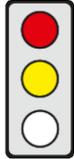


KEY ISSUES

Objective of the Directive: Women's participation in employment should be increased by expanding employee rights to paternity, parental and carers' leave as well as their rights to flexible working arrangements.

Affected parties: Employees with children and ill or dependent relatives, companies



Pro: (1) The right to flexible working arrangements may increase women's participation in employment.

Contra: (1) The assertion of rights to paternity, parental and carers' leave gives rise to losses in efficiency for companies. Small companies, in particular, have difficulty compensating for the temporary absence of employees.

(2) The rules on flexible rights to parental leave and flexible working arrangements should be more precisely worded to ensure that the interference with the freedom to conduct a business does not go beyond that which is necessary and reasonable.

The important passages in the text are indicated by a line at the side

CONTENT

Title

Proposal COM(2017) 253 of 26 April 2017 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

Brief Summary

► Context and objectives

- According to the Commission, the employment rate of women aged between 20 and 64 is significantly lower, at 64.3%, than that of men, which is 75.9%. The reason for this is principally the assumption of caring responsibilities. (p. 1)
- The gender pay and pension gap means that women in old age are at higher risk of "poverty and social exclusion" (p. 1).
- The aim of the Directive is to increase women's participation in employment by improving rules on work-life balance and increasing incentives for men to take family-related leave (p. 2).

► Subject matter and scope

- The Directive contains minimum requirements on (Art. 1 in conjunction with Art. 3):
 - paternal, parental and carers' leave and
 - flexible working arrangements for working parents and employees with seriously ill or dependent relatives.
- The Directive applies to all workers who "have an employment contract or employment relationship" (Art. 2 in conjunction with Recital 12).
- The Directive
 - replaces the proposal to revise the Maternity Leave Directive [COM(2008) 637; see [cepPolicyBrief](#), which was withdrawn by the Commission,
 - repeals the Directive "implementing the revised Framework Agreement on parental leave" [2010/18/EU] (Art. 19). The social partners concluded the Framework Agreement in June 2009.

► Paternal leave

- Currently, there are no minimum requirements for paternal leave under EU law (p. 11).
- In future, "fathers" will have the right to paternity leave of at least ten working days on the occasion of the birth of "a" child (Art. 4 (1) in conjunction with Art. 3 (a)).
- This right applies irrespective of the family status as defined in national law (Art. 4 (2)). Thus, it also applies to unmarried and same-sex couples (p. 11).

► Parental leave

- As before, workers have an individual right to parental leave of at least four months, of which in future at least four months (previously one month under EU law) cannot be transferred to the other parent (Art. 5 (1) and (2) in conjunction with Art. 3 (b)).
- Member States must specify the age of the child up to which workers can take parental leave. In future, this age must be at least twelve (previously eight under EU law) (Art. 5 (1)).

- Member States must establish a period of notice within which a worker has to notify his/her employer when exercising the right to parental leave (Art. 5 (3)).
 - Member States can make the right to parental leave dependent on length of service. This must not exceed one year (Art. 5 (4)).
 - Member States can define the circumstances in which an employer is allowed to postpone the granting of parental leave “by a reasonable period of time” because it would “seriously disrupt the good functioning of the establishment” (Art. 5 (5)).
 - Member States must ensure that workers can “request” parental leave on a part-time basis, in one or more blocks - separated by periods of work - or in “other flexible forms” (Art. 5 (6)). Employers must consider the requests “taking into account the needs” of both sides. Any refusal must be justified – in writing – (Art. 5 (6)).
- **Carers’ leave**
- Currently, there are no minimum requirements for carers’ leave under EU law (p. 12).
 - In future, workers - providing temporary or permanent “care or support” in case of a serious illness or dependency of a relative (child, parent, spouse or civil partner) - have a right to carers’ leave of at least five working days per year (Art. 6 in conjunction with Art. 3 (c) - (e)).
 - Member States can make the assertion of rights to carers’ leave dependent on proof of the medical condition of the worker's relative (Art. 6).
- **Adequate income during paternal, parental and carers’ leave**
- Currently, Member States decide whether to grant wage-replacement benefits during parental leave. In so doing, they must take account of income as a “relevant factor” for claiming parental leave (Clause 5 (5), Annex to the Directive [2010/18/EU]).
 - In future, employees claiming paternal, parental or carers’ leave, will receive wage replacement benefits at least equivalent to sickness benefit (Art. 8).
- **Right to employment following paternal, parental and carers’ leave**
- Currently, rights acquired or “in the process of being acquired” by an employee at the beginning of parental leave are maintained until the end of parental leave (Clause 5 (2) Annex to the Directive [2010/18/EU]). In future, this will also apply to paternal and carers’ leave (Art. 10 (1)).
 - Currently, employees have the right to return to the same job or an equivalent job at the end of parental leave (Clause 5 (1) Annex to the Directive [2010/18/EU]). In future, this will also apply to paternal and carers’ leave (Art. 10 (2)).
 - In future, employees will also “benefit from any improvement in working conditions” to which they would have been entitled during their absence (Art. 10 (2)).
- **Flexible working arrangements**
- Currently, on returning from parental leave, employees can only request changes to their working hours or conditions - e.g. more telework - for a set period of time (Clause 6 (1) Annex to the Directive [2010/18/EU]).
 - In future, employees with children or with seriously ill or dependent relatives will be able to “request flexible working arrangements” - such as a change in working patterns or a reduction in working hours - for caring purposes (Art. 9 (1) in conjunction with Art 3 (f)).
 - Member States must specify the age of the child up to which workers can request flexible working arrangements. In future, this age must be at least twelve. They can provide for a “reasonable limitation” on the duration of the flexible working arrangements.
 - Employers must consider the corresponding requests “taking into account the needs” of both sides. Any refusal must be justified (Art. 9 (2)).
 - On expiry of the agreed flexible working arrangements or “whenever a change of circumstances justifies it”, employees can request a return to the original working pattern. Employers must consider and “respond” to the corresponding “requests” taking into account the needs of both sides (Art. 9 (3)).
- **Non-discrimination and protection from dismissal**
- Currently, employees taking parental leave are protected against discrimination and dismissal (Clause 5 (4) Annex to the Directive [2010/18/EU]).
 - In future, protection against discrimination (Art.11) and dismissal (Art.12 (1)) also applies to those claiming paternal and carers’ leave as well as to flexible working arrangements.
 - In the event of a dismissal, the employer must, at the employee’s request, “provide duly substantiated grounds for the dismissal” in writing and in the case of court proceedings, prove that the dismissal was not due to the exercising of rights under the Directive (Art. 12 (2) and (3)).
- **Time off work for urgent family reasons**
- As before (Clause 7 Annex to the Directive [2010/18/EU]) employees have a right to time off work, for “urgent family reasons” where illness or accident requires their immediate presence (Art. 7).
 - Member States can restrict the duration of the right (Art. 7).

Statement on Subsidiarity by the Commission

The current law does not ensure equality between men and women. Many Member States either have no measures, or “insufficient” measures regarding paternity and carers leave as well as flexible working arrangements. In addition, provisions vary, e.g. as to the level of wage replacement benefits. Better work-life balance can therefore only be achieved by action at EU-level.

Policy Context

In its social policy, the Commission is striving for a “triple-A rating”. With this aim, in 2016, it submitted a draft for a pillar of European social rights [Communication COM(2016) 127; see [cepPolicyBrief 31/2016](#)] and in 2017, a corresponding Recommendation [C(2017) 2600]. This Directive consolidates Point 9 of the Recommendation relating to work-life balance.

Legislative Procedure

26 April 2017	Adoption by the Commission
Open	Debated by the Council and 1st reading in the European Parliament
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Employment Social Affairs and Integration (leading)
Committees of the European Parliament:	Employment and Social Affairs (leading); Rapporteur: TBA (EVP Group)
Federal Ministries:	Federal Ministry of Family Affairs (leading)
Committees of the German Bundestag:	Family Affairs (leading); Economic Affairs and Energy; Employment and Social Affairs
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Competence:	Art. 153 (1) (i), (2) (b) TFEU (social policy)
Form of legislative competence:	Shared competence (Art. 4 (2) (b) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The relatively low level of participation in employment by women with children or dependent relatives may be due to the lack of care facilities. Care facilities for children and dependent relatives offer the greatest potential for increasing women's participation in employment. The Commission fails - presumably due to its lack of legislative competency - to consider this point.

By contrast, **the rights specified in the Directive** to paternal and carers' leave, as well as the fact that the minimum parental leave cannot be transferred, make **at best a small contribution** to the Commission's goal of **increasing women's participation in employment**. Although expanding the amount of parental leave that cannot be transferred to the other parent, to four months, will increase the likelihood that men will make use of the right to parental leave, the still short duration means that the increase in women's participation in employment will at best be very limited. The same applies to the right to five days carer's leave per year. In addition: childcare or care for dependent relatives in the case of longer periods of illness will not be made any easier. In such cases, the partner with the lowest income will generally reduce their working hours. **The right to flexible working arrangements may** – depending on which “reasonable limitations on the duration” are introduced by Member States - **increase women's participation in employment**.

Impact on Efficiency and Individual Freedom of Choice

Employees' individual freedom of choice increases as long as national rights are not more far-reaching. Restricting the transferability of parental leave has the opposite effect. **The assertion of rights to paternal, parental and carers' leave gives rise to losses in efficiency for companies** and costs resulting e.g. from the employment of replacement personnel. **Small companies, in particular, with a small number of staff have difficulty compensating for the temporary absence of employees**, which leads to losses in efficiency in the affected company. Since the rights are limited to a few days, however, these effects are kept within limits and only have an effect in those Member States that do not yet have any comparable national rules. The right to wage replacement benefits increases social expenditure and thus the ancillary wage costs. Asserting rights to flexible working arrangements may result in more people taking up work thereby increasing overall economic efficiency.

Impact on growth and employment

Insofar as the planned provisions result in cost increases and inefficiencies, growth and employment will be impaired in the affected economies - in particular in southern and eastern Europe.

Impact on Europe as a business location

Insofar as the Directive results in cost increases and inefficiencies, Europe's desirability as a business location will fall in those Member States whose legal systems do not already have corresponding rules. An increase in the potential workforce as a result of more flexible working arrangements may, on the other hand, have a positive impact on places where manpower is scarce.

Legal Assessment

Legislative Competency

The Directive aims to increase the participation of women in employment by way of minimum requirements for the equal treatment of men and women in the workplace and may therefore be based on Art. 153 (1) (i) and (2) (b) TFEU. The provisions on an adequate income are covered by Art. 153 (1) (c) TFEU under which the EU can adopt minimum requirements for the social security of employees.

Compatibility with EU Law in other respects

The Directive provides a basis for claims by employees against their employers and thus represents an interference with the freedom to conduct a business protected under Art. 16 CFR. Increasing the participation of women in employment is a legitimate objective. Parental leave and flexible working arrangements are suitable at least for promoting the achievement of this objective. Paternal leave may strengthen a father's bond with his children thereby creating incentives for the take-up of parental leave, which may promote the participation of women in employment, at least indirectly. Carers' leave facilitates a balance between work and caring obligations and is also therefore basically suitable for promoting the achievement of the objective. Creating affordable day care for children and dependent relatives would be a less intrusive and significantly more suitable means of achieving the Commission's objective. Such an approach is not, however, available to the EU due to a lack of corresponding competency.

The rules on being able to take flexible parental leave and flexible working arrangements should be more precisely worded to ensure that any interference with the freedom to conduct a business does not go beyond that which is necessary and reasonable to achieve the objective. The same applies to the employer's right to reject the assertion of rights. To protect small companies from a disproportionate burden, these rights should only apply to companies with over a certain number of employees. Other rules should also be more precisely worded in the interests of legal certainty: In particular, with regard to scope, the distinction between "employment relationship" and "employment contract" should be more precisely defined. In addition, a definition of who is regarded as the "father" of "a" child is required because the right to paternal leave applies irrespective of the family status as defined in national law.

Impact on German Law

The Federal Law on Parental Leave and Child Benefit (BEEG) as well as the Law on Part-Time Work and Fixed-Term Employment will have to be brought into line with the Directive. Under the BEEG, 24 months parental leave can be taken up until the child's eighth birthday. In future, under the Directive, at least four months parental leave can be taken up until the child's twelfth birthday. In addition, the BEEG must be amended so that child benefit corresponds not to 67% of net income but to the level of sickness benefit, which is 70% of gross income.

Conclusion

The rights specified in the Directive make at best a small contribution to increasing women's participation in employment. The right to flexible working arrangements may increase women's participation in employment. The assertion of rights to paternity, parental and carers' leave gives rise to losses in efficiency for companies. Small companies, in particular, have difficulty compensating for the temporary absence of employees. The rules on flexible rights to parental leave and flexible working arrangements should be more precisely worded to ensure that the intervention in the freedom to conduct a business does not go beyond that which is necessary and reasonable.