



2017/0085(COD)

6.3.2018

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on work-life balance for parents and carers and repealing Council Directive
2010/18/EU
(COM(2017)0253 – C8-0137/2017 – 2017/0085(COD))

Committee on Employment and Social Affairs

Rapporteur: David Casa

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (COM(2017)0253 – C8-0137/2017 – 2017/0085(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0253),
 - having regard to Article 294(2) and Article 153(1)(i) and 153(2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0137/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 6 December 2017¹,
 - having regard to the opinion of the Committee of the Regions of 30 November 2017²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Women's Rights and Gender Equality and the Committee on Legal Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C ...

² OJ C ...

Amendment 1

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. Lack of paid paternity and parental leave in many Member States contributes to the low take-up of such leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender differences between work and care. Conversely, use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.

Amendment

(8) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. Lack of paid paternity and parental leave in many Member States contributes to the low take-up of such leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender differences between work and care. Conversely, use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment. ***Furthermore, the availability of quality, accessible, and affordable childcare infrastructure has proven to be a crucial aspect to work-life balance policies that facilitates the rapid return of women to work and their increased participation in the labour market.***

Or. en

Amendment 2

Proposal for a directive Recital 15

Text proposed by the Commission

(15) In order to provide greater possibility for parents to use parental leave as their children grow up, the right to parental leave should be granted until the child is at least ***twelve*** years old. Member

Amendment

(15) In order to provide greater possibility for parents to use parental leave as their children grow up, the right to parental leave should be granted until the child is at least ***ten*** years old. Member

States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and to decide whether the right to parental leave may be subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating the period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether they define if the employer may be allowed to postpone the granting of parental leave under certain circumstances. In such cases, the employer should provide justification for the postponement.

Given that flexibility makes it more likely that second parents, in particular fathers, will take up their entitlement to such leave, workers should be able to request to take parental leave on a full-time or part-time basis or in other flexible forms. It should be up to the employer whether or not to accept such a request for parental leave in other flexible forms than full-time. Member States should also assess if the conditions and detailed arrangements of parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and to decide whether the right to parental leave may be subject to a certain period of service, ***taking into particular account the constraints of micro and small and medium-sized enterprises (MSMEs)***. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating the period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether they define if the employer may be allowed to postpone the granting of parental leave under certain circumstances. In such cases, the employer should provide justification for the postponement.

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Or. en

Amendment 3

Proposal for a directive Recital 19

Text proposed by the Commission

(19) To increase the incentives for workers with children and caring

Amendment

(19) To increase the incentives for workers with children and caring

responsibilities, men in particular, to take the periods of leave provided for in this Directive, they should have the right to an adequate allowance while on leave. ***The level of the allowance should be at least equivalent to what the worker concerned would receive in case of sick leave.***

Member States should take into account the importance of the continuity of the entitlements to social security, including healthcare.

responsibilities, men in particular, to take the periods of leave provided for in this Directive, they should have the right to an adequate allowance while on leave.

Member States should take into account the importance of the continuity of the entitlements to social security, including healthcare.

Or. en

Amendment 4

Proposal for a directive Recital 21

Text proposed by the Commission

(21) In order to encourage working parents and carers to remain in the work force, those workers should be able to adapt their working schedules to their personal needs and preferences. Working parents and carers should therefore be able to request flexible working arrangements, meaning the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for caring purposes. In order to address the needs of workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including a reduction in working hours. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children, long periods of reduced working hours may lead to lower social security contributions translating into reduced or non-existing pension entitlements. The ultimate decision as to whether or not to accept a worker's request for flexible

Amendment

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working arrangements should lie with the employer, Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore not only have the right to return to their original working patterns at the end of a given agreed period, but should also be able to request to do so at any time where a change in the underlying circumstances so requires.

working arrangements should lie with the employer, ***taking into account the difficulties that flexible working arrangements may cause to MSMEs.*** Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore not only have the right to return to their original working patterns at the end of a given agreed period, but should also be able to request to do so at any time where a change in the underlying circumstances so requires.

Or. en

Amendment 5

Proposal for a directive Recital 25

Text proposed by the Commission

(25) The burden of proof that there has been no dismissal on the grounds that workers have applied for, or have taken, leave referred to in Article 4, 5 or 6 or have exercised the right to request flexible working arrangements referred to in Article 9 should fall on the employer when workers establish, before a court or other competent authority, facts from which it may be presumed that they have been dismissed on such grounds.

Amendment

(25) The burden of proof that there has been no dismissal on the grounds that workers have applied for, or have taken, leave referred to in Article 4, 5 or 6 or have exercised the right to request flexible working arrangements referred to in Article 9 should fall on the employer when workers establish, before a court or other competent authority, facts from which it may be presumed that they have been dismissed on such grounds. ***Member States should be able to adopt measures to limit the burden generated by this obligation on micro enterprises.***

Or. en

Amendment 6

Proposal for a directive Recital 30

Text proposed by the Commission

(30) This Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of ***small and medium-sized undertakings***. Member States are therefore invited to assess the impact of their transposition act on ***SMEs*** in order to make sure that ***SMEs*** are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden.

Amendment

(30) ***Member States are encouraged to ensure that employers are not overly burdened by the financial obligations resulting from this Directive. In particular,*** this Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of ***MSMEs***. Member States are therefore invited to assess the impact of their transposition act on ***MSMEs*** in order to make sure that ***MSMEs*** are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden.

Or. en

Amendment 7

**Proposal for a directive
Article 2 – paragraph 1**

Text proposed by the Commission

This Directive applies to all workers, men and women, who have an employment contract or employment relationship.

Amendment

This Directive applies to all workers, men and women, who have an employment contract or employment relationship ***as defined by law, collective agreement and/or practices in force in each Member State, in accordance with the criteria for determining the status of a worker as established by the case law of the Court of Justice of the European Union.***

Or. en

Amendment 8

**Proposal for a directive
Article 3 – paragraph 1 – point a**

Text proposed by the Commission

(a) "paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child;

Amendment

(a) "paternity leave" means *paid* leave from work for fathers *or an equivalent second parent as defined in national law* to be taken on the occasion of the birth *or adoption* of a child;

Or. en

Amendment 9

**Proposal for a directive
Article 3 – paragraph 1 – point b**

Text proposed by the Commission

(b) "parental leave" means leave from work on the grounds of the birth or adoption of a child to take care of that child;

Amendment

(b) "parental leave" means *paid* leave from work on the grounds of the birth or adoption of a child to take care of that child;

Or. en

Amendment 10

**Proposal for a directive
Article 5 – paragraph 1**

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least *twelve*.

Amendment

1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least *ten*.

Or. en

Amendment 11

Proposal for a directive Article 5 – paragraph 5

Text proposed by the Commission

5. Member States may define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, may be allowed to postpone the granting of parental leave by a reasonable period of time on the grounds that it would seriously disrupt the *good* functioning of the establishment. *Employers shall justify any postponement of parental leave in writing.*

Amendment

5. Member States may define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, may be allowed to postpone the granting of parental leave by a reasonable period of time on the grounds that it would seriously disrupt the *proper* functioning of the establishment *or seriously negatively impact the business of the employer.*

Or. en

Amendment 12

Proposal for a directive Article 5 – paragraph 6

Text proposed by the Commission

6. Member States shall take the necessary measures to ensure that workers have the right to request parental leave also on a part-time basis, in blocks separated by periods of work or in other flexible forms. Employers shall consider and respond to such requests, taking into account the needs of both employers and workers. *Employers shall justify any refusal of such a request in writing.*

Amendment

6. Member States shall take the necessary measures to ensure that workers have the right to request parental leave also on a part-time basis, in blocks separated by periods of work or in other flexible forms. Employers shall consider and respond to such requests, taking into account the needs of both employers and workers.

Or. en

Amendment 13

Proposal for a directive Article 5 – paragraph 6 a (new)

6a. Member States shall establish notice periods to be given by the worker to the employer when exercising the right to parental leave. Such notice shall include the beginning and the end of the period of leave. Member States shall take into consideration the interests of workers and of employers when determining the lengths of such notice periods.

Or. en

Amendment 14

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4, 5 or 6 will receive a payment or an adequate allowance at least equivalent to ***what the worker concerned would receive in case of sick*** leave.

Amendment

In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4, 5 or 6 will receive a payment or an adequate allowance ***as follows:***

(a) for paternity leave as referred to in Article 4(1), a payment or allowance of at least equivalent to sick pay level whilst ensuring the principle of equality between women and men is respected;

(b) for parental leave as referred to in Article 5(1), a payment or allowance of at least equivalent to 75 % of the worker's gross wage;

(c) for carers' leave as referred to in Article 6, a payment or allowance of at least equivalent to 75 % of the worker's gross wage.

Amendment 15

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that workers with children up to a given age, which shall be at least *twelve*, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

Amendment

1. Member States shall take the necessary measures to ensure that workers with children up to a given age, which shall be at least *ten*, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

Or. en

Amendment 16

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

2. Employers shall consider and respond to requests for flexible working arrangements referred to in paragraph 1, taking into account the needs of both employers and workers. Employers shall justify any refusal of such a request.

Amendment

2. Employers shall consider and respond to requests for flexible working arrangements referred to in paragraph 1, taking into account the needs of both employers, *in particular micro and small and medium-sized enterprises (MSMEs)*, and workers. Employers shall justify any refusal of such a request. *Employers may postpone the granting of such a request on the grounds that it would seriously disrupt the proper functioning of the establishment, or seriously and negatively impact the business of the employer.*

Or. en

Amendment 17

Proposal for a directive Article 12 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States may adopt measures to limit the burden generated by the obligation under this Article on microenterprises.

Or. en

Amendment 18

Proposal for a directive Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18 a

Non-Regression

- 1. Member States and/or the social partners may maintain or introduce more favourable provisions for workers than those set out in this Directive.**
- 2. This Directive shall be without prejudice to any more specific provisions in Union law, and in particular Union law provisions concerning equal treatment or opportunities for men and women.**
- 3. The implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.**

Or. en

EXPLANATORY STATEMENT

The Commission's proposed directive is one of the first deliverables of the European Pillar for Social Rights. It is based on the 'New Start' initiative aimed to address the work-life balance challenges faced by working parents and carers. The initiative will help in the pursuit of the objectives set out in the Treaty of equality between men and women with regard to labour market opportunities and equal treatment at work and the promotion of high level of employment in the EU.

The legislative proposal thus aims to focus on targeting measures to address the under-representation of women in employment by improving the conditions of reconciling working and private duties, but also their unequal treatment and opportunities in the labour market. Furthermore, it encourages the strengthening of men's roles as carers in the family, which will also benefit children. It is well documented that the use of work-life balance arrangements by fathers, has demonstrated that they have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment. It thereby promotes non-discrimination and fostering gender equality. The proposed Directive in its current form aims to cover all workers, men and women, who have an employment contract or employment relationship.

It seeks to introduce a number of new or higher minimum standards for parental, paternity and carers' leave, which are geared at helping to address the anomalies that exist in achieving a work life balance for both parents and carers. The Rapporteur believes that these measures are both timely and necessary in order to improve access to work-life balance arrangements and to better reflect the changing working patterns in our society.

The Rapporteur further believes that the availability of quality, accessible, and affordable childcare infrastructure has proven to be a crucial aspect to work-life balance policies in the Member States and that facilitates the rapid return of women to work and their increased participation in the labour market. He would therefore encourage the Member States to improve childcare facilities and would like to see this reflected in the text; he therefore inserts related recital in the Directive.

Within the same spirit of Article 153 on which this Directive is being proposed the Rapporteur would like to introduce in addition to small and medium sized enterprises (SMEs) a specific emphasis on micro enterprises as the Rapporteur believes that due to their particular specificities and constraints, that are different from those of SMEs, they might find it more challenging to implement certain parts of this directive.

Throughout the text, the Rapporteur ensured that additional micro, small and medium sized enterprises (MSMEs) provisions are added to ensure that this Directive shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of such undertakings, without taking away the rights of their workers to avail themselves of work-life balance arrangements. As an example, the Rapporteur qualified in one of his amendments, without any prejudice to whether such a request should be granted or not by the employer that we should take into account the difficulties that flexible working arrangements may cause to MSMEs.

In order to address the concern that certain administrative burdens might be severely

detrimental to micro enterprises the Rapporteur has proposed that Member States should have the option to adopt measures to limit the burden on micro enterprises from the provisions of Article 12 (Protection from dismissal and burden of proof), in order not to risk imposing a disproportionate burden on such enterprises.

The Commission's main proposals introduce the following new elements to what is currently already in force:

- The Directive introduces a right to paternity leave of no less than ten working days around the birth of a child. This is a major new development, considering that presently there are no minimum European-level standards for paternity leave. The Rapporteur fully supports this new proposal as the opportunities and incentives for fathers to take leave range considerably across Member States. Where such leave exists the level of pay and days of leave vary considerably.

The Rapporteur amended the text to include the right to paternity leave also on the occasion of the adoption of a child. It is clear that the birth or adoption of a child is an important time for the father to be present and share the responsibilities with his partner. It is a time for bonding, which has been proven to be important for both the child and the father. The Rapporteur has proposed an amendment to clarify that the worker that is considered a father could also be an equivalent second parent as defined in national law.

With reference to the level of pay or allowance the Rapporteur maintained the Commission proposal for persons availing themselves of paternity leave to be paid at sick pay level in order to mirror existing EU legislation catering for leave at the time of the birth of a child.

- With regards to the Parental leave directive (2010/18/EU), which will be repealed once this proposed Directive enters into force, workers have an individual right to parental leave of at least 4 months, of which one month is non-transferable, on the grounds of birth or adoption of a child. This can be taken at least until the child reaches the age of 8 years. Currently there is no obligation of pay during parental leave and it is up to the Member States and social partners to decide on the detailed conditions of this leave.

The current proposal on the other hand strengthens the right to parental leave by making the 4 month period compensated at least at the level of sick pay and non-transferable from one parent to another. Parents will also have the right to request to total period of leave in a flexible way and the age of the child up to which parents can take leave will be increased from 8 to 12 years. The Rapporteur agrees with this proposal as the current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. It is well documented that the use of work-life balance arrangements by fathers, has demonstrated that they have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.

On the other hand, whilst the Rapporteur agrees that parental leave should be paid he deviated from the Commission proposal and is proposing that the worker receives a payment or allowance of at least equivalent to 75% of the gross wage. The Rapporteur believes that setting a standard percentage of payment at EU level will address the anomalies between the different rates at which workers are paid at sick pay level in the different Member States and create a level playing field for all workers and will help in the take up of leave by more fathers, for whom the lack of economic return is a strong disincentive to taking parental leave.

The Rapporteur introduced a proposal to better manage the request of parental leave by

establishing a clear notice period to be given by the worker requesting a period of leave to the employer with the exact timeframe for when the worker intends to exercise their right to parental leave. The Rapporteur believes that this would benefit both employers in their planning and workers by giving them the possibility of being able to take up this leave when it is needed most. This is especially even more relevant to MSMEs as they do not afford the luxury of an extensive number of employees or financial resources to recruit additional temporary workers.

- The Rapporteur welcomes the proposal to introduce a right to carer's leave for workers caring for seriously ill or dependant relatives. They will be able to take 5 days per year, compensated at least at the level of sick pay. The Rapporteur has proposed that carers leave are instead paid at least equivalent to 75% of the worker's gross wage.
- In parallel the new proposal also extends the right to request flexible working arrangements and to make use of parental leave to all working parents of children of at least up to the age of 12. The Rapporteur understands that this might generate certain difficulties, particularly for MSMEs, and has therefore proposed to amend the minimum age to 10.