Assessment of the EU Work-life balance Directive by COFACE Families Europe

New social rights, consolidation of existing social rights, and some missed opportunities

15th March 2019

#IwantWorkLifeBalance

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I. Background: A road full of hurdles

COFACE Families Europe has been intensively promoting and advocating for specific EU measures on Work-Life Balance for years and has campaigned over the last decade to EU law-makers highlighting the challenges that families and carers face in reconciling their professional and private life.[1] COFACE has supported the notion of work-life balance for **all**, based on measures that tackle the stereotypical vision of "traditional" and old-fashioned distribution of roles, where women are caregivers and men are the breadwinners.

We have also advocated for an intergenerational approach to work-life balance policies, considering needs across the lifecycle not only of young families (working parents) but also adults with ageing parents or family members with disabilities (working carers). Measures addressing these needs are essential to achieving the 2030 Sustainable Development Goals, especially goals 3 (health and well-being) and 5 (gender equality).

Moreover, the importance of *time* for families should be underlined, as lack of time and stress are correlated. Many people find it difficult to strike a balance between work and family demands, with proven links between Work-Family conflict and burnout factors.[2]

Equality between women and men, and sharing of family care responsibilities, is a cornerstone of the reconciliation of family and professional life. This can only become a reality through comprehensive policies based on a mix of **Resources, Services and Time** to support families and give them real options for work-life balance.[3]

The agreement on the EU work-life balance directive adopted on 24th January 2019 [4] covers aspects of **Time** (family leaves and flexible working arrangements) and some of the **Resources** (through the adequate payment for certain leaves), and also paves the way for future action on access to **Services.**

[1] http://www.coface-eu.org/campaigns-2/work-life-balance/

[2] "Burnout in the workplace: A review of data and policy responses in the EU", Eurofound, 2018.
"Position Paper on the proposal for a Directive on Work-Life Balance for Parents and Carers", Mental Health Europe, 2017

[3] "Families on the edge: building a comprehensive European Work-Life Balance reality", COFACE Position Paper, March 2017

[4] http://europa.eu/rapid/press-release_STATEMENT-19-424_en.htm

Here is an overview of the key elements of the Directive.

Provision of the Directive	Current EU law	Provisional agreement between European Parliament and Council
Paternity leave	No minimum standards at EU level	• 10 working days of paternity leave for fathers • Remunerated at least at the level of sick-pay
Parental leave	• 4 months per parent, out of which one month is non-transferable between parents • No minimum standards on allowance/payment	• 4 months per parent, out of which 2 months are non-transferable between parents and remunerated at adequate level by Member States
Carers leave	No minimum standards at EU level	• At least 5 working days with additional flexibility on how to allocate them • No provisions on remuneration
Flexible working arrangements	• Right to request reduced and flexible working hours by parents upon return from parental leave • Right to request part-time work for all workers	Right to request by parent of children up to at least 8 years old and carers the following FWA: reduced working hours, flexible working hours, tele-work

The road to reach this agreement was uneasy and full of obstacles. After several years of blocking of the proposal for the revision of the EU Maternity leave directive[5], the European Commission launched in April 2017 a Work-Life Balance Package, composed of a proposal for a Directive and a Communication. This package was very much in line with the "European Reconciliation Package" of COFACE adopted in 2015 and based on the needs of families[6]. In June 2018, despite various hurdles[7], the Council adopted its position on the Directive under the Bulgarian Presidency of the EU. The following month, the European Parliament adopted its position on the Directive. Both co-legislators received the mandate to enter negotiations, via the Trilogues.[8]

The Trilogues lasted 5 months during the Austrian and Romanian presidencies of the EU. COFACE, as the leader of the Work life balance coalition of NGOs, monitored the whole process closely.[9] Finally, on 24th January 2019, the Council and the Parliament reached an agreement on the Directive, which offers clear improvements for families, carers and strengthens employment rights. In a first reaction, COFACE stated clearly that the expectations of families have not been fully met but that the agreement is still an important step in the right direction for the realisation of the European Pillar of Social Rights, creating new social rights and consolidating existing rights.[10]

During the next month, it is expected that the co-legislators both approve the agreement[11], which will then kick-off the transposition phase of the Directive into national legislation. While our COFACE network will require more time for country impact assessments, this paper offers a first overall evaluation and highlights the opportunities for advancement of rights for working parents and working carers enshrined in this Directive.

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[5] Maternity leave is regulated in the EU with Directive 92/85/EEC. This Directive provides for the obligation of at least 14 continuous weeks of maternity leave, two weeks of which are compulsory before or after childbirth. In 2008, the Commission proposed an amendment to extend the number of weeks, but the Council of the EU never adopted a position on this directive, thereby blocking the legislative process. It stalled until 2015 when the Commission finally decided to withdraw it.

[6] http://www.coface-eu.org/resources/european-reconciliation-package/

[7] In April 2018, we issued an Open Letter by 50 European and national organisations urging France to stop blocking the legislative process on the Directive. http://www.coface-eu.org/europe/lettre-ouverte-m-le-president-macron-passez-a-lacte/

[8] COFACE launched different assessments of the Commission's proposal (April 2017) and the Council's position (June 2018).

[9] See for example, "Listen up – Here is what voters want from the EU Work-life balance Directive", 5 November 2018

[10] "Provisional agreement reached by EU co-legislators on work-life balance measures", 24th January 2019, http://www.coface-eu.org/europe/breaking-news-provisional-agreement-reached-by-eu-co-legislators-on-work-life-balance-measures/

[11] In February 2019, EU Member States' representatives in the Council of the EU (COREPER) endorsed the provisional agreement on the Directive. As for European Parliament, following its approval of the Directive in the Employment Committee on 26th February with a landslide majority, the next step is the approval by the Plenary Session in March-April 2019.

II. Assessment of the Directive

The Directive is founded on key articles of the European Union Treaties and the EU Charter of Fundamental Rights. This includes Article 153 of the TFEU on equality between men and women in the labour market, Article 3 of the TEU on equality between women and men, Articles 23 (equality between women and men) and 33 (reconciling work and family life) of the Charter of Fundamental rights of the EU.

Moreover, it is the first legislative proposal that follows the proclamation of the European Pillar of Social Rights in November 2017, which aims to develop a robust social dimension of the EU. The Directive is an important step forward in the consolidation of existing rights, and the establishment of new ones. As the agreement mentions, "*this Directive builds, in particular, upon the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights*" (Recital 15).

This assessment highlights how the Directive paves the way for a strengthening of European values, examines the new minimum standards on paid family leaves (paternity, parental, carers), considers the employment rights and right to request flexible arrangements which hold potential to change workplace culture; and finally underlines some derogation clauses which require further assessment.

a. Strengthening European values

First of all, the different definitions in the Directive are aligned with legal texts that the EU has subscribed to and in line with values of **gender equality, social inclusion, diversity and non-discrimination.**

The Directive refers to work-life balance policies as important "*to achieve gender equality by promoting the participation of women in the labour market, the equal sharing of care responsibilities between men and women, and closing gender gaps in earnings and pay.*" (Recital 6). This is in line with SDG 5 and at the core of COFACE's vision, namely that gender equality in the labour market goes hand in hand with gender equality in the family. **Closing the gender *care* gap** is a key priority for our network and precondition to close the gender pay gap and gender pension gap. Society has changed, families have different forms and needs, more and more families are dual earners. More men want to have the opportunity to take up an important caring role for their children and family members. This Directive is an important step in the right direction to address these needs.

COFACE welcomes a definition of the right to paternity leave which takes account of one-parent families, recomposed families and rainbow families with the inclusion of "*equivalent second parent*" where and in so far as recognised by national law (Articles 3 and 4), **acknowledging family diversity in the 21st century**. For instance, single parents and mothers in recomposed families, who are often in more vulnerable situations should be able to choose a person in their entourage to whom the paternity or parental leave could be transferred, allowing them to share care responsibilities.

This right to paternity leave is granted irrespective of the marital or family status.

The diversity of families and their needs is also highlighted in this directive through the introduction of guidelines to take in account families with special needs and situations: "*Member States are encouraged to assess if conditions of access and detailed arrangements of paternity and carers leave, and flexible working arrangements should also be adapted to special needs, such as those of single parents, parents with a disability or parents of children with a disability or long-term illness, adoptive parents as well as to special situations, such as multiple births and premature births*" (Recital 37). We fully agree with the recognition of the need for both universal measures for all families and specific measures for **families in vulnerable situations,** and this should be further operationalised in the transposition of the Directive in national legislation.

COFACE considers that the Directive has moved in the right direction by granting a European minimum right to carers' leave. However, we find the eligibility too limited as it only focuses on the caring for a son/daughter, mother/father, spouse/partner, or a person living in the same household (Article 3). Although we regret this narrow definition, we welcome the clear recommendation in the Directive to **enlarge the definition of relative**: "*Member States are encouraged to make the right to carers' leave available for additional relatives such as grandparents and siblings*." (Recital 27). This is in line with the intergenerational and diverse nature of families today. Furthermore, with increasing mobility of workers across Europe, and with a clear EU will to support mobility, it would be short-sighted for national legislation to limit access to carers' leave to first-degree relatives who are, in increasing numbers, living in different cities or countries.

Finally it is important to highlight that the Directive has been aligned with **human rights**, especially with international treaties like the UN Convention for the Rights of Persons with Disabilities (UNCRPD) signed and ratified by the EU in 2010, and the UN Convention for the Rights of the Child (UNCRC), which celebrates its 30th anniversary this year. In relation to the UNCRPD, the notion of "*dependency*" was removed from the Commission proposal and replaced by "*persons with care or support needs*" (Article 3). As for the UNCRC (signed and ratified by all the EU countries), there is an explicit reference to it under Recital 5 in relation to shared parenting: "*The Convention provides, inter alia,*

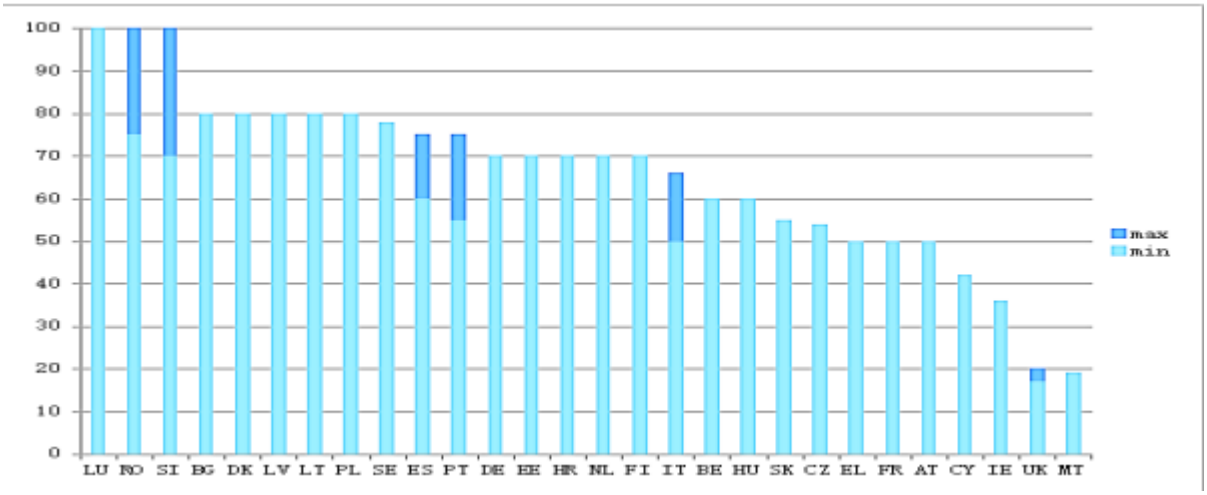
*in its Article 18.1 that **both** parents have the common responsibilities for the upbringing and development of the child and that the best interests of the child should be the parents' basic concern."*

b. New European standards for paid family leaves

The Directive introduces the right to ten working days of **PATERNITY LEAVE** around the birth of the child paid at least at national sick-leave level (Article 4). No period of work qualification is required to *access* this right, however the *payment* of this leave may be made subject to previous employment (not more than 6 months) as stated in Article 8.1 of the Directive.

Member States can determine if the leave is to be taken in "*flexible forms*" and "*partly before or only after the birth of the child"*. It also includes the notion of "*equivalent second parent*", which paves the way to open the eligibility of the leave to the mother's partner and does not restrict the eligibility to fathers only. This must ensure the right to paternity leave to rainbow, recomposed families, and one-parent families.

The decision of introducing a European payment threshold of at least sick leave level is a decision that COFACE welcomes to boost gender equality policies, and to ensure adequate income replacements for paternity leave. Yet while this is a good benchmark, sick pay level varies greatly across Member States (Graph 1) so that special attention should be paid in transposition into national legislations, to ensure adequate levels of payment of paternity leave.

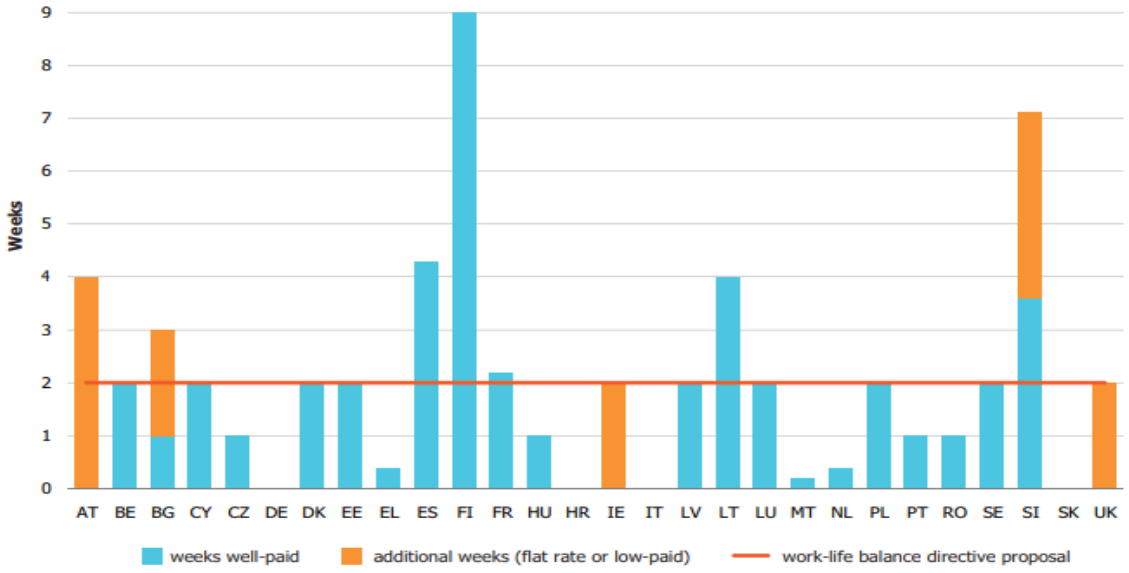


***Graph 1**: Sickness benefit replacement levels, EU28, 2015*[12]

[12] "Sick pay and sickness benefit schemes in the European Union", European Commission, October 2016

In fact, Recital 30 of the Directive encourages governments to align paternity leave on maternity leave payment levels: "*Considering that paternity leave pursues a similar objective as maternity leave when it comes to creating a bond between the parent and the child, Member States are encouraged to equalise the payment or allowance for paternity leave to the payment or allowance granted for maternity leave at national level.*" This statement is in line with COFACE's position, which advocates for adequately paid leaves in order to ensure take-up by all families and especially those who need them most.

This Directive will have a direct impact on Member States that would need to harmonise their legislation to fulfill the requirements, either by introducing the leave, or by spreading the duration of leave to minimum ten working days. So far, 17 Member States fulfill the suggested ten working days' paternity leave at the time of the child's birth. On the other hand, only 13 of these countries offer ten working days of "*well-paid*" paternity leave[13] (Graph 2).



***Graph 2**: Paternity leave levels, EU28, 2017*[14]

The EU Commission defines "well-paid" paternity leave at least 66 % of previous earnings. The Commission underlines that below this rate, a risk of a low wage trap could be created.[15] National reforms are underway in certain Member States which means these figures will require an update and further assessment e.g: In The Netherlands from the 1st July 2020, paternity leave

[13] The 13 Member States are the following: Belgium, Cyprus, Denmark, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Poland, Spain, Sweden and Slovenia. The four remaining Member States that fulfill the suggested ten working days' paternity leave at the time of the child's birth but do not provide "well-paid" paternity leaves are Austria, Bulgaria, Ireland and the UK.

[14] "Paternity and parental leave policies across the European Union. Assessment of current provision", European Commission, 2018

[15] "Paternity and parental leave policies across the European Union. Assessment of current provision", *op.cit*.

reforms will give the partner of the mother 1 week paid at 100% and 5 weeks paid at 70%.[16]

It is important to note that, as a result of negotiations between the co-legislators to reach an agreement, some countries will benefit from a derogation (Article 20.7). This will be addressed further under section d below.

As regards **PARENTAL LEAVE,** the Directive maintains the right of each parent to at least 4 months of parental leave to be taken full-time, part-time or needs-based for each child up to the age of 8 years old.[17] It extends from **one to two non-transferable months** of parental leave. Moreover, the two non-transferable months must be paid at **adequate level**, with the payment to be determined by national governments (Article 5). This new European standard mixing non-transferability and pay must pave the way for an increase in the women's employment rate due to their higher availability in the job market and higher involvement of fathers as carers , as stated in Recital 26: "*Relevant studies demonstrate that Member States that provide a significant portion of leave for fathers and pay the leave at a relatively high replacement rate tend to experience higher take-up rates for fathers and a positive trend in mothers' employment rate*".

However, it is a missed opportunity that the Directive does not refer to a *European* payment threshold (e.g. like sick leave level for paternity leave) for the whole period of the minimum four months' parental leave. The EU Work-life balance alliance of NGOs supported the European Parliament's proposal for a 78% threshold for the income replacement rate[18], and payment of leaves remains fundamental to address poverty. Article 8.2 stipulates that "*such payment or allowance shall be set in such a way as to facilitate the take-up of parental leave by both parents*". This reference and the fact of introducing guidelines for payment that allows "*decent living standards*" (Recital 31) shows the importance of payment to boost the effectiveness and take-up of parental leave in promoting work-life balance for parents with middle and low incomes. This is not the case where parental leave is currently unpaid or paid at very low rates. Furthermore, the payment can decrease the risk of poverty and the gender pay gap in families with children,[19] as a recent European Parliament report shows.

The introduction of adequate minimum standards of income replacement and non-transferability are essential measures to promote men's uptake of leaves. The number of fathers taking a leave period is still very low. The two key reasons for low involvement of fathers are social and economic. On the one hand, the culture of presence/availability at the workplace for men

[16] https://www.rijksoverheid.nl/actueel/nieuws/2018/12/19/wat-verandert-er-op-1-januari-2019
[17] See 2010 EU Directive on Parental Leave https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF
[18] "Listen up – Here is what voters want from the EU Work-life balance directive", *op.cit*.
[19] European Parliament Resolution of 15 November 2018 on care services in the EU for improved gender equality

and stereotypical division of roles, where men are breadwinners and women carers, are elements that work as disincentives for men's involvement in family and care responsibilities. In 2016, almost 9 out of 10 mothers in the EU provided daily care for their children, compared to some 6 out of 10 fathers.[20] In number of hours, the care gap is even more evident: fathers spend an average of some 20 hours per week for the care of their children, while the mothers dedicate almost twice as much. On the other hand, with a gender pay gap at 16%[21], it is cheaper for a family to renounce a woman's income instead of the man's. This inequality has a €370 billion yearly cost for the EU[22] and jeopardises women's professional careers.

A recent Eurofound report shows that **uptake of parental leave is uneven throughout Europe.** In Latvia, for example, the number of fathers taking parental leave dropped significantly following changes to parental benefits and the impact of the economic and financial crisis triggered in 2008. An increase in parental leave uptake by fathers was noted in Portugal, Italy, Lithuania, Finland, as well as in Estonia and Slovakia (but in those two countries the levels of uptake remain consistently low). Uptake of parental benefits by fathers remains below 10% in Bulgaria, Croatia, The Czech Republic, Hungary, Slovakia and Spain. One of the obstacles highlighted by the Eurofound report is the design and features of the leave: notably the level of compensation rates, but also the extent to which leave can be taken on a flexible basis.[23]

The Directive clearly mentions the need for adequate payments of parental leave to encourage workers to take the leaves. (Article 8, Recitals 30 and 31). This will not only nurture Work-Life Balance but also have an important **economic impact.** According to some studies, adequate payments of parental leave could boost the EU GDP by somehow € 24 Bn between 2015 and 2055[24]. However, this falls short if compared with the expected € 112 Bn with a Directive including payment of parental leave at least at sick pay level, and with an increase of the age of the child from 8 to 12 years to take the leave[25], which corresponds to what COFACE had been advocating for.[26]

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[20] "Progress in paternity and parental leave for fathers – Are baby steps enough?", Eurofound, 2018 **https://www.eurofound.europa.eu/publications/blog/progress-in-paternity-and-parental-leave-for-fathers-are-baby-steps-enough**

[21] A woman is around four times more likely than a man to work part-time. "Work-life balance for all: what are the benefits?", European Commission, February 2019

[22] *Ibid.*

[23] "Parental and paternity leave –Uptake by fathers" Eurofound, 2019

[24] "Commission Impact Assessment on the Proposal for a Work-Life Balance Directive", European Commission, April 2017

[25] I*bid.*

[26] "Families on the edge: building a comprehensive European Work-Life Balance reality",*op.cit.*"Assessment of the European Commission Work-Life Balance package, June 2017; "Assessment of the Council position on the EU Work-Life Balance Directive", June 2018.

Unfortunately, **the requirement of a length of service of up to one year,** as referred to in Article 5.4 of the Directive, reduces eligibility for parental leave which limits the impact of this piece of legislation. Young people are among those who are most likely to be employed with temporary and atypical contracts, with low job stability. Asking a length of service of one year, even if the one year can be the sum of shorter contracts with the same employer, means not recognising the changes of the labour market in the past couple of decades and, de facto, reducing the chances for young parents to enjoy their rights.

According to Article 5.6, Member States can determine if the leave can be taken in flexible forms (e.g. reduction of working hours) which allows workers to stay connected to the labour market. **Flexibility is what families want and need.** This is a positive measure not only for workers, but also for employers who would not have to replace workers for blocks of time. Finally, employers need to justify in writing any kind of postponement of parental leaves.

It is important to note that, as a result of negotiations between the co-legislators to reach an agreement, some countries will benefit from a derogation, as indicated in Article 20.7. This will be addressed further under section d below.

The Directive introduces a **CARER'S LEAVE SCHEME** of 5 days per year per worker and encourages Member States to make the right available to care for siblings and grandparents (Recital 27) as well as mother/father, son/daughter, spouse/partner (Article 3). While this effectively introduces a new minimum European right to carers leave, and gives visibility to carers (who are still an invisible workforce in many EU countries[27]), this part of the Directive falls short of COFACE expectations.

We had called for the introduction of an EU Directive on carers' leave based on some key principles: it should be paid at least at the level of sick leave and carers should have the choice to take the leave full-time, part-time or based on specific needs. While the flexibility in taking the leaves referred to in the Directive (Articles 6 and 9) corresponds to what COFACE had been advocating, we had hoped for an extension of the number of days of carers' leave beyond 5, and counted on an adequate payment threshold for all countries.[28]

COFACE therefore regrets that the Directive does not mention any threshold for the level of payment for carers leave in Article 8 as it does for paternity and parental leaves. The fact of granting an income replacement would have positive economic impacts: not only would it bring a higher stability in the job market (by reducing loss of employment linked to caring duties) mainly for

[27] "Who cares? COFACE Study on challenges of family Carers", 2017, http://www.coface-eu.org/wp-content/uploads/2017/11/COFACE-Families-Europe_Study-Family-Carers.pdf

[28] "Assessment of the European Commission Work-Life Balance package", June 2017

female older workers with low incomes, but forecasts also show that such investments would raise the EU GDP by €40 Bn by 2050.[29]

On the other hand, it is important to underline that Recitals 29 to 31 of the Directive offers clear guidelines to encourage adequate payment of the leaves, which could have positive impacts for families in vulnerable situations, also nurturing a more gender-balanced use: "*Whereas the decision whether to provide a payment or allowance for carers' leave remains with the Member States, they are encouraged to introduce such payment or allowance in order to guarantee an effective use of the right to the leave by workers with caring responsibilities, in particular men".*

While many EU countries already have a system for carers leave, the transposition of the directive should be an opportunity to review the systems, ensuring a mix of short-term and long-term leaves are provided, to fulfil the needs of the person cared for. The person in need of care should be allowed to choose his/her carer, and this person should be entitled, even if he/she is not a first degree relative or family member at all to access the carers' leave scheme. Special awareness-raising actions should be initiated to promote men's take up of carers' leave.

In the transposition of this right, we would encourage Member States to reform care systems upwards, to further prepare European societies for demographic changes and the effects of an ageing population. Introducing a minimum right to carers' leave is a key part of the answer, but needs to be supported by the provision of quality, accessible and affordable services for older people and persons with disabilities in the community. Leaves should not be designed to provide an alibi for not creating a service infrastructure.

[29] "Commission Impact Assessment", *op.cit.*

c. Employment rights and flexible working arrangements: a change in work culture ahead?

Work-life balance is not only to be achieved through family leaves. Employment rights and flexible working arrangements are an essential part of the equation. The Directive has the merit of not only maintaining[30] but extending workers' rights, allowing them to better reconcile professional and private life with the following key elements.

The Directive enlarges the possibilities of the right to request Flexible Working Arrangements (FWA) by extending the right to working carers, and not only for working parents (Article 9). Moreover, working parents have the right to request FWA until the child reaches the age of 8. Granting carers the right to take FWA shows a move in the right direction, proving the understanding and willingness of the European Union to move towards a more comprehensive and life-cycle approach to Work-Life Balance. It is important to note however, that Member States can define the conditions and the reference period to access to this right (e.g. they may introduce up to six months qualification period). While this is a "softer" right than the family leaves in the Directive (employers may refuse or postpone access to flexible work arrangements, with justification), this could lead to a potential change of working culture and patterns in the EU and, at the same time, increase employees' productivity, motivation and professional progression.[31] The *types* of FWA are not mentioned in the Articles of the Directive, but the Recitals explicitly mention potential flexible working arrangements for family leaves, which can be taken in flexible forms, in blocks, through reduced working time, remote working arrangements, part-time, and more. (Recitals 19, 21, 34). Last but not least, the Directive encourages the right to return to original working patterns before the end of the agreed period of leave, a measure which COFACE believes that may benefit a high number of families.

The impact of the economic crisis and its aftermath have increased the risk of precariousness. The number of temporary, marginal part-time and involuntary part-time contracts have increased and standard employment has decreased in the EU. Altogether self-employment and non-standard forms of work represent a significant share of the labour market. In 2016, 14% of the employed persons in the EU were self-employed, 8% were full-time temporary employees, 4% were part-time temporary employees, 13% were part-time permanent employees and 60% were employees with a full-time permanent

[30] Recital 28 of the Directive: "(…) *all workers should maintain their right to take time off from work without loss of employment rights acquired or in the process of being acquired* (…)" and Art.10: "*Rights acquired or in the proves of being acquired by workers (…) shall be maintained (…)At the end of such leave or time off from work, those rights (…) shall apply*"

[31] "Work-life balance for all: What are the benefits?, *op.cit.*

contract.[32] In times of job insecurity in Europe, where for many workers the alternative would be structural unemployment, the Directive goes in the right direction by being applied to workers with different kinds of employment contracts or relationships (part-time, temporary, fixed-term contracts), as highlighted in Recital 17 and Article 2 of the Directive. The Directive strengthens social rights and working conditions, aligning them with the European Social Pillar of Rights.[33] It must be noted that while the Directive does not apply to self-employed workers, the European Commission must carry out a "study on the rights to family leave granted to self-employed." (Article 18.2b).

On top of that, the Directive reinforces workers' rights during the different leaves by protecting them against any potential change in the national laws, abuse from employers, discouragement[34] or any kind of possible lowering condition when they return to their job positions, especially to women (Article 10 and Recitals 38 and 40). We consider this essential, given that a recent Eurobarometer survey on work-life balance indicates that almost three workers out ten feel that they are discouraged from taking family leave by managers and supervisors. One out three workers claims that making use of flexible working arrangements has a negative impact on their career.

The Directive introduces penalties or disincentives to actions which could jeopardise these rights such as non-discrimination and asking for justification in case of potential abuse from the employer, including for leaves, in writing (Articles 5, 11 to 14, Recitals 41 and 43). COFACE regrets the limits of the Directive, which does not include the obligation for employers to respond in time and in writing to the employee in relation to flexible working arrangements.

[32] See Proposal for a Council Recommendation on access to social protection for workers and the self-employed, European Commission, 2018
[33] Principle 12 of the European Pillar of Social Rights: "Social Protection of Workers"
[34] "Eurobarometer on Work-Life Balance", June-July 2018

d.Derogation clauses: flexibility for countries with higher standards

As COFACE previously stated[35], the Directive certainly goes in the right direction to fulfill the needs of families and workers of the 21st century, but our expectations have not been fully met. The final text was a missed opportunity to harmonise welfare standards to pave the way for a truly European Social Union as it only sets up minimum requirements for Europe's families. COFACE was advocating for higher minimum standards. The Directive fails too to **harmonise the payment levels for the leaves** across the EU, as there are only minimum thresholds for paternity leave payment, while for parental leave the adequate payment applies to two months only with the decision in the hands of Member States, and for carers leave there is only a recommendation for adequate payment which again is left to the Member States to determine.

Furthermore, Recital 49 of the Directive shows flexibility for countries which have significantly higher standards in duration and payment of family leaves: *"Any kind of family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available under national legislation and/or collective agreements should count towards fulfilling the requirements for one or more of the leaves foreseen in this Directive and Directive 92/85/EEC, provided that all minimum requirements established therein are met and that the general level of protection afforded to workers in the field covered by these Directives is not reduced. In this case, when implementing this Directive, Member States need not rename or change the different types of family leave that are provided for under national legislation and/or collective agreements and which are used towards compliance with this Directive."*

This notion is specified in some **derogation clauses: Article 20.7.** This means that some countries will be able to take from existing leaves in order to meet the minimum requirements of the Directive, without changing their systems.

As previously mentioned, **Article 20.7** mentions derogations for some Member States related to paternity leave. "*Where Member States ensure a payment or an allowance of at least 65% of the worker's net wage, possibly subject to a ceiling, for at least six months of parental leave for each parent, they may decide to maintain such system instead of providing for the payment or allowance referred to in Article 8a*". There are two pre-conditions referred to in order to benefit from this clause: 1. ensuring a payment or allowance for parental leaves of at least at 65% of the worker's net wage and 2. at least for six months of parental leave.

[35] "Provisional agreement reached by EU co-legislators on work-life balance measures", *op.cit.*

Member States for which this applies will still have the obligation to provide a paternity leave paid at least at the same level of the parental leave but they may use their existing parental leave system to fulfill the paternity leave requirements, and they do not have to name the leaves differently. Member States may choose not to provide for payment only for the days they introduce, dedicating such payment rather to their current parental leave schemes. For instance, Austria and Germany for 10 working days (as they do not have paternity leave in their legislations); The Czech Republic, Hungary and Romania for 5 working days (they have already 5 working days of paternity leave in their legislations).

As for **Article 20.6**, this clause provides derogations in relation to paternity, parental and carers' leave: "*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 for family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave available at the national level which goes beyond the minimum standards prescribed by this Directive and Directive 92/85/EEC, provided that the minimum requirements for the respective leaves as set out in these Directives are met and that the general level of protection afforded to workers in the field covered by these Directives is not reduced*".

So, while Member States will have to reach the minimum thresholds indicated in the Directive, it appears they still retain flexibility in how these thresholds are to be met, and this requires further country-by-country assessment. Therefore the minimum standards on family leaves will be applicable to all EU countries, but this will not necessarily lead to a change of the current leave systems in countries which are significantly more generous in their leave systems. It is not entirely clear how these clauses will affect the implementation of the Directive across EU Member States - this will require further country analyses.

III. Next steps: Guidelines for transposition to consolidate national policies and legislation

Once the co-legislators - Council and Parliament - have approved the Directive, the Commission will publish it on the Official Journal of the European Union. The Directive will then be formally adopted. The Directive will afterwards enter into force three weeks after the publication in the Official Journal.[36] The Directive will be available in all the official languages of the EU. Following the adoption, Member States will have to **transpose** the Directive into national law in the following **three years**.[37] It is important to underline that Member States are granted **two additional years** to implement the last two-week payment of parental leave.[38]

Furthermore, Member States are obliged to provide the Commission with, at the latest **eight years** from the entry into force of this Directive, a thorough report: "…*Member States shall, communicate to the Commission all relevant information concerning the application of this Directive necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive, including available aggregated data on the take-up of leaves and flexible working arrangements by men and women granted by this Directive in order to allow for the proper monitoring and assessment of the implementation for issues falling within the scope of this Directive, in particular as regards gender equality.*" (Article 18).

This report will be a guide to the Commission to monitor whether the Directive has been correctly transposed and the achievements so far accomplished. During the transposition period, the Commission will certainly monitor the way Member States implement the Directive in their national legislation, through the Employment, Social Policy, Health and Consumer Affairs Council and High Level and Advisory Committees.

This Directive is the first legislative initiative that follows the launch of the European Pillar of Social Rights. COFACE Families Europe expects higher ambitions from the different EU institutions and national governments in the implementation of the European Pillar of Social Rights, as a stepping stone to develop a framework for a more social and fairer European Union. **Therefore, the transposition phase of this Directive will be of paramount importance.**

The Directive embraces the approach COFACE Families Europe has been advocating for: the R-S-T (Resources - Services - Time) policy mix and the life-cycle approach. R-S-T means understanding that what families need, regardless of the family form, is a mix of Resources (income, fair and equal tax

[36] Article 21 of the Directive
[37] Article 20.1 of the Directive
[38] Article 20.2 of the Directive. The first 1.5 paid months must be implemented in the first 3 years.

systems), Services (childcare, elderly care, care and support for persons with disabilities) and Time (leaves schemes, flexible working arrangements). Indeed, delivering only on one of these three aspects (access to resources, to services, to time arrangements) will help but it will not bring systemic change. On the contrary, building policy and legislation based on all three of them is a bold and ambitious move that will impact positively millions of families. The transposition process is an opportunity to review national work-life balance policies to ensure they meet the needs of families in the 21st century, based on values of gender equality, social inclusion and non-discrimination, and boost investment and development of services for families. Here below we highlight our **checklist** for the transposition process, to push for upward reforms across EU countries.

- **Boost investment in services to families as a complementary measure**

As stated in Recital 12, the transposition of this directive must be framed in a holistic approach which ensures access to services: *"When implementing this Directive, Member States should take into consideration that the equal up take of family-related leaves depends also on other appropriate measures, such as the provision of accessible and affordable child care and long-term care services, which are crucial for allowing parents and carers to enter, stay on, or return to the labour market."*. Families need adequately paid leaves but they also rely on **care services** every day. These services are crucial for their chances to reconcile the different aspects of their lives such as family, work, care, leisure, education. The European Union has an important role to play in driving long-term care reforms upwards towards more holistic long-term care *for* and *with* families, through the Pillar of Social Rights and the European Disability Strategy. The implementation of measures for working carers in line with the Directive is an opportunity to review existing policies on long-term care. Our position on the family dimension of long-term care[39] makes key recommendations to bring national policies and legislation in line with the needs and rights of both care recipients and caregivers. As for childcare, our recent paper *A New EU Deal for Childcare* (published in December 2018) underlines that the EU must show leadership by nurturing the supply of accessible, affordable and quality childcare, a continuation of the current EU worklife balance Directive. The European Parliament report "Care services in the EU for improved gender equality" (November 2018) provides useful guidance for both national and European actions[40], as well as the report of Social Services Europe.[41]

[39] "Long-Term Care: The family dimension. Key Recommendations from COFACE Families Europe to shape Long-Term Care Systems for and with Families", COFACE Families Europe, October 2018.
[40] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0464+0+DOC+PDF+V0//EN
[41] "Improving work-life balance through enabling social services: From service provision to decent policies", Social Services Europe, December 2018

- **Recognise the diversity of families and their needs**

The Directive acknowledges the need for universal services to all families to build an adequate safety net, while also taking into account special needs and special situations of families. Furthermore, it acknowledges family diversity, with the notion of "equivalent second parent". We would encourage national legislators to insert this notion into national legislation via the transposition of the Directive. This must be reflected in national laws, to support all families without discrimination, and work to both address and prevent poverty of families in vulnerable situations.

- **Adequate payment of family leaves**

There are clear references in the Directive about the need to provide adequate income replacement for family leaves (Recitals 29 to 31), and this should guide governments in their definition of "adequate". Payment of leaves, regardless of the type of leave, is a key element to ensure non-discrimination of workers based on economic conditions of the family and also to rebalance the gender uptake of the leaves. If leaves are not paid, only those who can afford it will take them or, in a family economy, the person who earns less will take up the leave to minimise income loss. Due to structural problems of the labour market, like gender segregation and the gender pay gap, and a traditional separation of roles between men and women, the latter are those who earn less and therefore those who take the leave in most cases. Moreover, only if adequately paid, leaves will constitute a reasonable solution for single parents or families on a low income, because if leaves are not paid or not paid enough, single parents and families on a low income will not be able to bear the income reduction.

- **Raise awareness of these new social rights in the media and the role of the EU**

It will be important to raise awareness about the transposition of this Directive, highlighting that the European Union strives to support families in their daily lives through strengthened and new social rights which allow them to keep their employment and income, while also providing them with more time to care for their families. This is an important message to convey ahead of the European Elections of May 2019, ensuring there is reliable information and public debate on the impact of EU legislation and the European Pillar of Social Rights.

- **The role of social partners**

This Directive is a revision (upwards) of the collective agreement by the European social partners in 2010, and national social partners have a key role to implement efficient measures and monitor reconciliation measures in workplaces (Recital 50). Furthermore "*Social partners should be encouraged to promote voluntary certification systems assessing work-life balance at the*

workplace." (Recital 51). Together with NGOs representing and supporting families, the social partners must be fully involved in the transposition process, and be encouraged to secure collective agreements on work-life balance. In addition, promotion of best practices and exchanges across countries will be an important contribution for effective reconciliation between professional and private life policies, with support to incentivise SMEs (especially micro-businesses) to promote work-life balance policies for their employees.

- **EU funding programmes to support innovation and upward reforms**

The non-legislative measures in the Work-Life Balance package published by the European Commission in 2017 include 10 broad EU policy actions, including the use of EU financial instruments like the European Social Fund and the European Regional Development Fund to support services (infrastructure, training of professionals), which includes helping family carers to reconnect or to stay connected to the labour market, investments in childcare facilities and training, supporting the work-life balance of young parents, boosting investments in community-based services and independent living of persons with disabilities, respite care for family carers, and much more. These interventions are extremely complementary to the leaves and flexible working arrangements covered by the Directive. The European Commission has started working with national and regional authorities to build the 2021-2017 partnership agreements and operational programs for different funds - it would be essential to link these processes where possible with transposition dynamics.

- **Monitoring and reporting**

There is a commitment in the Directive to close monitoring by the European Commission of the Directive implementation which requires national governments to collect data on the take-up of leaves and flexible working arrangements (Article 18). The European Commission is also expected to further research: 1. The interaction between the leaves provided for in this Directive and other types of family-related leaves such as adoption leave; and 2. Carry out a study on the rights to family leave granted to self-employed persons. In addition, COFACE will continue measuring progress of the implementation of the Directive through the EU Semester, with strong Country Specific Recommendations (CSR) to the countries that fall below the minimum requirements. The creation of a European Work-Life Balance Index (WLB index) and its incorporation in the Semester process would be a powerful tool to better monitor Member States' performance over time.

The European Union has shown leadership by agreeing this legislative initiative in order to kick-start national reforms to meet the emerging needs of families in a changing society and labour market. While COFACE expectations have not been fully met with this directive, we acknowledge that every step towards an improved paternity leave system, parental leave system allowing fathers and mothers to take time for their children, and a carers leave system

will benefit the well-being of all family members. The new standards on flexible working arrangements will also be a supportive measure to support reconciliation of work and family life.

This Directive is a step in the right direction which we will use to further consolidate national policies and legislation. Members of COFACE Families Europe will monitor the national transposition processes closely, while ensuring that families are aware of the role of the EU trying to improve their quality of life. We now expect national governments to consolidate those social rights, involve relevant civil society organisations representing families of all types without discrimination, and move towards swift transposition.

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