accordance with paragraph 5, offer, to the extent possible, flexible ways of taking parental leave pursuant to paragraph 6.*
8. Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.

## Article 6

### Carers' leave

1. Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of **■** five working days per year. Member States may determine *additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that* right may be subject to appropriate substantiation, *in accordance with national law or practice.*
2. *Member States may allocate carers' leave on the basis of a reference period other than a year, per person in need of care or support, or per case.*

## Article 7

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

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

## Article 8

### *Payment or allowance*

1. In accordance with national circumstances, such as national law, collective agreements or practice, and taking into account the powers delegated to *the* social partners, Member States shall ensure that workers who exercise their right to leave provided for in *Article 4(1) or Article 5(2)* receive a payment or an *allowance in accordance with paragraphs 2 and 3 of this Article*.
2. *With regard to paternity leave as referred to in Article 4(1), such payment or allowance shall guarantee an income at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law. Member States may make the right to a payment or an allowance subject to periods of previous employment, which shall not exceed six months immediately prior to the expected date of the birth of the child.*
3. *With regard to parental leave as referred to in Article 5(2), such payment or allowance shall be defined by the Member State or the social partners and shall be set in such a way as to facilitate the take-up of parental leave by both parents.*

## Article 9

### Flexible working arrangements

1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least ***eight years***, 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 as referred to in paragraph 1 ***within a reasonable period of time***, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request ***or for any postponement of such arrangements***.
3. When flexible working arrangements as 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 ***before the end of the agreed period*** where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

4. *Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.*

## Article 10

### Employment rights

1. Rights that have been acquired or that are in the process of being acquired by workers on the date on which leave provided for in Articles 4, 5 and 6 or time off from work provided for in Article 7 starts shall be maintained until the end of such leave *or time off from work*. At the end of such leave *or time off from work*, 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 ***provided for*** in Articles 4, 5 and 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 ***had they not taken the leave***.
3. Member States shall define the status of the employment contract or employment relationship for the period of leave ***provided for*** in Articles 4, 5 and 6, ***or time off from work provided for in Article 7***, including as regards entitlements to social security, ***including pension contributions***, while ensuring that the employment relationship is maintained during that period.

## Article 11

### 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 provided for in Articles 4, 5 and 6 ***or time off from work provided for in Article 7***, or that they have exercised ***the rights provided for*** 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 the dismissal of workers, on the grounds that they have applied for, or have taken, leave provided for in Articles 4, 5 and 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 *provided for* in Articles 4, 5 and 6, or have exercised the right to request flexible working arrangements as referred to in Article 9, may request the employer to provide duly substantiated reasons for their dismissal. *With respect to the dismissal of a worker who has applied for, or has taken, leave provided for in Article 4, 5 or 6*, the employer shall provide reasons for the dismissal in writing.

3. Member States shall take the measures necessary to ensure that where workers *who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for* in *Articles 4, 5 and 6* establish, before a court or other competent authority, facts capable of giving rise to a presumption that they *have* been dismissed on such grounds, it shall be for the employer to prove that the dismissal was based on other grounds.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to workers.
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member States.

## Article 13

### Penalties

Member States shall lay down *the* rules on penalties applicable to infringements 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, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. ■

## 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 for the purpose of enforcing compliance with the requirements laid down in this Directive.

## Article 15

### Equality bodies

*Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners,* 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 *all persons* without discrimination on grounds of sex, are competent with regard to issues relating to *discrimination* falling within the scope of this Directive.

## Article 16

### Level of protection

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive. █
2. *The implementation of this Directive shall not constitute grounds for justifying a reduction in the general level of protection of workers in the areas covered by this Directive. The prohibition of such a reduction in the level of protection shall be without prejudice to the right of Member States and the social partners to lay down, in light of changing circumstances, legislative, regulatory or contractual arrangements other than those in force on ...[the date of entry into force of this Directive], provided that the minimum requirements laid down in this Directive are complied with.*

## Article 17

### Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are brought to the attention of *workers and employers, including employers that are SMEs*, by all appropriate means throughout their territory.

## Article 18

### Reporting and review

1. By ... *[eight years after the date of entry into force of this Directive]*, Member States shall communicate to the Commission all information concerning the implementation of this Directive that is necessary for the Commission to draw up a report. That information shall *include available aggregated data on the take-up of different types of leave and flexible working arrangements, by men and women pursuant to this Directive, for the purposes of allowing the proper monitoring and assessment of the implementation of this Directive, in particular with regard to gender equality.*

2. The Commission shall submit the report referred to in paragraph 1 to the European Parliament and the Council. The report shall, if appropriate, be accompanied by a legislative proposal.

*The report shall also be accompanied by:*

- (a) *a study of the interaction between the different types of leave provided for in this Directive as well as other types of family-related leave, such as adoption leave; and*
- (b) *a study of the rights to family-related leave that are granted to self-employed persons.*

## Article 19

### Repeal

1. Directive 2010/18/EU is repealed with effect from... *[three years after 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 *set out* in the Annex.

- 2 *Notwithstanding the repeal of Directive 2010/18/EU pursuant to paragraph 1 of this Article, any period or separate cumulative periods of parental leave taken or transferred by a worker pursuant to that Directive before ... [three years after the date of entry into force of this Directive] may be deducted from that worker's parental leave entitlement under Article 5 of this Directive.*

## Article 20

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive *by... [three years after the date of entry into force of this Directive]*. They shall *immediately inform* the Commission *thereof*.
2. *Notwithstanding paragraph 1 of this Article, for the payment or allowance corresponding to the last two weeks of parental leave as provided for in Article 8(3), Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [five years after the date of entry into force of this Directive]. They shall immediately inform the Commission thereof.*

3. When Member States adopt the *measures referred to in paragraphs 1 and 2*, they shall contain a reference to this Directive or *shall* be accompanied by such a reference on the occasion of their official publication. *The methods of making such reference shall be laid down by Member States.*
4. Member States shall communicate to the Commission the text of the main *measures* of national law which they adopt in the areas covered by this Directive.
5. *The detailed rules and modalities for applying this Directive shall be established in accordance with national law, collective agreements or practice, as long as the minimum requirements and the objectives of this Directive are respected.*
6. *For the purposes of complying with Articles 4, 5, 6 and 8 of this Directive and with Directive 92/85/EEC, Member States may take into account any period of, and payment or allowance with respect to, family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available at national level which is above the minimum standards provided for in this Directive or in Directive 92/85/EEC, provided that the minimum requirements for such leave are met and that the general level of protection provided to workers in the areas covered by those Directives is not reduced.*

- 7 *Where Member States ensure a payment or an allowance of at least 65 % of the worker's net wage, which may be subject to a ceiling, for at least six months of parental leave for each parent, they may decide to maintain such system rather than provide for the payment or allowance referred to in Article 8(2).*
8. Member States may entrust *the* social partners with the implementation of this Directive, where *the* social partners jointly request to do so, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

#### 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 .....

*For the European Parliament*

*For the Council*

*The President*

*The President*

## Correlation table

Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.03.2010, p. 13)	This Directive
Clause 1(1)	Article 1
Clause 1(2)	Article 2
Clause 1(3)	Article 2
Clause 2(1)	Article 5(1)
Clause 2(2)	Article 5(1) and (2)
Clause 3(1)(a)	Article 5(6)
Clause 3(1)(b)	Article 5(4)
Clause 3(1)(c)	Article 5(5)
Clause 3(1)(d)	---
Clause 3(2)	Article 5(3)
Clause 3(3)	Article 5(8)
Clause 4(1)	Article 5(8)
Clause 5(1)	Article 10(2)

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Clause 5(2)

Article 10(1)

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Clause 5(3)	Article 10(3)
Clause 5(4)	Article 11
Clause 5(5) first subparagraph	Article 10(3)
Clause 5(5) second subparagraph	Article 8(3)
Clause 6(1)	Article 9
Clause 6(2)	Recital 25
Clause 7(1)	Article 7
Clause 7(2)	Article 7
Clause 8(1)	Article 16(1)
Clause 8(2)	Article 16(2)
Clause 8(3)	---
Clause 8(4)	---
Clause 8(5)	---
Clause 8(6)	---
Clause 8(7)	---