



**Work-life balance**

**Dir. 2019/1158 on WLB for parents and carers**

Petra Foubert, ERA, Trier, 12 June 2023

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KNOWLEDGE IN ACTION

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1

Case Dicu (C-12/17), 4 Oct. 2018

- Ms. Dicu = Romanian judge who took parental leave
- Romanian law: period of parental leave cannot be regarded as a period of actual work for the purpose of determining paid annual leave entitlement
- CJEU: a period of leave guaranteed by EU law cannot affect the right to take another period of leave guaranteed by that law which has a different purpose from the former

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2

**Prior to 2019 ...**

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3

Measures scattered over different legal instruments

- Protective measures for pregnant workers
  - Dir. 92/85/EEC
- Parental leave
  - Dir. 2010/18/EU
- Equal treatment in matters of employment and occupation
  - Dir. 2006/54/EC
- Equal treatment for self-employed
  - Dir. 2010/41/EU
- Non-discrimination of part-time workers
  - Dir. 97/81/EC

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4

4

## Measures scattered over different legal instruments

- Adopted at different moments in time
- Different legal bases
  - Health & safety vs. equality ...
- Different scopes

## No integrated EU 'plan' for work-life balance

- COM(2017) 253 final
- Why? Underrepresentation of women in employment
  - ✓ Lack of leave arrangements
  - ✓ Unequal distribution of care activities



5

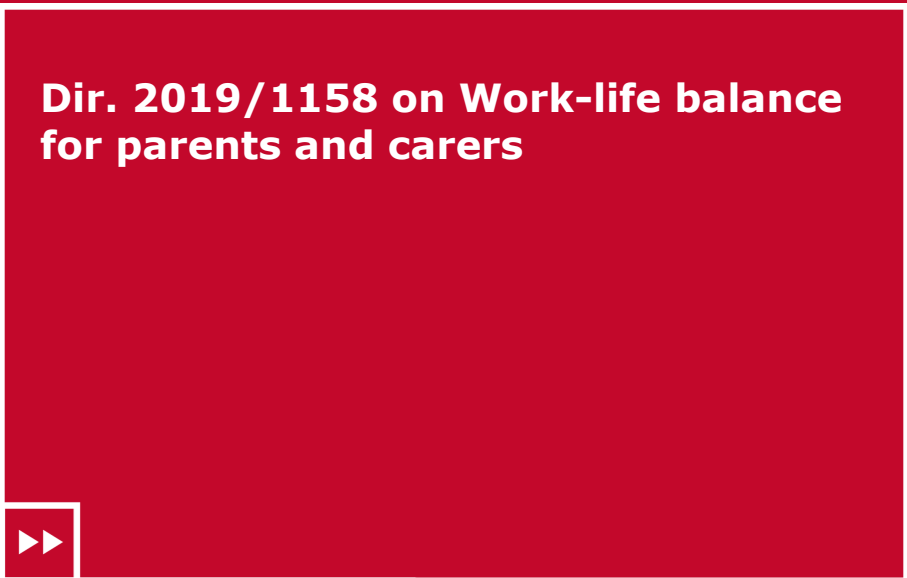
## COM(2017) 253 final

- Integrated package of measures
- Focus on parents and carers
- Repeals Dir. 2010/18/EU
- Idea that well-paid care leaves are not necessarily advantageous for women
- Idea that men should be encouraged to take up their share of care



6

## Dir. 2019/1158 on Work-life balance for parents and carers



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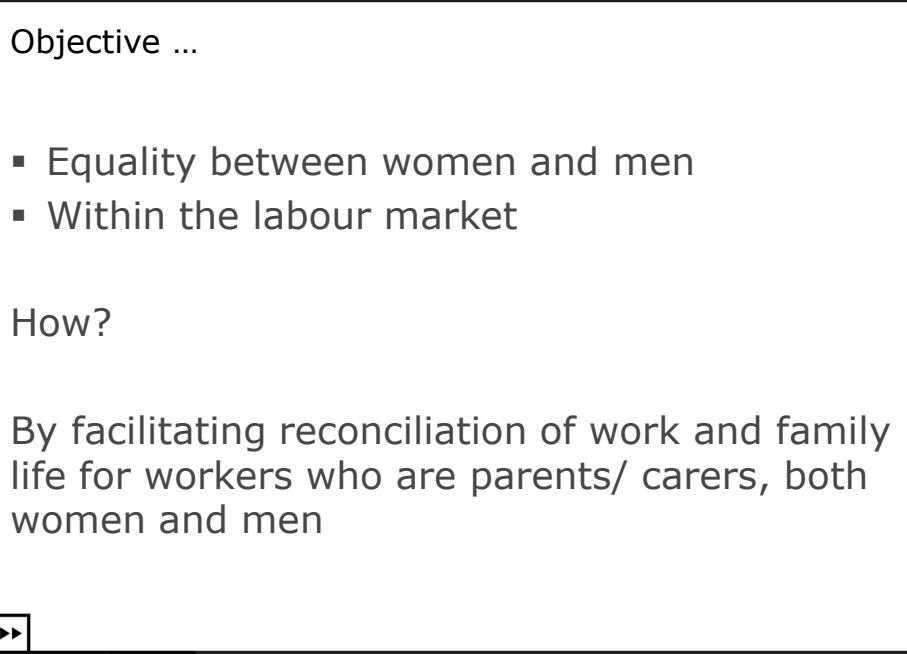
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Objective ...

- Equality between women and men
- Within the labour market

How?

By facilitating reconciliation of work and family life for workers who are parents/ carers, both women and men



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8

## Legal basis

- Art. 153 TFEU:
  - “1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:[...]
    - (i) equality between men and women with regard to labour market opportunities and treatment at work; [...]”
- Also reference to:
  - Charter Fundamental Rights
  - UN Convention Persons with Disabilities
  - UN Convention Rights of the Child



9

## What has been introduced?

- 4 types of care leave
  - 10 days paternity leave
  - 4 months parental leave
  - 5 days carers' leave
  - Time off from work on grounds of force majeure (passerelle clause, Art. 20(6))
- Right to request flexible working arrangements for caring purposes
- Non-discrimination (Art. 11)
- Protection from dismissal (Art. 12)



10

## Care leaves

- 10 days paternity leave (Art. 4)
  - Fathers/ equivalent second parents
  - Before/ after birth – flexible ways
  - No length of service qualification
  - Irrespective of marital status
  - Income?
    - Cfr. in case of sick leave
    - May be made subject to periods of previous employment (max. 6 months)
    - MS are encouraged to provide for a payment/ allowance equivalent to that for maternity leave (Preamble)



11

## Care leaves

- 4 months parental leave (Art. 5)
  - Of which 2 non-transferable months
  - For child up to 8 years old
  - Reasonable period of notice to be given
  - May be made subject to a period of work/ length of service qualification (max. 1 year)
  - Postponement allowed under certain conditions
  - Modalities for flexible take-up
  - Spec. attention for needs of adoptive parents, disabled parents & parents of disabled children
  - Income? 'set in such a way as to facilitate the take-up by both parents'



12

## Care leaves

- 5 days carers' leave (Art. 6)
  - Re. a relative/ person who lives in the household of the worker
  - Scope and conditions to be determined by national law/ practice (e.g. proof of medical condition; transferability)
  - Income? Not regulated



13

## Care leaves

- Time off from work on grounds of force majeure (Art. 7)
  - Urgent family reasons (illness or accident)
  - May be limited to certain amount of time/ cases
  - Income? Not regulated
  - MS can limit to certain amount of time



14

## Flexible working arrangements

- Right to request flexible working arrangements for caring purposes (Art. 9)
  - 'Adjustment of working patterns' (Preamble)
    - ✓ Remote working arrangements
    - ✓ Flexible working schedules
    - ✓ Reduction in working hours
  - Re. children of up to at least 8 years old
  - Duration may be subject to reasonable limitations
  - Right/ duty to return to original working pattern
  - May be made subject to a period of work/ length of service qualification (max. 6 months)



15

## WLB Directive ...

An improvement?



16



YES, but ...

- Yes

- Fathers are included and encouraged to take leave
- Focus on other carers

- BUT

- Missed opportunity to include maternity leave
  - ✓ Still regulated by Dir. 92/85
  - ✓ Right to min. 14 weeks (no max.; 2 weeks compulsory)
  - ✓ Income? Cfr. in case of sick leave
  - ✓ Prohibition of dismissal
- Compulsory paternity leave, to counterbalance maternity leave?
- Allowance/ payment = key



17

**Thank you for listening!**

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18