

Written Opinion

COM(2017)253 final - Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU;

COM(2017)252 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support Work-Life Balance for Working Parents and Carers.

PART I - INTRODUCTORY NOTE

In accordance with the terms of Article 7 of Law No. 43/2006 of 25 August, on monitoring, assessment and pronouncement by the Assembleia da República within the scope of the process of constructing the European Union, as amended by Law No. 21/2012 of 17 May, and in accordance with the procedures for the scrutiny of European draft acts approved on 01 March 2016, the European Affairs Committee received the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support Work-Life Balance for Working Parents and Carers [COM(2017)252], and the Proposal for a Directive of the European Parliament and of the Council [COM(2017)253 Final], repealing Directive 2010/18/EU of the Council.

In view of its object, this draft act was submitted to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees and to the Committee on Labour and Social Security, which analysed it and approved the Reports annexed to this Written Opinion, of which it forms an integral part.

PART II - RECITALS

Considering the provisions of this proposal, the following issues should be noted:

The package of initiatives under consideration, consisting of a Communication and a proposal for a Directive, was foreseen in the New Initiatives of the European Commission's Work Programme for 2017 (Annex 1) as one of the proposals to follow up on the political priority of 'A Deeper and Fairer Economic and Monetary Union', thereby completing the European Pillar of Social Rights, which provides for 'initiatives to address the challenges of work-life balance faced by working families'.¹

According to the impact assessment accompanying the Directive, *'the problem to be addressed is women's under-representation in employment, particularly due to the lack of equal sharing of caring and professional responsibilities by parents with children or those with dependent relatives'*.

It is therefore proposed to amend the legal and political framework of the EU in the following terms:

- To improve access to work-life balance arrangements for working parents and carers, such as leaves and flexible working arrangements;
- To increase take-up of family-related leaves and flexible working arrangements by men

In accordance with the impact studies, proposals are made for five measures that optimise results against possible costs, namely:

1. **Maternity:** 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);
2. **Paternity leave:** introduction of an individual entitlement for 10 working days, paid at least at sick pay level.
3. **Parental leave:** revision of existing rights in order to provide for:

¹ The following working documents accompany this legislative proposal: an impact assessment, available only in English, and a summary of the impact assessment, available in all languages: [SWD\(2017\)202](#) – COMMISSION STAFF WORKING DOCUMENT **IMPACT ASSESSMENT** accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU; [SWD\(2017\)203](#) – COMMISSION STAFF WORKING DOCUMENT **SUMMARY OF THE IMPACT ASSESSMENT** accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for working parents and carers and repealing Council Directive 2010/18/EU.

- a) The right to flexible uptake (part-time, piecemeal);
 - b) Four months of non-transferable entitlement, and
 - c) Four months paid at least at sick pay level.
4. **Carer's Leave:** introduction of an individual entitlement of five days/year, paid at least at sick pay level.
5. **Flexible working arrangements:** right for parents of children up to 12 and carers to request flexibility in working hours, schedule or place of work for a set period of time. The employer has no obligation to grant the requested change.

In addition, the Communication also includes proposals for non-legislative measures to complement the objectives of the existing legislation currently proposed, notably at the level of guidance and monitoring (identification of country-specific obstacles, with recommendations to be provided 'by the coordination of economic policies within the European Semester') and also by the collection of data at EU level (identification of 'disincentives to work within the tax and benefit systems').

a) Legal Basis

The legal basis of the proposal for the directive under consideration is Article 153, subparagraph (i) and paragraph 2(b) of the Treaty on the Functioning of the European Union, in the section relating to Social Policy, which refers to the specific areas of EU action to achieve the objectives of this policy. This aims to achieve the principles set out in the European Social Charter of 1961 and the Community Charter of the Fundamental Social Rights of Workers of 1989, including 'equality between men and women with regard to labour market opportunities and treatment at work', in addition to guaranteeing workers' health and safety, collective defence of employees' interests and social protection of workers, in accordance with the initial legal basis of Directive 2010/18/EU, which it is intended to repeal.

b) Principle of Subsidiarity

In accordance with Article 3(3)(2) of the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union, as well as in Protocol 3 of its annex, any action taken at EU level must respect the principles of subsidiarity and

proportionality, which means that the EU can only intervene when its action results in added value to Member States' measures.

The issues addressed in this initiative are necessarily transnational in nature, as they affect several Member States simultaneously. The aim is to achieve deeper and fairer Economic and Monetary Union, to bring together the various schemes in force in the Member States, which is why these matters could not be treated adequately by the Member States individually and in isolation. This would then comply with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union (TEU).

Moreover, the differences in the various national laws on these matters require the uniform application of the directive, so that only concerted action at EU level can ensure better and more uniform implementation of the Directive and thereby ensure proportionality.

In short, after hearing the *Committee on Constitutional Affairs, Rights, Freedoms and Guarantees* as well as the *Committee on Labour and Social Security*, it is our understanding that, since the objectives of this Directive cannot be sufficiently achieved by individual Member States in isolation, insofar as they relate to matters of shared competence, and that by reason of the scale and effects of the action envisaged they can only be achieved in a more appropriate and effective way at European Union level, we conclude that the proposal presented here conforms to the principles of subsidiarity and proportionality.

c) Position of the Government and National Context:

In the Chapter entitled 'Responding to the Demographic Challenge', the Programme of the XXI Constitutional Government states that public policies on birth rates 'must have as their core aim to contribute to the sustainability of the country and its demographic growth, ensuring that citizens under these plans can make truly free individual choices', including in the area of birth rates 'in which public policies should create the conditions for the exercise of responsible parenting, promoting work-life balance, equality in family responsibilities and removing legal obstacles to increasing the birth rate and to parenting'

In the Chapter on Gender Equality ('Building a More Equal Society') reference is made to promoting 'A social model based on new social relationships that ensure that men and

women live in equality both in the public and private sphere; and which takes into account the different ways in which individuals suffer discrimination for reasons of sex, gender, class, ethnic origin, religion or belief, disability, age, sexual orientation or gender identity.'

With regard to **Paternity leave**, the policy proposal now under consideration introduces the possibility, not compulsory, of parents taking 10 working days paid at least at sick pay level. By way of comparison, Portuguese legislation provides for compulsory leave of 15 working days to which 10 non-compulsory working days may be added, while the proposal for the directive provides for the possibility of the father taking 10 working days paid at 100%.

As for **Parental Leave**, the policy proposal in question provides for the right to flexible use of parental leave, guaranteeing 4 months for workers, individually, at least until the child is 12 years old, and for Member States to ensure that the leave exceeds 4 months, the surplus being transmissible to the other parent, and these 4 months to be paid at least at sick pay level. Portuguese legislation provides for parental leave exclusively for the mother, which is compulsory in the first 6 weeks after childbirth (42 days). After this period, the initial parental leave may be used by the mother or the father, as decided by both, for a period up to 120 days (paid at 100%) or 150 days (paid at 83%), and to this period a further 30 consecutive days may be added, provided they follow on directly from the 6 weeks taken by the mother, which either the father or the mother may take, exclusively, as a period of 30 consecutive days or two periods of 15 days consecutively.

As for **Carer's Leave**, the proposed directive provides for the introduction of an individual right of 5 days per year, paid at least at sick pay level, to support a sick family member. According to the proposal, the 'carer' is an employee who provides personal care or support in the event of serious illness or dependency of a family member, which according to the policy may be a son, daughter, father, mother or spouse of the employee, or partner in a civil union, when these are recognised in national law. Portuguese legislation does not provide for the role of the 'carer'. However, it does allow the employee to benefit from up to 15 days of absence per year to assist a member of their household.

As for **Flexible Working Arrangements**, the policy proposal under consideration provides an obligation on Member States to enshrine in national law the possibility for caregivers to opt, at least until the child is 12 years old, for flexible working arrangements, so that they can adapt their working routine, particularly through the use of teleworking schemes, flexible working hours or reduction in hours of work. All these cases are already provided for and regulated in the Portuguese Labour Code (CT), and it is already

possible for employees with children up to the age of 12 years to enjoy the right to work part-time or have flexible hours. There is however a difference in teleworking, in that the CT allows an employee with a child under 3 years old to work from home, provided that it is possible and that the employer provides the resources and means for this purpose. This diverges from the directive with regard to age, as it covers employees with children up to the age of 12.

d) Rapporteur's Opinion:

The legislative options and recommendations are generally already enshrined in Portuguese legislation, which can in fact be considered more favourable to the employee than that now being proposed by the draft directive in question, or by the communication. However, as the proposal for a directive aims to lay down minimum thresholds, Portuguese legislation should not require any major changes.

Nevertheless, it will undergo an amendment, as a result of an 'alert' in the report presented by the Committee of Labour and Social Security, about the role and model presented for parental leave, which deserves our especial consideration, and a warning, as we believe that the role in Portuguese legislation will be more favourable to parents and employees as it allows them greater flexibility and freedom in how they choose to share the initial parental leave. It should be noted that the initial parental leave model in force in Portugal has been recognised by the ILO as a breakthrough and of great importance in the pursuit of gender equality and policies on work-life balance.

On the other hand, the role of 'carer' deserves special attention as it is still alien to Portuguese legislation, and its introduction into the Portuguese legal system deserves to be duly considered. This concept must necessarily include the elderly, both parents and grandparents, and is something that is becoming increasingly significant in our society today.

This being the case, and given the relevance and importance of the issues dealt with by the initiatives under consideration, covering areas such as demographic change, birth rates, gender equality and the implications of all this in the labour market, the rapporteur considers that the Committee should follow the European legislative process of this package of initiatives.

PART III – OPINION

In the light of the recitals and the content examined and conclusions contained in the Reports issued by the *Committee on Constitutional Affairs, Rights, Freedoms and Guarantees*, as well as by the *Committee on Labour and Social Security*, with which we agree and support, the European Affairs Committee is of the opinion that:

1. Since the objectives of this Directive cannot be sufficiently achieved by individual Member States in isolation, insofar as they relate to matters of shared competence, and that by reason of the scale and effects of the action envisaged they can only be achieved in a more appropriate and effective way at European Union level, we conclude that the European Union may adopt these measures, and that the proposal presented here conforms to the principles of subsidiarity and proportionality.
2. Given the relevance and importance of the issues dealt with by the initiatives under consideration, covering areas such as demographic change, birth rates, gender equality and the implications of all this in the labour market, the rapporteur considers that the Committee should follow the European legislative process of this package of initiatives.
3. The scrutiny process in relation to these draft acts is completed.

São Bento Palace, 27 June 2017

Rapporteur

Committee Chairman

(Carla Tavares)

(Regina Bastos)

PART IV - ANNEX

Report of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees;

Report of the Committee on Labour and Social Security.

REPORT of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees

COM(2017)252 - 'Communication from the Committee to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an initiative to support work-life balance for working parents and carers'

and

COM(2017)253 final - 'Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU;

Rapporteur: MP Elza Pais

1. Background

In compliance with Article 7(1) of Law No. 43/2009 establishing the monitoring, assessment and pronouncement system by the Assembleia da República as part of the process of constructing the EU, the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees was informed of the content of European initiatives **COM (2017) 252** and **COM (2017) 253**, to analyse them and issue an opinion.

In the case of document COM (2017) 252, given that it is the European Commission's communication, it is exempted from scrutiny due to the application of the principle of subsidiarity, as set out in Protocol 2 annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

2. Object

Gender equality is a fundamental principle and one of the European Union's objectives, in accordance with Article 3(3) of the Treaty on European Union (TEU). Article 8 of the TFEU provides for the Union to undertake all actions that aim to eliminate inequalities and

promote equality between men and women. Similarly, the Charter of Fundamental Rights of the European Union refers specifically to equality between men and women and reconciliation of family and professional life.

The proposed Directive aims to guarantee the principle of equality between men and women with regard to opportunities and treatment in the labour market. Adapting and modernising the legal framework will give carers a better balance between family and professional life. To this end, it provides for individual rights in relation to paternity leave, parental leave and carer's leave, and flexible working arrangements for parents and carers who pursue an occupation. It proposes new measures to strengthen the implementation of the directive on maternity leave, thereby striving for a broader approach which takes into account the most recent developments in society.

2.1 Communication from the Committee to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions An initiative to support work-life balance for working parents and carers

This initiative is one of the main documents of the European Pillar of Social Rights - which strengthens the social dimension of the Union².

In the European Union, although women have increasingly higher qualifications, even surpassing the educational level of men³, their participation in the labour market, and hence their economic independence, remains considerably lower than that of men, as many leave the labour market because they have to take responsibility as family carers.

Women continue to be under-represented in the labour market throughout the European Union. In 2015, the average employment rate of women aged 20 to 64 years was 64.3%, while for men it was 75.8%, an 11.6 percentage point gap, which increased to 18.1 percentage points for those in full-time employment. The economic losses caused by the disparity in employment between men and women amount to €370 billion per year⁴.

² https://ec.europa.eu/commission/sites/beta-political/files/gender-equality-work-life-balance_en.pdf

³ In 2015, 43.4% of women aged between 30-34 years had higher educational qualifications than men (34%). Unless otherwise indicated, the statistics come from Eurostat.

⁴ Eurofound (2016), *'The gender employment gap: challenges and solutions'*.

One of the main causes of the disparity in employment is the unequal distribution of family responsibilities between women and men, which greatly increases in families with children. There is one significant piece of data: women with young children have on average an employment rate 8.8% lower than women without children (in some Member States this is as high as 30%); while for fatherhood the inverse is true with regard to employment rates. Fathers have on average an employment rate which is 12% higher than men without children.

On the other hand, the fact that the active population in Europe is ageing, and that the digital transformation of the economy is changing, must also be taken into consideration. This opens up new opportunities for organising work, which move away from the traditional models.

In summary, there is a significant disparity in wages, 16% on average in the EU, and a disparity in pensions between women and men averaging 40%. This makes women more economically dependent on their partners as a result of lower salaries, a higher concentration of part-time work and career interruptions due to family responsibilities. This is the situation that a Europe founded on the principle of equality and solidarity has to solve. As well as the increased risk of exposing women to poverty, the negative repercussions of their social exclusion and on the education of their children constitute an obstacle to the development of Europe.

However, policies have not been able to create equal opportunities for mothers and fathers to work and take care of children, and contribute to the well-being of society in general.

This initiative is intended to set out a modern policy for reconciling work and family life that will help to improve employment rates, reduce poverty and social exclusion and thereby help fulfil the objectives of the Treaty in terms of equality between women and men and equal opportunities in the labour market. It will also help increase motivation and productivity and reduce absenteeism, thereby avoiding the waste of talent.

The EU has been addressing issues related to equality between men and women in the labour market and to promoting work-life balance through legal acts⁵of the European semester for⁶policy coordination, EU funding and⁷policy orientations.

In a rapidly changing world, there is an urgent need to take new measures.

In order to modernise the existing legal framework, the Committee presents a proposal for a directive on work-life balance that will preserve existing rights and develop them in order to ensure new and strengthened rights for men and women.

Starting from an analysis of the data on the current situation and on the approach of the European Union, the European Commission presents the communication identified as COM (2017) 252, which establishes priority action areas to promote work-life balance of working parents and carers, namely:

- 1) To improve the design of arrangements for family-related leaves and flexible working arrangements and promote their fair use by men and women;
- 2) Improve the quality and affordability of and access to childcare facilities and long-term care;
- 3) Combat economic disincentives to the participation of parents and carers in the labour market.

For each of these areas, the European Commission indicates legislative and non-legislative measures, which include in terms of their future importance:

⁵ See: Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68 of 18.3.2010); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204 of 26.7.2006); Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health of pregnant workers, and workers who have recently given birth or are breastfeeding (tenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348 of 28.11.1992); Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 14 of 20.1.1998) and the proposal from the Commission, in 2008, for a revision of Directive 92/85/EEC on maternity protection (referred to above).

⁶ For more information, see https://ec.europa.eu/info/strategy/european-semester_pt

⁷ In 1992, the Council issued a recommendation on child care (92/241/EEC, OJ L 123 of 8.5 1992).

- *Propose a Directive improving work-life balance of parents and carers that preserves and builds on existing rights in particular under the Parental Leave Directive. New rights proposed in terms of flexibility in taking parental leave, paternity leave, payment of leaves, and flexible work arrangements, among others;*
- *Financial support, within the Rights, Equality and Citizenship Programme for (trans)national projects aiming at better enforcement of EU law on work-life balance, including information campaigns;*
- *A seminar, in cooperation with the European Network of Equality Bodies (EQUINET), on capacity-building activities for equality bodies and other respective labour market supervisory bodies (Network of Labour Inspectorates, SLIC) in Member States, with a focus on dismissal protection.*
- *Continue monitoring the design and the gender balanced take-up of family- related leaves and flexible working arrangements as part of the European Semester and in the annual report on gender equality.*
- *Improve the collection of EU-level data by Eurostat on the take-up of family-related leaves and flexible working arrangements by women and men, in cooperation with employment policy committees (SPC, EMCO) and in coordination with the European Institute for Gender Equality (EIGE).*
- *Ensure, together with Member States, that the European Social Fund and other structural and Investment Funds are supporting adequately work-life balance measures.*
- *Revise the existing Education and Training 2020 target on early childhood education and care.*
- *Improve EU level data collection on availability, affordability and quality of care services, particularly on formal long-term and out-of school care services, with the view to the exploring possibilities of developing benchmarks at EU level.*
- *Develop a tailored approach with Member States to encourage the use of the European Fund for Strategic Investment (EFSI) to finance social infrastructure, notably of child and long-term care services; including through Public-Private Partnerships.*

- *Continue to develop the provision of accessible, affordable and quality childcare, out-of-school and long-term care services, including by using support from the ESF and the ERDF; in the light of country-specific recommendations and in the event of insufficient funding earmarked to address the relevant challenges identified in the European semester, request Member States to review the programming of European Structural and Investment funds (ESIF).*
- *Explore the potential of addressing these concerns in the preparation of the post-2020 EU funding programmes, in particular drawing lessons from preparatory actions in this field.*
- *Continue to identify country-specific obstacles resulting from tax-benefit systems and monitor progress in addressing them in particular through EU economic policy coordination in the European Semester and provide Commission's guidance in the appropriate form.*
- *Improve EU level data collection on economic disincentives for second earners; develop and use benchmarks at EU level on work disincentives for second earners created by tax-benefit systems in the context of the European Semester.*

2.2 Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

The proposal for a directive in question arises in the context of commitments established by the European Commission, to '*guarantee the application of the principle of gender equality with regard to job opportunities and treatment at work*'.

With this initiative, the European Commission aims to: (i) improve access to work-life balance mechanisms such as leaves and flexible working arrangements; and (ii) encourage the use by men of family-related leaves and flexible working schemes.

As referred to in the explanatory memorandum, '*the directive builds on the existing rights and strengthens them in places or introduces new rights*'.

The following innovations are particularly worth highlighting:

- The introduction of minimum standards for **paternity leave** and a period of not less than 10 working days on the birth of a child⁸;
- Improvement in the system of **parental leave**⁹;
- A new annual right for workers to take a period of **carer's leave**, for use in the event of serious illness or dependency of a relative, of at least 5 working days per year;
- The right for workers making use of the different types of leave to receive an **adequate allowance** during the minimum period of leave foreseen at least equivalent to the level of sick pay that the worker in question would receive;
- A third form of **flexible working arrangement** (remote working possibilities) and further extension of the personal scope of those rights to all carers and workers with children up to a given age, which shall be at least twelve.
- Measures for **protection from dismissal** and **burden of proof** for workers because they requested or took one of the leaves provided for, or exercised the right to flexible working arrangements for the purpose of reconciling family and professional life.

The deadline for transposition of the directive by the Member States is set at two years.

It should also be noted that the proposal is accompanied by annexes SWD (2017) 202 final and SWD (2017) 203 final which deal, inter alia, with the impact assessment and corresponding summary.

3. Principle of Subsidiarity and Proportionality

For the purposes of assessing compliance with the principle of subsidiarity and the principle of proportionality, recommended by Article 5 of the TFEU, it is important to present the legal basis invoked that is referred to in Article 153(1)(1) of the TFEU. This provides that the Union shall support and supplement the action of Member States in the area of gender equality with regard

⁸ In order to avoid any discrimination between married and unmarried couples, and between heterosexual and homosexual couples, the directive provides that the right to paternity leave should not depend on civil or marital status, as defined in national law.

⁹ The directive lays down a minimum period of parental leave of at least four months which cannot be transferred between parents, ii) introducing greater flexibility as regards the ways in which parental leave can be taken (full-time, part-time or other flexible forms).

to labour market opportunities and treatment at work. Article 153(2)(b) of the TFEU establishes in this regard that '*the European Parliament and the Council may adopt, [...] by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States*'.

In fact, the judgement on the compatibility of community legislative intervention with the principle of subsidiarity may be considered consolidated to the extent that, currently, this is covered by Directive 2010/18/EU that is now to be replaced, i.e. the need for Community legislation in this area was previously accepted.

In this respect, it is worth extolling the arguments that '*the existence of common minimum standards is particularly relevant in the context of the free movement of workers and the freedom to provide services in the EU internal market* ', and that '*an action at EU level shall provide common minimum requirements for the reconciliation of work and family life that support equality between men and women with regard to labour market opportunities and treatment at work*'.

The collection of reports presented by the European Commission on this subject demonstrates effectively that several important discrepancies remain between Member States which create uneven protection in the EU and differences in the functioning of labour markets. This situation clashes with the objectives enshrined in the TFEU, and therefore justifies a new deepening of the legislative framework.

The proposal for a directive fully respects the freedom of workers and families and does not prevent Member States from providing stricter standards if they so wish. This initiative also proposes new measures to strengthen implementation of the policy on maternity leave, without prejudice to the rights granted under its provisions.

The success of this initiative will be based on a shared commitment. The Commission therefore calls on Member States, social partners and all relevant stakeholders to intensify their efforts with a view to improving policies on work-life balance and, thereby, the greater well-being of European society as a whole.

As the directive is the legal instrument chosen, and because the degree of intervention is limited to defining the minimum requirements needed and respects the consolidated national measures on leaves and flexible working arrangements and the opportunity for Member States

and social partners to establish their corresponding specific procedures, it is also considered that the principle of proportionality has been satisfied.

4. Report

In light of the foregoing, the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees is of the opinion that this report assessing the Community initiatives: (i) **COM (2017) 252 - "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support work-life balance for working parents and carers"** and (ii) **COM (2017) 253 - "Proposal for a Directive of the European Parliament and Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU"** shall be referred to the European Affairs Committee.

São Bento Palace, 12 June 2017

MP acting as Rapporteur,

(Elza Pais)

Committee Chairman,

(Pedro Bacelar de Vasconcelos)

REPORT OF THE COMMITTEE ON LABOUR AND SOCIAL SECURITY

- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU COM(2017)253

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support Work-Life Balance for Working Parents and Carers COM(2017)252.

Rapporteur: Clara
Marques Mendes (PSD)

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PART IV - CONCLUSIONS

PART I - INTRODUCTORY NOTE

The European Affairs Committee received the proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/08/EU, and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support Work-Life Balance for Working Parents and Carers.

It should be noted that these two initiatives are the first embodiment of European Pillar of Social Rights, whose establishment is provided for in a separate communication¹⁰, which was not the subject of a technical note. Similarly, it should be stressed that in the context of the debate on the future of Europe, the European Commission presented a discussion paper on the social dimension¹¹, which analyses developments in the labour market and its contingencies within the Community, which also did not receive a technical note. These two documents, although related, are not analysed in this report.

The following working documents accompany this legislative proposal: an impact assessment, available only in English, and a summary of the impact assessment, available in all languages:

- SWD(2017)202 – COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/UE;
- SWD(2017)203 - COMMISSION STAFF WORKING DOCUMENT SUMMARY OF THE IMPACT ASSESSMENT accompanying the document Proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

¹⁰ **COM(2017)250** – Communication from the Commission to the European Parliament, to the Council, to the Economic and Social Committee establishing a European Pillar of Social Rights.

¹¹ **COM(2017)206** - Reflection Paper on the Social Dimension of Europe .

This legislative initiative was submitted by the European Affairs Committee to this Committee, because it covers matters related to workers' rights already enshrined in the Portuguese Labour Code.

Thus, as part of the scrutiny procedures of European initiatives by the Assembleia da República, adopted in a meeting of the European Affairs Committee on 1 March 2016, in accordance with Article 6(3) of Law No. 43/2006 of 25 August [monitoring, assessment and pronouncement by the Assembleia da República as part of the construction process of the European Union], as amended by Law No. 21/2012, of 17 May, the European Affairs Committee request that the Committee on Labour and Social Security analyse and issue the relevant report on the proposal for a directive.

The Committee on Labour and Social Security shall issue this report on the proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/08/EU, and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An initiative to support Work-Life Balance for Working Parents and Carers, which once approved, shall be forwarded, in accordance with the applicable legal and procedural terms, to the European Affairs Committee.

PART II - RECITALS

1. General

The proposal for a directive which is the subject of this report is particularly important in guaranteeing the application of the principle of gender equality with regard to job opportunities and treatment at work. To adapt and modernise the EU legal framework, this directive aims to allow parents and people with care responsibilities to better reconcile their employment and family obligations.

It follows from the justification of the proposal that the directive builds on the existing rights and strengthens them in places or introduces new rights. It also follows from the aforementioned justification that the minimum level of protection already offered by the EU acquis is also retained.

It should be noted that the set of initiatives under consideration was provided for under the New Initiatives of the European Commission's Work Programme for 2017. Among the proposals made to follow-up the political priority:

'A Deeper and Fairer Economic and Monetary Union', namely the European Pillar of Social Rights, which provided for *'initiatives to address the challenges of work-life balance faced by working families'*.

The proposal therefore aims 'to improve access to work-life balance mechanisms such as leaves and flexible working arrangements; and encourage the use of family-related leaves and flexible working arrangements'.

2. Background and objectives

The Proposal for a Directive of the European Parliament and of the Council aims, as shown above, to revise Directive 2010/08/EU.

As stated, this directive aims to improve work-life balance for working parents and carers.

According to the impact assessment accompanying the Directive, 'the problem to be addressed is women's under-representation in employment, particularly due to the lack of equal sharing of caring and professional responsibilities by parents with children or those with dependent relatives'.

To this end, proposals are hereby submitted to amend the EU's political and legal framework, with the following specific policy objectives:

- to improve access to work-life balance arrangements for working parents and carers, such as leaves and flexible working arrangements;
- to increase take-up of family-related leaves and flexible working arrangements by men.

In order to allow a better understanding of the legislative dimension of the issue under consideration, we shall offer a brief summary of the legislative background to this matter.¹²

¹² For a more detailed analysis of the historical background see note drawn up by the technical support team to the Fourth Committee, dated 30 May 2017.

Thus,

Specifically on work-life balance, which is the subject of the initiatives under consideration, the main EU legislative acts are:

- Council Directive 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

This was based on initiative COM(1990)406, transposed by Law No.17/95 of 09/06/1995 amending Law No. 4/84, of 5 April (protection of motherhood and fatherhood).

- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organisation of working time.

This was based on initiative COM(2002)336, transposed into national law by Act No. 99/2003 of 27 August - It approves the Labour Code.

- Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC.

This directive shall be repealed and replaced by the initiatives under scrutiny, while preserving existing rights and obligations. This was based on initiative COM(2009)410. The information provided to the European institutions regarding transposition into national law is that it was not considered necessary, since the law in force guaranteed identical rights or higher.

- COM(2008)637 - Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

This directive was withdrawn by the Commission in 2015, in order to prepare a new, broader initiative, in particular the proposals in question. It is notable for having been the first case of co-decision which has not been completed.

3. Purpose of the Proposal

The aim of the proposal is to introduce a change in the EU legal and political framework in order to improve access to work-life balance mechanisms such as leaves and flexible working arrangements; and encourage take-up of family-related leaves and flexible working arrangements by men.

Thus, on the basis of the impact assessments, the proposal for a directive applies the following five measures:

- **Maternity:** 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).
- **Paternity leave:** introduction of an individual entitlement to 10 working days, without being compulsory, paid at least at sick pay level.
- **Parental leave:** revision of currently existing rights in order to provide for i) the right to flexible use (i.e. part-time, piecemeal), ii) four months for workers to take until the child is at least 12 years old, iii) if it is made transmissible between parents, Member States must ensure that the leave exceeds four months, and only the surplus is transmissible to the other parent, and iv) payment for four months, at least at the level of sick leave.
- **Carer's Leave:** the introduction of an individual entitlement of five days per year, paid at least at sick pay level, to support a sick family member.
- **Flexible working arrangements:** right of parents with children until at least 12 years of age and for caregivers to request flexibility of working hours, timetable or workplace over a given period, without an obligation on the employer to grant the requested change.

The Communication also includes proposals for non-legislative measures to complement the objectives of the existing and proposed legislation, notably at the level of guidance and monitoring (identification of country-specific obstacles, with recommendations to be provided 'by the coordination of economic policies within the European Semester') and also by the collection of data at EU level (identification of 'disincentives to work within the tax and benefit systems').

4. Legal elements of the Proposal

The legislative measure which is the subject of this report was adopted under Article 153(2) of the Treaty on the Functioning of the European Union.

In this case, the proposal complies with the Principle of Subsidiarity, since this is a legislative measure on the implementation of the principle of gender equality with regard to labour market opportunities and treatment at work, with a focus on work-life balance for workers, an area of shared competence between the European Union and the Member States. Similarly, the modernisation of an existing legal framework in the single market, which discourages social dumping and promotes women's participation in the single labour market, can only be obtained through European legislation, which provides common minimum standards for policies on work-life balance.

Thus, the objectives of the proposal cannot be sufficiently achieved by the Member States alone, since only legislation at EU level can guarantee the achievement of sufficient progress and minimum application in all Member States.

PART III - IMPLICATIONS OF THE PROPOSAL ON LABOUR LAW IN PORTUGAL

- Paternity Leave

The proposal now under consideration provides fathers with the possibility, not compulsory, of taking 10 working days paid at least at sick pay level.

Portuguese legislation provides for mandatory entitlement by the father to 15 days, five of which are consecutive, immediately after the birth of a child and 10 consecutive days that may or may not be taken in the 30 days following the birth of the child (parental leave exclusively for the father provided for in Article 43 of the Labour Code, approved by Law No. 7/2009 of 12 February). In addition to these, there are 10 optional working days, consecutive or not, that may be taken after the period of the 10 mandatory days in which the initial parental allowance is granted to the mother.

According to the OECD¹³, 40% of Portuguese parents use paternity leave and Portugal is the OECD country with the 5th highest number of weeks of paid leave for men (up to 21 weeks).

By way of comparison, Portuguese legislation provides for compulsory leave of 15 working days to which 10 non-compulsory working days may be added, while the proposal for the European directive only provides for the possibility of the father taking 10 working days.

- Parental Leave

The proposal for the directive in question provides for the right to flexible use (i.e. part-time and piecemeal) of parental leave, and guarantees four months for workers to use individually until the child is at least 12 years old¹⁴. In the event of transmission between parents, Member States must ensure that the leave exceeds four months, that only the excess days are transmissible to the other parent and that the four months' leave must be paid at least at sick pay level.

Portuguese legislation provides parental leave exclusively for the mother, which is compulsory in the first six weeks after childbirth (42 days) - Article 41 of the Labour Code.

After this period, the initial parental leave can be used by the mother or the father, as decided by both, for a period up to 120 or 150 consecutive days (4 months or 5 months) - Article 40 of the Labour Code. A further 30 days may be added to this period, in which case each of the parents may, exclusively, take a period of 30 consecutive days or two periods of 15 consecutive days, after the mandatory period taken by the mother¹⁵. This may make a total of 180 days.

The initial parental leave model in force in Portugal replacing the maternity and paternity leaves has been recognised by the ILO as a breakthrough and of great importance in the pursuit of gender equality and policies on work-life balance.

¹³ Study of March 2016, <http://www.oecd.org/gender/parental-leave-where-are-the-fathers.pdf>

¹⁴ In the Portuguese version of the Proposal of the Directive there is a lapse in Article 5(1), which refers to 'female workers' when what was intended was 'workers', which is removed from the English and French versions.

¹⁵ The 120 days of leave and the 150 days of shared leave (120 + 30) are paid at 100%, while the 180 days of shared leave are paid at 83% and in the case of 150 days at 80%.

To this period and until the child turns 6 years old, the parents, individually, can still take supplementary parental leave (Article 51 of the Labour Code). This may be used in one of two ways: for a period of three months; part-time work for 12 months, with a normal working period equal to half of the full time; several periods of extended parental leave and part-time work in which the total duration of the absence and the reduction of working time is equal to normal working periods of three months; absences interspersed with work of a duration equal to normal working periods of three months, as long as provided for in a collective labour regulation instrument. These periods may be used consecutively or in up to three interspersed periods, but shall not be transferable between the father and the mother.

In practical terms, the proposal for a directive which provides for parental leave for each parent of 4 months (120 days) for a child up to the age of 12, ultimately offers fewer days to parents than current Portuguese legislation already provides. In fact, use of the initial parental leave plus supplementary parental leave can provide up to 270 days in total.

However, the proposal for a directive differs profoundly from the Portuguese legislation by eliminating the freedom for parents to agree the best way to take the initial parental leave, consigning each parent with 120 non-transferable days and extending the period in which it may be taken up to the child's 12th birthday. *In contrast*, Portuguese legislation provides for similar arrangements for supplementary parental leave, in which 90 days are assigned to be taken by the father or the mother - which is less than European law, but restricts the period it may be taken up to the child's 6th birthday.

- Carer's Leave

The proposal for a directive provides for the introduction of an individual entitlement of five days per year, paid to the carer, at least at sick pay level, to support a sick family member. According to the proposal, the carer is an employee who provides personal care or support in the event of serious illness or dependency of a family member, which according to the directive may be a son, daughter, father, mother or spouse of the employee, or partner in a civil union, when these are recognised in national law.

Portuguese legislation does not provide for the concept of the 'carer'. However, it does allow the employee to benefit from up to 15 days of absence per year to assist a member of their household (Article 252 of the Labour Code).

Similarly, Portuguese legislation lays down a set of possibilities, which with separate names serve the same purpose as carer's leave, namely, to justify absences and leaves to care for children and justify absences to look after grandchildren. The definition of 'carer', in Article 3(c), is entirely within the existing concept in the Portuguese Labour Code of an 'absence to help for a member of the household', and it should be added that Portuguese legislation is more favourable to the worker. It should also be pointed out that Portuguese legislation provides for the concept of grandfather/grandmother, which is excluded from the proposed directive.

- Flexible working arrangements

The proposal for a directive under consideration provides an obligation on Member States to enshrine in national law the possibility for caregivers to opt, at least until the child is 12 years old, for flexible working arrangements, which includes the possibility that workers can adapt their working routine, particularly through the use of teleworking schemes, flexible working hours or reduction in hours of work.

All these cases are already provided for and regulated in the Portuguese Labour Code (CT), and it is already possible for employees with children up to the age of 12 years to enjoy the right to work part-time (Article 55) or have flexible hours (Article 56). With regard to teleworking, the Labour Code provides that a worker with a child up to 3 years old can do their job by teleworking, provided that it is possible and that the employer provides the resources and means to that end (Article 166).

On this aspect of the proposal for a directive, only the age of the child for the purpose of having the right to telework is distinct, although European legislation gives greater freedom for the employer to refuse the request, albeit with justification. In Portugal, case law has adopted a position more favourable to the worker.

- Concluding analysis

The legislative options presented are, as a general rule, enshrined in Portuguese legislation, which we consider, in accordance with the aforementioned, more favourable to the worker in relation to the proposal for a directive under consideration here.

Therefore, as the proposal for a directive aims to establish standards, Portuguese legislation minimum should not undergo major changes with the possible approval of the proposal.

However, two aspects deserve some reflection: on the one hand, the European construction of the legal concept of parental leave. In fact, although the leave seems to be more favourable, analysis of the Portuguese legal framework reveals identical assurances. We believe, therefore, that the Portuguese legislative framework offers parents more freedom to share the initial parental leave than European legislation. On the other hand, the inclusion of the concept of the 'carer', which is alien to Portuguese legislation, is worth thinking about in terms of the need to introduce a new concept into the legal system. As provided for in the European legislative initiative, this does not include the concept of grandparents, which in today's society has gained especial relevance.

In Portugal, this matter deserves a national debate, which necessarily intersects with demographic change and gender equality, but also has implications for the labour market.

Therefore, it is considered that the adoption of a Directive which aims to reinforce gender equalities with a focus on work-life balance of parents will have a positive effect at European level, even if some of the proposed solutions seem to use to be more restrictive than those already provided by Portuguese legislation.

The rapporteur also believes that the Parliament should follow the European legislative process through regular information from the competent Ministry, given the importance of the matter concerned.

PART IV - CONCLUSIONS

Mindful of the above, the Committee on Social Security and Labour concludes as follows:

1. Through the Proposal for a Directive on work-life balance for parents and carers, the European Parliament and the Council aim to repeal Directive 2010/18/EU of the Council.
2. The proposal for a Directive presented, by maintaining the philosophy and basic principles contained in the aforementioned Directive, introduces significant improvements to adapt and modernise the legal framework of the EU.

3. The Committee on Labour and Social Security agrees with the adoption of a legislative measure, binding in character, which ensures a better and greater protection of the principle of gender equality with regard to labour market opportunities and treatment at work, adapting and modernising the existing legal framework in the EU, allowing parents and people with care responsibilities to a better reconcile their employment and family obligations.
4. The Committee on Labour and Social Security considers that some aspects of the proposal, mentioned in part III of this report, should be the object of reflection by the Government during negotiations, namely, the inflexibility of sharing parental leave proposed by the European Commission. At different career stages, it might make sense that sharing between both parents is not equitable.
5. The Committee on Labour and Social Security considers that scrutiny of this initiative should be maintained until the completion of the respective legislative procedure, in particular, on request to the Minister of Labour, Solidarity and Social Security of regular information in writing about developments in the negotiations.
6. This initiative was presented under Article 153(2) of the Treaty on the Functioning of the European Union and respects the principle of subsidiarity, to the extent that it relates to matters of shared competence and the objective to be reached cannot be achieved at national level.
7. Pursuant to Law No. 43/2006, of 25 August 2006, as amended by Law No. 21/2012 of 17 May, this report, after approval, should be referred to the European Affairs Committee for all due purposes.

São Bento Palace, 20 June 2017.

MP acting as Rapporteur

Committee Chairman

Clara Marques Mendes

Feliciano Barreiras Duarte