

May 2017

## Parental Leave Directive

*This briefing is one in a series of 'implementation appraisals' on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.*

### Summary

For several years, EU policies have been aimed at improving the working and living conditions of working parents and ensuring better reconciliation of their professional and private life. Different pieces of legislation promote the rights of working parents, such as Council Directive 92/85/EEC (Maternity Leave Directive), protecting pregnant workers and workers who have recently given birth or are breastfeeding, and Council Directive 2010/18/EU (Parental Leave Directive), establishing the leave conditions for male and female workers. In 2008, the European Commission submitted a new legislative proposal, seeking to modify the provisions of the Maternity Leave Directive. Given that after more than four years the co-legislators had still not been able to reach an agreement, the European Commission decided to withdraw the proposal in 2015. A further initiative was submitted in early 2017 within the European Pillar of Social Rights, this time seeking to repeal the Parental Leave Directive and to encourage a better work-life balance. It is the Parental Leave Directive that is the subject of this appraisal.

**EP committee responsible at time of adoption of the EU legislation:** Not applicable (more information on the [adoption procedure](#) available on EUR-Lex website).

**Date of adoption of original legislation in plenary:** Not applicable.

**Entry into force of original legislation:** 7 April 2010.

**Date of transposition:** 8 March 2012.

**Planned date for review of legislation:** Not provided for in the Directive.

**Timeline for new amending legislation:** [Annex I](#) of the [2017 Commission work programme](#) (CWP) includes new legislative measures on work-life balance under the European Pillar of Social Rights. The European Commission published a new proposal on 26 April 2017.

## 1. Background

The European Pillar of Social Rights establishes principles and rights aimed at encouraging and strengthening the EU social dimension and at promoting well-functioning labour markets.

There are three main components of the European Pillar of Social Rights:

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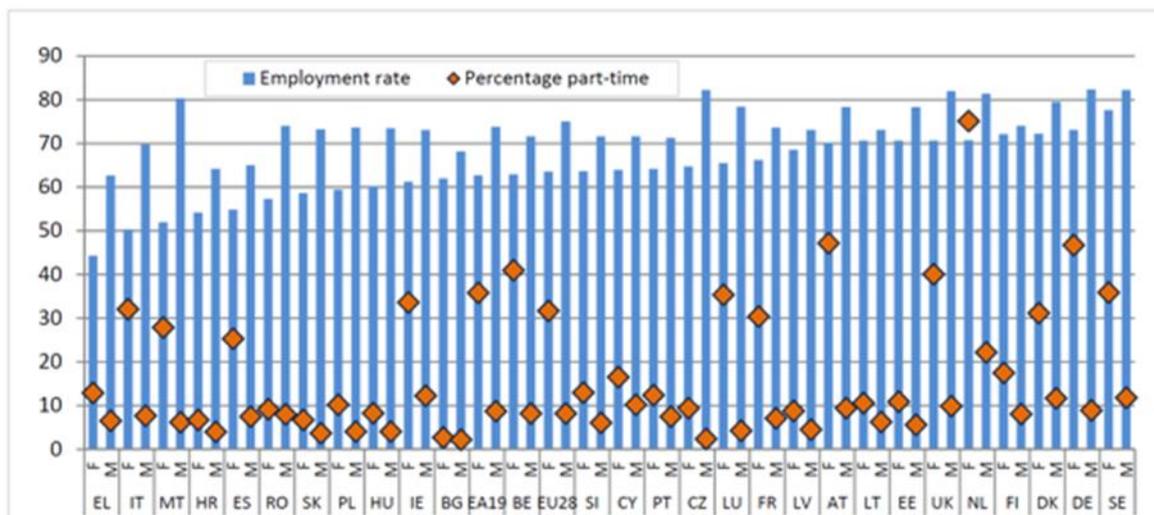
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- Equal opportunities and access to the labour market;
- Fair working conditions;
- Social protection and inclusion.

The European Pillar of Social Rights is seen as a joint responsibility of the EU institutions, Member States and social partners, implying common approaches and collective answers to the challenges faced by European societies and their world of work.

Addressing the work-life balance challenges is one of the deliverables included in the European Pillar of Social Rights. The issue can be considered from a dual perspective: on the one hand, the European legal framework needs to adapt to the new trends in work patterns (such as better reconciliation of professional and private life) and, on the other hand, the European Commission has to respond with specific measures to the expectation of encouraging and supporting women’s participation in the labour market. [Statistical data](#) show that women remain significantly under-represented in the labour market, especially those who have children.<sup>1</sup> Moreover, increasing labour force participation and raising the employment rate of women is also one of the objectives of growth strategies at European level. In 2014, the EU28 employment rate for women reached 63.5 % (compared to 75 % for men; 75 % is the headline target for both genders according to the [Europe 2020](#) strategy).

**Figure: Employment rate of the population aged 20-64 and percentage of part-time workers by gender (F/M) in 2014**



Source: European Commission, [European Semester Thematic Fiche Labour Market Participation of Women](#)

Finding a suitable balance between work and daily life is a long-standing item on the European Union's social policy agenda. [Directive 92/85/EEC](#) (Maternity Leave Directive) and [Directive 2010/18/EU](#) (Parental Leave Directive) are but two examples in this area.

This briefing focuses on the review of the Parental Leave Directive 2010/18/EU, in the light of the European Commission's new and broader approach, which seeks to address the current challenges of living and working conditions in relation to women's labour market participation, gender equality and the balance between personal and professional responsibilities for working parents. The 2010 Parental Leave Directive replaced [Directive 96/34/EC](#), following the adoption of a [revised Framework Agreement](#) on parental leave concluded by the [European social partners](#) on 18 June 2009.

<sup>1</sup> See also: M. Kiss, [Trends in female employment](#), European Parliamentary Research Service, European Parliament, 2015.

Council Directive 2010/18 sets out minimum requirements on parental leave for male and female workers, and related employment protection. The main elements of the Parental Leave Directive are:

- Workers are entitled to parental leave on the birth or adoption of a child.
- Equal treatment for workers, men and women, irrespective of their type of employment contract.
- Parental leave must be granted for at least four months as an individual right of both parents.
- Taking of leave.
- Return to work and non-discrimination.

**Parental leave:** 'employment-protected leave of absence for employed parents, which is often supplementary to specific maternity and paternity leave periods, and frequently, but not in all countries, follows the period of maternity leave.'

Source: [Organisation for Economic Co-operation and Development](#)

In its 2017 work programme, the European Commission committed to tabling several measures, legislative and non-legislative, to respond to the concerns about better work-life balance, especially after its decision, in 2015, to withdraw its 2008 [proposal](#), aiming to amend the Maternity Leave Directive, following over four years of fruitless negotiations between the co-legislators.

The European Commission submitted a new proposal on 26 April 2017 that seeks to repeal Directive 2010/18.

## 2. The Commission's new proposal on the work-life balance of parents and carers

The European Commission decided to address the challenges faced by working parents and carers through a 'comprehensive package of complementary legal and policy measures, which will reinforce each other'.<sup>2</sup> The new [proposal](#) puts forward several novelties aimed at improving working and living conditions across the EU. The general objective of the proposal is 'to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work' and, more broadly, to benefit citizens, business, Member States and the economy. Its specific objectives are:

- to improve access to work-life balance arrangements (for example leave and flexible working arrangements);
- to increase take-up of family-related leave and flexible working arrangements by men.<sup>3</sup>

On the one hand, the proposal encourages a better sharing of caring responsibilities between women and men by introducing new legislative measures, such as:

- Paternity leave (at least 10 working days of paternity leave around the time of birth of the child, compensated at least at the level of sick pay).
- Strengthening of parental leave (at least 4 months per parent, that cannot be transferred between parents, and compensated at least at sick pay level). Parents can take leave in flexible forms (full-time, part-time, etc.). Parents can take leave until their child is 12 years old.
- Introduction of carers' leave for workers caring for a seriously ill or dependent relative (5 days of carers' leave per year compensated at least at the level of sick pay).

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<sup>2</sup>European Commission [website: Employment, Social Affairs and Inclusion; Work-life balance](#).

<sup>3</sup>European Commission, 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\(2017\) 253 final](#), pp. 2 and 3.

- Flexible working arrangements for parents of children up to 12 and carers with dependent relatives (reduced working hours, flexible working hours, flexibility on the place of work).

On the other hand, Member States are encouraged to reach their objectives through several non-legislative measures, such as:

- ensuring accessible, affordable and quality formal care services,
- reducing tax and benefits disincentives for women to work more,
- making better use of European funds,
- raising awareness,
- enhancing monitoring.

### 3. EU-level reports, evaluations and studies

#### European Commission

##### [Roadmap \(2015\)](#)

Following its decision to withdraw the 2008 proposal amending Directive 92/85, the Commission published a roadmap in 2015 explaining the main reasons for a new legislative initiative in the field of work-life balance, namely:

- 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 or those with dependent relatives to better balance caring and professional responsibilities.

The European Commission also pointed out that the low participation of women in the labour market '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.'<sup>4</sup> At the same time, 'overall labour market participation and in particular also female labour market participation has been recognised as an issue at EU level and (...) 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'.<sup>5</sup>

##### [Implementation Report \(2015\)](#)

In 2015, The European Commission commissioned an external [study](#) on the implementation of Directive 2010/18. According to this study, the application of the directive varies in the Member States in terms of duration, possibility of part-time working, remuneration (or not), continuous or piecemeal character, child age limits, type of employment contracts. This is because the application of parental leave, as well as the conditions of access to it, are defined by national law and/or collective agreements.

As regards the implementation of Directive 2010/18, no major problems could be identified. At the same time, the analysis concluded that 'an integrated approach of EU law to the subjects of maternity protection and reconciliation of family and working life (rather than the separate approaches that result from the fact that parental leave is addressed by the social partners while pregnancy leave is addressed by the Commission), might contribute to more transparent and straightforward national systems in this area, which would also be easier to assess'.<sup>6</sup> The study also indicated an economic issue that should be addressed in the

<sup>4</sup>European Commission Roadmap, New start to address the challenges of work-life balance faced by working families, 2015, p.1.

<sup>5</sup>*idem*, p.3

<sup>6</sup> Report of the European Network of Legal Experts in the Field of Gender Equality, The Implementation of Parental Leave Directive in 33 European Countries, 2015, p.27.

future: 'when reading the national reports, it becomes evident that, more than the traditional stigma on the social roles of men and women that links care responsibilities predominantly to women, the payment of or compensation for the leaves is indeed the key factor in the practical use (the more equally shared use) of the leaves and working-time arrangements designed to facilitate the reconciliation between work and family life'.<sup>7</sup>

### European Parliament

In 2015, Policy Department C of the European Parliament's general secretariat, at the request of the Committee on Women's Rights and Gender Equality (FEMM), conducted a [study](#) on 'Maternity, paternity and parental leave: data related to duration and compensation rates in the European Union'. The study was carried out in relation to a possible revision of Directive 92/85 and collected data on the provisions for maternity, paternity and parental leave in the Member States. The study also analysed the relation between the duration of and the compensation rates during maternity leave and the provisions of paternity and parental leave.

As for Directive 2010/18, the analysis pointed out that 'the Parental Leave Directives, adopted on the basis of social partner agreements, were not able to guide all Member States in the transposition of effective parental leave'.<sup>8</sup>

In its 2015 [European Implementation Assessment](#) on gender equality in employment and occupation, produced for the Committee on Women's Rights and Gender Equality (FEMM), the European Parliamentary Research Service analysed, *inter alia*, the implementation of Directive 2010/18. Some of the key findings were that 'the Directive is implemented in a way that it is unlikely to change men's behaviour. Take-up rates for men depend on the availability of non-transferable entitlements and adequate financial compensation, as attached to the leave. There is a need for stronger monitoring of the Directive's implementation, including the impact assessment on men's behaviour (take-up rates)'.<sup>9</sup>

## 4. European Parliament's position/MEPs' questions

### 4.1 European Parliament resolutions

In its 2016 [resolution](#) on the application of Directive 2010/18, the European Parliament pointed out the need to promote better work-life balance for all parents, noted that the gender imbalance in taking parental leave persists, as well as the differences between Member States regarding the maximum duration, statutory form of parental leave and systems regarding pay during the leave period. The Parliament called on the Member States and the European Commission 'to guarantee that family rights assigned by public policies, including parental leave, are equal in terms of individual rights and equally accessible for both parents, so as to encourage them to achieve a better work-life balance and in the best interest of their children'. The European Parliament also expressed its support for an effective directive to address the challenges of a work-life balance.

In a [resolution](#) on the EU strategy for equality between women and men post 2015, the European Parliament also stressed the importance of equality in parental leave: 'the principle of equal treatment of women and men implies that there must be no discrimination whatsoever, be it direct or indirect, including on account of motherhood, fatherhood and the fact of shouldering family responsibilities'.

The European Parliament has also expressed its support and interest in legislative measures on women's participation in the labour market, gender equality and work-life balance through other related resolutions (on [maternity leave](#), [women's labour market participation](#), [female poverty](#) and [gender equality](#)).

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<sup>7</sup>*idem*, p.28.

<sup>8</sup>European Parliament, Maternity, paternity and parental leave: data related to duration and compensation rates in the European Union, 2015, p.86.

<sup>9</sup> European Parliament, European Implementation Assessment, Gender Equality in employment and education, Annex IV 2015, p.9.

## 4.2. Written questions by Members of the European Parliament

Members of the European Parliament have asked the Commission to initiate new legislative measures to encourage better reconciliation of professional and private life and for the Council to clarify its positions and/or intentions regarding the maternity leave directive.<sup>10</sup>

### [Written question by Vilija Blinkevičiūtė \(S&D, Lithuania\)](#), 22 November 2016

The Commission is asked when precisely they plan to come forward with a package of proposals on work-life balance and what specific measures the Commission is considering including in this package.

### [Answer given by Marianne Thyssen on behalf of the Commission](#), 14 March 2017

'The reconciliation of professional, private and family life is a wide-ranging concept that involves many different policies, such as family leaves, flexible working arrangements and formal care services.

The forthcoming "New Start" initiative for work-life balance is therefore considering a combination of different EU-level tools, both legislative and non-legislative, across a broad range of areas.

The Commission consulted the European social partners and a broad public consultation on work-life balance issues also ran between November 2015 and February 2016.

In line with its 2017 Work Programme, the Commission aims to bring forward a proposal in early 2017'.

### [Written question by Agnieszka Kozłowska-Rajewicz \(EPP, Poland\)](#), 30 November 2016

The European Commission is asked about its intentions to submit legislation on carers' leave (content and timing) as well as about the areas of action in which the social partners decided to negotiate on behalf of the Commission.

### [Answer given by Marianne Thyssen on behalf of the Commission](#), 16 September 2015

'The initiative to address the challenges of work-life balance faced by working families is presented in the Commission Work Programme 2017 as an initiative under the European Pillar of Social Rights(1).

In conformity with the Treaty, the Commission consulted the social partners on several possible legislative avenues, including carers' leave. The second phase consultation closed on 30 September 2016 and the social partners did not agree to enter into negotiations on any of the issues raised during the consultations.

The Commission is currently undertaking a thorough impact assessment in order to evaluate the costs and benefits of the possible measures mentioned in the Roadmap on the "New start to address the challenges of work-life balance faced by working families".

The Commission intends to come forward with a proposal on legislative and/or non-legislative measures in spring 2017'.

## 5. Consultations, petitions, citizens' questions

### 5.1. Consultations

Between November 2015 and January 2016, the EU social partners<sup>11</sup> could give their opinion on how to improve work-life balance and encourage women's participation in the labour market. This [first-phase consultation](#) was followed by a [second-stage consultation](#), launched on 13 July 2016. The results of this consultation process were considered by the European Commission when drafting the new proposal that was submitted on 26 April 2017.

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<sup>10</sup>The list of written questions presented in this briefing is not exhaustive. Other written questions linked to work-life balance, maternity/paternity/parental leave are: [E-000675-17](#), [P-008963-16](#), [P-005800-16](#), [E-005412-16](#), [E-006354-16](#), [E-002182-16](#), [E-011033-15](#), [E-008593-15](#), [E-007764-15](#), [E-007763-15](#), [E-011033-15](#), [E-010891-15](#), [E-010890-15](#), [E-008593-15](#), [E-007764-15](#), [E-007763-15](#), [E-007053-15](#), [P-006768-15](#), [E-011052-14](#), [E-010935-14](#), [E-010897-14](#), [E-006219-14](#).

<sup>11</sup>The [list](#) of social partners organisations consulted under Article 154 TFEU is available on the Commission website.

The European Commission also undertook a [public consultation](#) between November 2015 and February 2016, aimed at collecting opinions on the development and implementation of a range of possible tools at EU-level to support work-life balance. The Commission has made an overall assessment of the results and pointed out the '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'.<sup>12</sup>

Another [public consultation](#) ran between March and September 2016, being focused on the evaluation of the current EU social 'acquis' and on opinions on the principles identified in a preliminary outline of the European Pillar of Social Rights. To collect as many views as possible from experts and interested parties,<sup>13</sup> the Commission organised a 'very wide and far-reaching' process, including 'in-depth input through dedicated work streams, meetings and events at EU and national level, written input through position papers, an online survey and social media outreach. All in all, the number of **dedicated meetings and events at EU and national level amounted to over 60, involving more than 2 500 participants**. Social partners and civil society were given a prominent role in the consultation process, through targeted hearings and strategic dialogue meetings'.<sup>14</sup> Stakeholders provided around 200 position papers and more than 16 500 answers were received on-line (through the questionnaire).

## 5.2. Petitions

Since 2009, the Petitions Committee of the European Parliament has received several petitions dealing with work-life balance and maternity/paternity/parental leave. For example, in 2015 one petitioner claimed that Italian law does not appropriately preserve the right to parental leave, in violation of Council Directive 2010/18/EU. The Commission recalled that Directive 2010/18/EU sets minimum standards on parental leave, and as long as the minimum requirements of the directive on parental leave are met, there is no concern raised by the Italian legislation in this matter. The Commission concluded that an infringement of EU legislation could not be established in this case.

## 5.3. Citizens' Enquiries

Since 2015, the Citizens' Enquiries Unit ([Ask EP](#)) has received 10 questions from citizens on topics such as maternity leave/maternity benefits across the EU, gender equality, working conditions, work-life balance. Citizens were mainly interested in European legislation, provision of documents, application of EU law and dissemination of information.

## 6. European Economic and Social Committee

In its [opinion](#) of January 2017, the European Economic and Social Committee (EESC) welcomed the initiative of the European Commission to run a public consultation on the European Pillar of Social Rights. The EESC expressed its support for sustainable, effective and efficient social welfare systems as well as for social rights that should apply to all Member States. The future of work should be a key priority of the debate on the social pillar.

In May 2009, in an [opinion](#) on the Commission proposal modifying Directive 92/85, the EESC expressed its support for the initiative and for strengthening the protection of pregnant workers and workers who have recently given birth or are breastfeeding.

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<sup>12</sup> 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) 253 final, p.4.

<sup>13</sup> National authorities and parliaments, other EU institutions, social partners, civil society, academic and policy experts as well as citizens.

<sup>14</sup> European Commission, Report of the public consultation accompanying the document 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions establishing a European Pillar of Social Rights, SWD(2017) 206 final, 2017, p.4.

In 2015, the EESC [welcomed](#) the initiative of the Members of the Parliament's Committee on Women's Rights and Gender Equality calling on the Commission and the Council to find a solution to unblock the negotiations on the Maternity Leave Directive.

## 7. Other sources of reference

U. Jurviste, M. Prpic, G. Sabbati, [Maternity and Paternity Leave in the EU](#), European Parliamentary Research Service, European Parliament, 2016.

M. Kiss, [Parental Leave Directive: Towards a Revision?](#), European Parliamentary Research Service, European Parliament, 2016.

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European Parliament, [A new strategy for gender equality post 2015 – Workshop for the FEMM Committee](#), September 2014.

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J. Van Belle, [Paternity and parental leave policies across the European Union](#), RAND Europe, 2011.

S.B. Kamerman, P. Moss (eds.), *The politics of parental leave policies: children, parenting, gender and the labour market*, University of Bristol, 2009.

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