Reconciling Work and Private Life in EU Law and Policy

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Outline of the discussion

- what is and why do we need reconciliation?
- terminology
- the EU “journey”
- the resulting concept
- the measures
  - leave
  - time
  - care
- the Commission’s “Work-Life Balance” package
- conclusions: where are we now?
What is reconciliation?

reconciliation measures enable individuals to combine their family responsibilities with their occupational ambitions
Why do we need measures to reconcile work and family life?

- gender equality
- economic concerns
- demographic issues
- fight against poverty
- real choices for individuals
## Terminology

<table>
<thead>
<tr>
<th><strong>Reconciliation</strong></th>
<th><strong>Work-Life Balance</strong></th>
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<td>Between Work and Family Life</td>
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<td>the <strong>need</strong> to spend less time in the workplace in order to take care of one's family</td>
<td>the <strong>desire</strong> to limit the involvement in paid activities in order to pursue other interests (e.g., further education) with the overall aim of contributing to individuals’ well being</td>
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The development of reconciliation in the EU policy and legal context

**Phase 1**
the establishment of the principle of equal pay (Art. 119 EC); feminist claims

**Phase 2**
Social Action Programme 1974. Reconciliation as part of the gender equality and economic agenda
**Phase 3**
Pregnant Workers Directive (92/85 EEC);
Parental Leave Directive (96/34 EC)
Childcare Recommendation (92/241 EEC)

**Phase 4**
Treaty of Amsterdam 1999 (Art 2: to promote equality, Art 3: gender mainstreaming)

“... both men and women, without discrimination on the grounds of sex, have a right to reconcile work and family life”

Art 33: “To reconcile family and professional life, everyone shall have the right to protection from dismissals for a reason connected with maternity and a right to paid maternity leave and to parental leave following the birth or adoption of a child”

## Reconciliation: the concept

<table>
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<tr>
<th>The Leave Provisions</th>
<th>The Time Provisions</th>
<th>The Care Strategy</th>
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<td>to grant time off to parents to spend time with children</td>
<td>to alter working patterns</td>
<td>to provide care whilst the carer is at work</td>
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<td>• maternity leave • paternity leave • parental leave • leave for family reasons (time off for family related reasons)</td>
<td>• part-time • fixed term • tele-working</td>
<td>• child care • elderly care</td>
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time

leave

care

children

adults
Reconciliation as an evolving concept

The traditional framework:
- women with young children
  - Case 184/83 Hofmann [1984] ECR 3047

A modern (dynamic) approach:
- reconciliation as a fundamental right which is for everybody (carers rather than parents)
  - Case C-243/95 Hill [1988] ECR I-3738
The LEAVE provisions: maternity leave and benefits

- Pregnant Workers Directive (92/85 EEC)
- Recast Directive (2006/54 EC)
- Extensive case law
  - Case 177/88 Dekker [1990] ECR I-3941
  - Case C-506/06 Meyer [2008] ECR I-8511
Paternity leave and benefits

The (traditional) approach of the case law:

“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 [1984] ECR 3047)

Case 163/82 Commission v Italy [1983] ECR 3275
Rights of adoptive mothers as different from rights of adoptive fathers

Case C-243/95 Hill and Stapleton [1998] ECR I-3739
The role of fathers

Case C-218/98 Abdoulaye [1999] ECR I-5723
The changing role of fathers

“The evolution of society is such that in many cases working men, if they are fathers, must share all the tasks previously performed by the wife as regard to the care and the organisation of the family” (Case 312/86 Commission v France [1984] ECR 6315)

Art 2(7) Amended Equal Treatment Directive (2002/73 EC)
“it is (…) without prejudice to the rights of Member States to recognise distinct rights to paternity (…) leave”

Art 16 Recast Directive (2006/54 EC)
Parental leave


It enables parents of young children to take 13 weeks unpaid leave to care for young children
Parental leave: the main issues

1. structure
2. duration
3. time limit
4. flexibility
5. eligibility conditions
6. level of employment protection
7. level of financial compensation
Time off for family related reasons


- possibility to take leave “on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable”
Time off: the main issues

emphasizes on *employers* rather than *parents*

BUT

domestic interpretation -

e.g. *Qua v J. Ford Morrison Solicitor* [2003] ICR 482 (EAT)

Recent development:
Case C-303/06 *Coleman* (NYR)
The TIME provisions: flexible working arrangements

Change the **structure** of the contract

Part-time Workers Directive (97/81 EC)
Fixed-term Workers Directive (99/70 EC)

1992: 14.2% of the EU working population was working part-time
2002: 18.1% of the EU working population was working part-time
Flexible working arrangements: the main issues

1. focus on the market rather than on parents
2. parents have limited control over flexible working arrangements
   • right to ask but not to obtain
   • there is no right to resume full time work
3. type of jobs normally connected with flexibility
4. gender consequences of flexibility - in 2007, 31.2% of women in the EU worked part-time. (COM (2009) 77 final)
Does part-time work?

“the most prevalent form of working time in the EU is full-time work, both amongst men and women” (European Foundation for the Improvement of Living and Working Conditions, 2007)

There is, so far, no express link between flexible working arrangements and parents
The CARE strategy

“The activities and relations involved in meeting the physical and emotional requirements of dependent adult and children, and the normative economic and social frameworks within which these are assigned and carried out” (Daly & Lewis, 2000)

In 2005, over six million women aged between 25-49 were forced out of paid work in order to meet their family responsibilities (Eurostat, 2006)
The Childcare Recommendation (1992)

- Provision of children-care services
- Special leave for employed parents with responsibility for the care and upbringing of children
- Sharing of occupational, family responsibilities between men and women

**Recommendation 92/241 EEC**
- Non binding text but nevertheless has practical effects
- First time the EU proposes measures for the private sphere
- Gender neutral
The Barcelona objectives (2002)

The European Council invited the Member States to “remove disincentives to female labour participation and strive (...) to provide childcare by 2010 to at least 90% of children between 3 years old and the mandatory school age and at least 33% of children under 3 years of age”

- Communication (COM(2008)xxx)
The role of the Social Partners

In September 2008 the Social Partners initiated negotiations to update the existing rules on parental leave (Directive 96/34 EC)

Negotiation to last nine months
The Communication:
A better work-life balance: stronger support for reconciling professional, private and family law

It is, prima facie, the most innovative of the four documents:

• reconciliation as backbone of other policies but also as a way to guarantee real choice for individuals
• a mix of political actors
• “other forms of leave”: paternity leave, adoption leave and filial leave
• EC limitations: “the primary responsibility for developing and promoting reconciliation measures belongs to the Member States”
Amendments to the Pregnant Workers Directive

- adopted under Art. 118 (now 137) EC (health and safety measure)
- 14 weeks leave
- payment at “adequate allowance”
- no express mention to return to work
- no paternity leave

- based on Art 137(2) and 141 (3) EC
- 18 weeks leave
- full pay during the 18 weeks
- right for women to request flexible working arrangements after maternity leave
- no paternity leave
Other proposals of the Work-Life Balance Package

- Proposed amendments to Directive 86/613
- Report on the implementation of the Barcelona objectives:

“six years on from the adoption of the Barcelona objectives, and with the 2010 deadline approaching, it looks as though most Member States will fail to reach the targets”
Is the Work-Life Balance package enough?

- economic concerns
- does not consider the reality of today’s families
- no express reference to the role of fathers
- no express reference to adult care
- Member States remain responsible for the relevant measures
Conclusions: where are we now?


the Work-Life Balance Package as “one of the main initiatives” of the EU Commission in this area but the “unequal share of domestic and family responsibilities” remains