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# Work-life balance

## Directive 2019/1158 – (new) step towards equality?

Jelena Peranic Attenelle, LL.M.  
D3 Gender equality  
DG JUST

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## Introduction

- ***Our objectives today:***

- ❖ *family leaves and their history*
- ❖ *why Directive 2019/1158*
- ❖ *something new, something old –  
Directive provisions*
- ❖ *transposition and implementation*

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## What is work-life balance (WLB)?

- ❖ term “work-life balance” - first appears in the U.K. in the 80’s ( part of the Women’s Liberation Movement)
- ❖ The movement advocated for flexible schedules and maternity leave for women

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## Part I: PAST

*towards the WLB Directive*



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## **WLB Directive - building on previously existing legal framework**

- the first Parental leave Directive, 1996  
*revised in 2010:*

- Directive 2010/18

*not many changes:*

*3 months of non paid parental leave become 4 months*

*one month non-transferable between parents*

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## **... building on existing legal framework**

-Maternity leave Directive 92/85

*right of working mothers to at least 14 weeks maternity leave*

*2 of 14 weeks compulsory*

*the payment at least equal to MS sick leave*

*dismissal prohibited from beginning of pregnancy until end of maternity leave (exception: not connected to pregnancy, reason in writing)*

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## ... existing legal framework

- Directive 2010/41 equal treatment of self-employed

*Self employed persons as well as female spouses and life partners of self employed to be granted a sufficient maternity allowance enabling interruption in their occupational activity owing to pregnancy and motherhood for at least 14 weeks*

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## Maternity leave Directive - 2008 amendments proposal

*or how the road to hell (or nowhere) is paved with good intentions*

**MATERNITY LEAVE 18 WEEKS**

**Maternity leave 20 weeks**

**last monthly salary or  
an average monthly salary, no ceiling**

**Paternity leave of 2 weeks,**

**PAID AND NON TRANSFERABLE**

**Etc ...**

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## Maternity leave Directive

- unacceptable for Council
- July 2015 Commission withdraws proposal
  
- legal and political questions – legal basis:  
Treaty provisions on health and safety at work:  
*only maternity leave according to some MS*

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## New Directive WLB - proposal

- 2017 – instead of amending Maternity Leave Directive – *different legal basis (equality between men and women)*
- based on evidence how:  
*different forms of leaves function on EU and national level*  
*to improve situation of women in employment*

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## WLB Directive

*Objective:*

- ❖ **To improve the situation of women in the labour market [Article 153(1)(i) TFEU]**
- ❖ **Through better and more equally shared WLB measures**

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## Two strands of reform in the Directive:

### 1. special focus on fathers

*- specific right for fathers is created for the first time at EU level, i.e. the right to paid paternity leave*

*- effective incentives for fathers to take parental leave are introduced, namely the combination of non-transferable and adequately paid periods of leave.*

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## 2. life-cycle approach

*-life-cycle approach is materialised through the new right to carers' leave and the extension to carers of the right to request FWAs*

*-acknowledged that the need for workers to reconcile work and family may appear at any point during their working lives: not only when they have children, but also when they have a severely ill partner or a dependent parent*

## Part II: present



## WLB Directive

*Personal scope: employees*

- **As defined by national law**
- **Taking into account the case law of the CJEU**

*Material scope*

- **Paternity leave (new)**
- **Parental leave (strengthened)**
- **Carers' leave (new)**
- **Right to request FWA (strengthened)**

## Work-Life Balance Directive main novelties:

- **Paternity leave**
- **Parental leave**
- **Carers' leave**
- **Flexible working arrangement**





## **Paternity leave:**

*New right at EU level  
10 working days  
Compensated at sick pay level*

**aims to:** *allow for the early creation of a bond between fathers and children and to encourage a more equal sharing of caring responsibilities between women and men*

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## **Parental leave:**

**Before:** *4 months per worker, 1 month non-transferrable, payment*

**Now:** *4 months per worker, 2 month non-transferrable, paid (at an adequate level)  
2 months compensated at an adequate level  
Right to request flexible uptake*

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## Carers leave:

**Before:** *no specific EU legislation*

**Now:** *5 days*

*New right at EU level*

*5 working days/year/worker*

*Possible alternative design*

*No compensation*

## Carers' leave

*2 types of beneficiaries:*

*1. relatives – regardless of whether they live in the same household as the worker or not*

*2. persons who live in the same household as the worker, regardless of whether they are relatives or not*



## Flexible working arrangement

**Before:** *Right to request reduced and flexible working hours upon return from parental leave;  
Right to request part-time work for all workers*

**Now:** *All parents of children up to 8 and carers can request: Reduced working hours, Flexible working schedules, Flexibility on the place of work (Remote working)*

*Employers must consider the request and justify any refusal*

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## Force majeure leave

- *not new, the same as in Directive 2010/18*
- *leave for urgent family reasons in case of illness or accident*
- *can be limited to a certain amount of time per year or per case or both*
- *Directive does not require payment or allowance*

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## Legal protection

Standard provision prohibiting discrimination

*For those who request or take leave and flexible working arrangements*

- **Protection against dismissal**
- **Protection against discrimination**

*Job and previous rights maintained*

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## Transposition

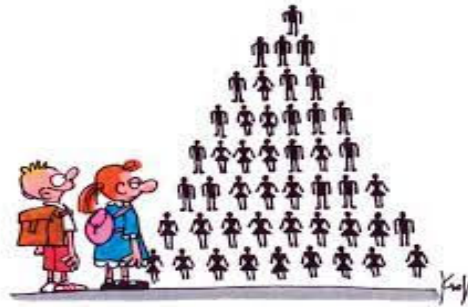
- 2/8/2022 - **general transposition** deadline  
(then, Directive 2010/18 on parental leave will be replaced)

- 2/8/2024 - **additional deadline** for transposition  
of payment of last 2 weeks of parental leave

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## Part III: implementation



## Infringements:

- In September 2022, the Commission sent letter of formal notice to **19 Member States** [BE, CZ, DK, DE, IE, EL, ES, FR, HR, CY, LV, LU, HU, AT, PL, PT, RO, SI, SK] who had not communicated the complete transposition of the Directive
- In April 2023, the Commission decided to take a further step in the infringement procedures by sending a reasoned opinion to **11 Member States** [BE, CZ, IE, EL, ES, FR, HR, CY, LU, AT, SI]



## The main problematic areas:

- Parental leave or compensation: 16 countries.
- FWAs: 15 countries.
- Legal protection: 14 countries.
- Carers' leave: 10 countries.
- Personal scope: eight countries.
- Force majeure leave: seven countries.
- Paternity leave or compensation: three countries.

<https://www.equalitylaw.eu/downloads/5779-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-a-long-way-ahead>

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## Examples of issues:

### Art. 2 personal scope:

- all workers, men and women, who have an employment contract or an employment relationship
- includes part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency
- the case law of the Court of Justice of the EU (CJEU) has to be taken into account.

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## Worker:

*settled case law of the Court defines a worker as  
**a person who 'for a certain period of time  
performs services for and under the  
discretion of another person in return for  
which he receives remuneration'***

*CJEU, Case C-216/15, Betriebsrat der Ruhlandklinik, 17 November 2016,  
ECLI:EU:C:2010:534, paragraph 27*

## Personal scope

- *two kinds of problems:*
  1. *employers with few employees in the private sector in 2 countries and certain categories of public employees or institutions in 6 countries are excluded from some national measures;*
  2. *in 7 MS there is a lack of coverage by the national measures of persons who would fit the EU definition of worker –mainly associated with 'false' self-employed workers*

## Examples:

- *Germany: right to long carers' leave does not exist in enterprises or organisations with up to 15 employees.*
- *LT: the right to request part-time working for parents with children under eight and carers is not applied to small employers, employing less than 10 employees*
- *Belgium: paternity leave, carers' leave and the right to request FWAs are not available for public servants in all local public schemes*

## - **The most common problem is 'false' self-employed workers (AT, EL, FR, LT and NL):**

*AT: freelance workers only enjoy part of the protection for parents that other workers enjoy, especially with regard to parental leave.*

*According to Austrian law, it is not immediately clear whether a freelancer is qualified (for the purposes of Labour Law) as an independent contractor or, due to the level of dependency on their employer, rather as an employee*



## Paternity leave – potential issues

- IT – 10 working days but from 2 months before birth until 5 months after birth
- Paternity leave beyond 6 months after childbirth (LT until child reaches 1 year, PL until 12 months, FI until child is 2 years old)
- qualifying conditions for leave itself:
  - AT – worker must live in the same household as the child
  - BG- worker must be married to mother or cohabiting with her

## Parental leave – potential issues

- RO- individual and non-transferable period shorter than 2 months (1 month)
  - the length of parental leave (2 years per family) is the same as the period during which the leave can be taken (until child is 2)
- EE- the whole leave designed as a family leave (the full period of leave could be used by one parent)
- flexible uptake of parental leave possible only in 13 MS

## Carers' leave – potential issues

- EE, IE, IT – only cover disability
- CZ- only in case of hospitalisation
- FR- terminal illnesses and significant disability
- LU- "end of the life leave"
- SE- life threatening serious illness

[jelena.peranic@ec.europa.eu](mailto:jelena.peranic@ec.europa.eu)

**Thank you!**

