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Work Life Balance: Brexit and Beyond

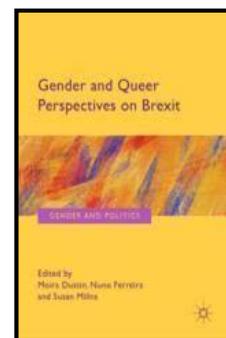
2-3 December 2019

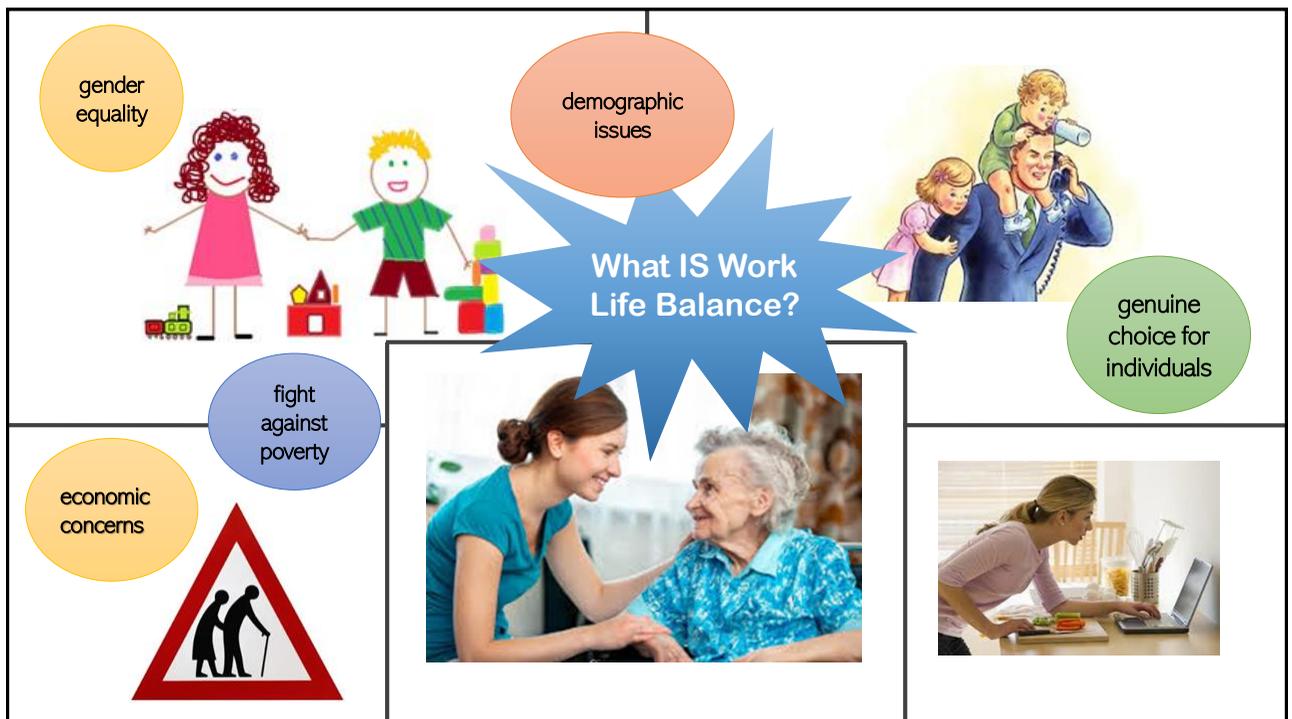
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Outline of the lecture

- What is work-life balance?
- What has been the contribution of the EU?
- What will happen after Brexit?





The EU and the principle of Work-Life Balance

WLB was not contemplated in the original Treaty. However, it soon became clear that it is crucial for the development of other policies such as (full) employment and gender equality.

The EU Legal Framework

- Article 2 TEU: equality between women and men and **human dignity** amongst the fundamental values of the EU
- Article 3 TEU: the EU shall promote equality between women and men (...) **solidarity between generations**; refers to a commitment to promote 'the **well-being** of its peoples'
- Pregnant Workers Directive 92/85
- Parental Leave Directives 2010/18
- Recast Directive 2006/54 (repeals Directives 75/117; 76/207 & 2002/73; 86/378 & 96/97 & 97/80)
- Part-Time Workers Directive 97/81
- Fixed-Term Work Directive 99/70
- 2008 Work-Life Balance Package (EU Commission, COM(2008) 635)
- In July 2015, given the lack of progress by the co-legislators and despite the Commission's continuous and intensive efforts to facilitate an agreement, the proposal for an amended PWD was formally withdrew. It was with a 'New Start' initiative, seeking to address work-life balance in a comprehensive way and to address women's underrepresentation in the labour market
- Directive 2019/1158 on Work-Life Balance for Parents and Carers (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158>)



The Work Life Balance Directive

Article 4 - Paternity Leave: Fathers and, when and in so far as recognised by national law, equivalent second parents, have the right to take 10 working days. Member states will determine the modalities. PL is to be paid at sick pay level (Art.8)

Article 5 – Parental leave 4 months: 2 months are non-transferable. Member States to determine the modalities. PL is payment is to be defined by MS and/or social Partners and must be set in such a way to facilitate the take up of it (Art.8)

Article 6 – Carers leave: 5 working days. Member States to determine the modalities. Member States *may* allocate leave over a reference period of a year, per person in need of care or support, or per case. CL is unpaid.

BUT: no Reference to maternity leave



Paternity leave

- much needed and a positive development
- It will contribute to a more equal use of leave arrangements between women and men.
- It has been shown to have a knock-on effect on fathers' longer-term involvement in childcare, which would have a clear positive impact on women's labour market participation.
- Enhancing fathers' possibilities to take leave after having a child could also help to reduce the risk of labour market discrimination against women.
- But: limited payment
- Disparity remains between mothers (14 weeks) and fathers (10 days) – motherhood penalty v fatherhood premium

Parents

A comprehensive set of provisions (see next slides). Although today the UK family friendly provision might seem more comprehensive than EU provisions, they have been triggered and shaped by EU law (TUC. 2018. Women Workers' Rights and the Risks of Brexit (2016) https://www.tuc.org.uk/sites/default/files/Women_workers_and_the_EU.pdf)

Other Carers

The EU works more as a forum to exchange good practices.

Parental Leave:
Across Europe 90% of
men does not take it

The proposed Directive aims to:

- Strengthen the Parental Leave Directive
- Encourage take up of fathers
- Counteract harmful stereotypes



Carers Leave

- At the moment there are no EU provisions on carers' leave; there is a right to take time off for urgent family reasons ('force majeure leave' (Clause 7 Directive 2010/18 EU).
- It aims to strengthen carers' attachment to the labour force (particularly women who are more likely to be carers), by having a temporary period of absence and then return to work, rather than dropping out of the labour market
- But: unpaid

EU Charter of Fundamental Rights

Art 24 – Protection of children

Art 25 – rights of elderly people

Art 26 – rights of people with disabilities

Article 33 - Family and professional life - To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

European Pillar on Social Rights (https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en)

Principle 9 - '[p]arents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way'.

Principle 11 - commitment to affordable childcare

Principle 18 - long term care

The CJEU Case Law: from traditional myths to the modern family

- The equal treatment directive is not designed to settle questions concerned with the organization of the family or to alter the division of responsibility between parents" (Case 184/83 *Hofmann*)
- 'the positions of a male and female worker, father and mother of a young child, are comparable with regard to their possible need (...) to look after the child' (Case C-104/09, *Roca Alvarez*)
- Case C 5/12 *Betriu Montull*
- C-173/13 *Leone*
- C- 222/14 *Maistrellis*





Brexit: the basic facts

- On 23 June 2016, more than 30 million people in the United Kingdom voted in a referendum to decide whether or not to leave the EU
- The 'Vote Leave, Take Control' campaign won by 51.9–48.1%
 - England voted for Brexit by 53.4–46.6%, as did Wales, by 52.5–47.5%. Scotland and Northern Ireland both backed the 'Britain Stronger in Europe' campaign. Scotland voted against Brexit by 62–38%, so did Northern Ireland where 55.8% voted to remain and 44.2% to leave.
- A clear majority? A narrow majority?

**BRITAIN
STRONGER
IN EUROPE**



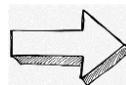


in many cases women make different choices in life to the ones men make, simply for biological reasons. A woman who has a client base, has a child and takes two or three years off – she is worth far less to her employer when she comes back than when she went away because that client base won't be stuck as rigidly to her portfolio

'[t]he European Parliament, in their foolishness, have voted for increase maternity pay. I'm off for a drink' (@Nigel_Farage) Twitter (20 Oct. 2010).

Historically, the UK has approached this area in terms of individual rights aimed at protecting autonomous choices, productivity and economic considerations.

Brexit and work-life balance: what next? An educated guess



Deal or No Deal?

- **The status quo scenario**
 - The UK adopt all existing legislation and to 'voluntarily' adopt EU legislation in future
- **The progressive scenario**
 - the UK is 'free' to develop its own legislation in this area and to build upon and improve the current EU standards.
- **The regressive scenario**
 - any future UK Government will be free to decide the course of action in any areas currently regulated by EU law. Thus, depending on the agreed terms of the relationship with the EU, the UK will not be obliged to implement future developments.



... so much more than 'just' legislation ...

- **soft law measures** such as Opinions, Communications and policy papers.
- **benchmarking mechanisms** for example the Open Method of Coordination (OMC), have also been important when it comes to work-life balance. OMC is a process that relies on the regular monitoring of progress to meet specified agreed targets, thus allowing Member States to compare their efforts and learn from the experiences of others.
- **financial tools** such as the European Social Funds and the European research and development funding have made possible the creation of several initiatives.



- Although not immune to criticisms and economic reasoning, the EU has sought to balance economic considerations with a more social rights based approach. In other words, over the years the EU has striven to develop a 'human face' (Ferreira 2016) and has played a pivotal role in including gender equality in the agenda. The EU approach is rooted in well-established principles that underpin its policy and legislation. For example, Article 2 TEU lists equality between women and men and **human dignity** amongst the fundamental values of the EU
- Article 3 TEU, states that the EU shall promote equality between women and men (...) **solidarity between generations**; refers to a commitment to promote 'the **well-being** of its peoples'

thank you!

