



**Reconciliation of Work and Family Life**

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KNOWLEDGE IN ACTION

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**Current EU Legal Framework re. Reconciliation of Work and Family Life?**

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## Measures scattered over different legal instruments

- Protective measures for pregnant workers
  - Dir. 92/85/EEC
- Leave for parents
  - 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



## Measures scattered over different legal instruments

- Adopted at different moments in time
- Different legal bases
- Different scopes
- Originally: no 'plan' for a work-life balance in the EU!
  - More recently: Commission has announced its intention to improve work-life balance
  - Why? Underrepresentation of women in employment
    - ✓ Lack of leave arrangements
    - ✓ Unequal distribution of care activities



## Measures scattered over different legal instruments

- Focus in this presentation: leave arrangements in current EU legislation
  - Leave for pregnant workers (Dir. 92/85/EEC)
  - Leave for parents (Dir. 2010/18/EU)



## Dir. 92/85/EEC (pregnant workers)

- Legal basis: Art. 118A EEC (Art. 153 TFEU)  
'minimum requirements ... for improvement ... of the working environment to protect workers' health and safety'
- 2 types of protective measures
  - Restrictive/ negative protective measures: pregnant workers are excluded from certain jobs/ working conditions/...
  - Enhancing/ positive protective measures: require employers to give pregnant workers special treatment (e.g. maternity leave)



## Dir. 92/85/EEC (pregnant workers)

- Maternity leave
  - Right to 14 weeks, before and/or after childbirth
  - Includes 2 weeks compulsory leave, before and/or after childbirth
  - Minimum, no maximum
  - Income? '[A]t least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation'
  - Prohibition of dismissal

## Dir. 92/85/EEC (pregnant workers)

- Approach = health and safety
- No link with equal treatment directives!
  - Pregnancy/ maternity = relevant trait for categorisation, as opposed to a specific derogation from equal treatment directives
- Dir. 2006/54/EC is 'without prejudice to':
  - 'the right of MS to recognise distinct rights to paternity and/or adoption leave' (Art. 16)
  - 'provisions concerning the protection of women, particularly as regards pregnancy and maternity' (Art. 28(1))
  - 'the provisions of Directive 96/34/EC and Directive 92/85/EEC (Art. 28(2))
- Dir. 2006/54/EC: right to return to job

Dir. 92/85/EEC (pregnant workers)

▪ Maternity leave: interpretation by the CJEU

'[M]aternity leave from which the female worker benefits is intended,

first, to protect a woman's biological condition during and after pregnancy and,

second, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment.'

(Case 184/83, *Hofmann*; recently, e.g., Case C-5/12, *Betriu Montul*)

Dir. 92/85/EEC (pregnant workers)

▪ Critique re. Directive + interpretative case law CJEU

➤ Weeks that are not necessary for physical recovery = 'disguised parental/ care leave'


➤ Not supportive of equal treatment of male and female workers

➤ Reinforces idea that women should take care of children: CARE TRAP!

➤ Case C-104/06, *Roca Álvarez*

'the positions of a male and a female worker, father and mother of a young child, are comparable with regard to their possible need to reduce their daily working time in order to look after their child'

### Dir. 92/85/EEC (pregnant workers)

- 2008: Commission proposal for directive amending dir. 92/85/EEC:
  - Art. 157 TFEU (ex art. 141 TEC) added to legal basis of proposal
  - Maternity leave:
    - ✓ 18 weeks (EP: 20 weeks)
    - ✓ 6 of which to be taken after childbirth (compulsory) (EP: fully paid)
    - ✓ 12 other weeks (non-compulsory): before or after childbirth (EP: no prejudice to existing laws providing compulsory leave before childbirth)
  - EP suggested: right to two weeks of fully paid paternity leave
- Proposal taken off the table in 2014 (New Start) 

### Dir. 2010/18/EU (parental leave)

- 18 June 2009: revised Framework Agreement on parental leave
  - Given legal effect by Dir. 2010/18/EU
- Main features
  - Individual right to 4 months of leave, one of which on a non-transferable basis
  - For child of up to 8 years old
  - Income: to be determined on the national level!
  - Protection from discrimination + right to return to the same job
  - Right to request changes to working hours when returning from parental leave

Dir. 2010/18/EU (parental leave)

▪ Main features (continued)

- Leave on grounds of *force majeure* for urgent family reasons
- Same rights in case of adoption + specific needs of adoptive parents to be addressed on national level

## The European Commission's Proposal for a new Directive on Work-Life Balance



## New Proposal

- 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



## New proposal: What has been regulated?

- 4 types of care leave
  - 10 days paternal leave
    - ✓ Non-transferable
    - ✓ Income? Cfr. in case of sick leave
  - 4 months parental leave
    - ✓ Non-transferable
    - ✓ For child up to 12 years old
    - ✓ Income? Cfr. in case of sick leave
  - 5 days carers' leave
    - ✓ Re. a relative
    - ✓ May be made subject to proof of medical condition
    - ✓ Transferability not limited
    - ✓ Income? Cfr. in case of sick leave





### New proposal: What has been regulated?

- 4 types of care leave (continued)
  - Time off from work on grounds of force majeure
    - ✓ Family reasons (illness or accident)
    - ✓ Transferability not limited
    - ✓ Income? Not regulated
    - ✓ MS can limit to certain amount of time
- Flexible working arrangements
  - Right to request flexible working arrangements for caring purposes
  - 'Adjustment of working patterns'
    - ✓ Remote working arrangements
    - ✓ Flexible working schedules
    - ✓ Reduction in working hours



### New proposal: What has NOT been regulated?

- Maternity leave!
- Explanatory memorandum

'Throughout the Impact Assessment work, a range of non-legislative and legislative measures were considered across all areas shown to be important for addressing women's underrepresentation in the labour market, namely: maternity leave, paternity leave, parental leave, carers' leave, flexible work arrangements.'
- The preferred combination includes:
  - Paternity leave
  - Parental leave
  - Carers' leave



## New proposal: What has NOT been regulated?

- Maternity leave ...  
'Non-legislative measures to enhance the enforcement of current legislation on dismissal protection, raise awareness on the dismissal of pregnant women and give policy guidance on facilitating successful transitions between maternity leave and employment (including breastfeeding facilities and breaks)'



## New proposal: an improvement?

- Yes: fathers are included and encouraged to take leave + focus on other carers
- BUT: missed opportunity to restyle maternity leave
  - Idea seems to be that only way forward is more leave
  - Why not limit it to what is required for physical recovery from childbirth?
  - All the rest is care leave, to be shared between father and mother
  - What about compulsory paternity leave, to balance maternity leave?
- What about measures re. breastfeeding?



**Thank you for your attention!**

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