

**Work-life balance**

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WIRTSCHAFTS  
UNIVERSITÄT  
WIEN VIENNA  
UNIVERSITY OF  
ECONOMICS  
AND BUSINESS

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**Overview**

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- Protective measures for pregnant workers
- Parental leave
- Care-giver leave
- Summary

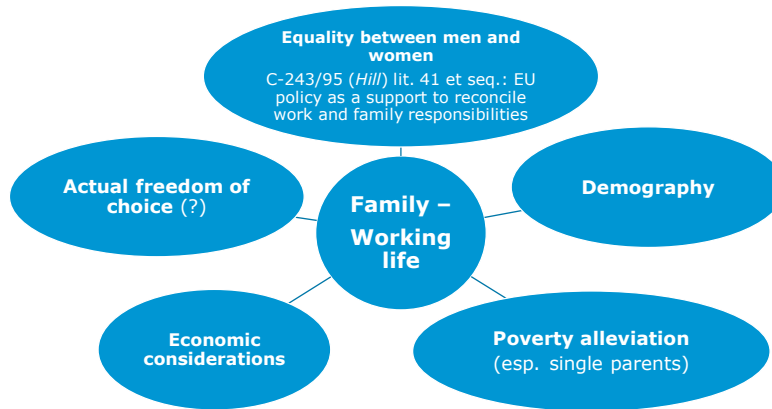
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## Aims/reasons for regulating the work-life balance



## Legal bases I

### ▪ Art. 2 TEU

"The ... society (in the EU and the Member States) in which pluralism, non-discrimination, tolerance, **justice**, **solidarity** and **equality between women and men** prevails."

### ▪ Art 3 (3) TEU: EU objectives in the context of the establishment of the single market (among others): It

- shall combat social exclusion and discrimination,
- shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
- shall promote economic, social and territorial cohesion, and solidarity among Member States.

## Legal bases II

- Bases for secondary legislation
  - Art 153 (1) TFEU: 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:
    - lit b: **working conditions** (-> Directive 92/85/EEC):
    - lit i: **equality** between **men and women** with regard to **labour market opportunities** and **equal treatment at work** (-> Directive 2010/18/EU)
  - Art. 157 TFEU
  - Art. 19 TFEU

## Legal bases III

- Charter of Fundamental Rights
  - Art 23: Equality between men and women must be ensured in all areas, including employment, work and pay.
  - Art 33: Family and professional life
    - (1) The family shall enjoy legal, economic and social protection.
    - (2) 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.

## Legal bases IV

- European Pillar of Social Rights
- Chapter II: Fair working conditions
  - **9. Work-life balance**
    - "**Parents and people with caring responsibilities** have the right to **suitable leave and 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."
- Chapter III: Social protection and inclusion
  - **11. Childcare and support to children**
    - Children have the right to **affordable early childhood education and care of good quality**.
    - Children have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.

## Important secondary legislation

- Pregnant Workers Directive (Directive 92/85/EEC):
  - EU Definition of workers
  - Paid leave
- Framework Agreement on Parental Leave (Directive 2010/18/EU)
  - National definition of workers
  - Unpaid leave
- Equal Treatment Directive (Directive 2006/54/EC)
- Agreement on part-time work (Directive 97/81/EC)
- Framework agreement on fixed-term work (Directive 1999/70/EC)

## Pregnant Workers Directive (Directive 92/85/EEC):



- Measures to encourage improvements in the **safety** and **health** at work of **pregnant workers** and workers who have **recently given birth** or who are **breastfeeding** (Art 1 (1))
- No obligation to perform night work (Art 7 (1))
  - Alternative daytime work, or
  - Leave from work or extension of maternity leave
- Maternity leave (Art 8)
  - Para. 1: at least 14 weeks – mother's entitlement
  - Para. 2: at least 2 weeks – absolute prohibition to work
  - in conjunction with Art 11: Entitlement to **(continued) payment** of "some" **remuneration** and/or "an" adequate **allowance**
    - C-194/08, *Gassmayr* (no entitlement to variable on-call allowance)
    - C-471/08, *Parviainen* (entitlement to performance allowance)

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## Pregnant Workers Directive (Directive 92/85/EEC):



- Time off for ante-natal examinations (Art 9)
- Prohibition of dismissal (Art 10)
  - Dismissal as a risk to physical and mental condition
  - Start of pregnancy until end of maternity leave
    - C-232/09, *Danosá* (members of board of directors)
      - NOTE, special situation in Latvia!
    - C-438/99, *Jiménez Melgar*, and C-109/00, *Tele Danmark*
      - Prohibition of dismissal also applies to fixed-term employment contracts
      - De facto extension to the non-extension of fixed-term contracts "simply because of" pregnancy
        - Otherwise: direct discrimination on the basis of sex

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## Framework Agreement on Parental Leave (Directive 2010/18/EU)



- Aim
  - Promoting equal opportunities for men and women
    - More easily available parental leave as *one* valid means
      - More equal distribution of unpaid domestic work, especially childcare
      - Thereby: Promoting the professional advancement of women
- Overview:
  - Minimum entitlement to (**unpaid**) parental leave: four months (Clause 2)
  - Protection against discrimination on grounds of application for/use of parental leave (Clause 5)
  - Facilitation of return to work after parental leave (Clause 6)

## Framework Agreement on Parental Leave (Directive 2010/18/EU)



- Entitlement to parental leave (Clause 2)
  - Purpose limitation: **actual care** of the child (cf. C-519/03, Commission/Luxembourg)
  - Parents' basic individual entitlement
  - At least **four months**
  - Up to the maximum age of the child of **eight years**
- Modalities (Clause 3)
  - Full-time leave, or
  - Part-time leave (reduction of working time)
  - In parts
  - As a time credit
  - Postponement for legitimate operational reasons
  - Notice period

## Framework Agreement on Parental Leave (Directive 2010/18/EU)



- Return to **previous** job (Clause 5)
  - Alternative: equivalent or similar job
    - C-7/12, (*Riežniece*) lit. 52 et seq.:
- Receipt of rights (Clause 5)
  - C-116/08, (*Meerts*) lit. 51 et seq.:
- Protection against discrimination (Clause 5)
  - No restrictive interpretation; C-588/12, *Lyreco*, lit. 37 et seqq.
  - Economisation dismissals as an case of application?
- Resumption of employment (Clause 6)
  - Compulsory procedure in which employee applications are dealt with

## Care of severely ill/dependent relatives?



- Framework Agreement on Parental Leave (Directive 2010/18/EU)
  - Clause 7: Time off from work on grounds of force majeure
  - Disputed:
    - "only" in the case of illness/accident of child
    - OR**
    - also in the case of illness/accident of relatives?
  - No obligation for the Member States to make provisions for paid leave

## Reconciliation and pillar of social rights



- Initiative "A new start" to promote the reconciliation between professional and private life for working parents and working carers (<http://ec.europa.eu/social/main.jsp?catId=1311&langId=de>, 13/10/2017)
- Proposal for a Directive on the reconciliation between work and private life for parents and carers and to repeal Directive 2010/18/EU, COM (2017) 253 final, dated 26/04/2017
  - **Paternity leave** for at least ten working days around the birth
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - **Parental leave**: no transferability for at least four months
    - Up to the maximum age of 12 years
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - **Care-giving leave**: Entitlement to five days/year for the care of severely ill/dependent relatives
    - Remuneration/social benefits: at least in the amount of continued payment in case of illness
  - Further entitlement to **flexible working time arrangements**
    - for parents of children up to the age of 12
    - For carers with dependent relatives

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## Summary and overview



- Total employment rate of women: 11.6% lower than that of men
- Part time: 31.5% of working women
  - 8.2% of working men
- Caring duties as a reason for non-employment
  - For nearly 20% of non-working women
  - For less than 2% of non-working men
- The aim of the Commission is: real balance between work and family life
  - Instead of choosing between family *OR* work

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**Thank you very much for your attention!**



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