

CONTENTS

Background

- Introduction
- Existing situation
- Parliament's starting position
- Council starting position

Proposal

- Preparation of the proposal
- The changes the proposal would bring

Views

- Advisory committees
- National parliaments
- Stakeholders' views

Legislative process

References

- EP supporting analysis
- Other sources

A new directive on work-life balance

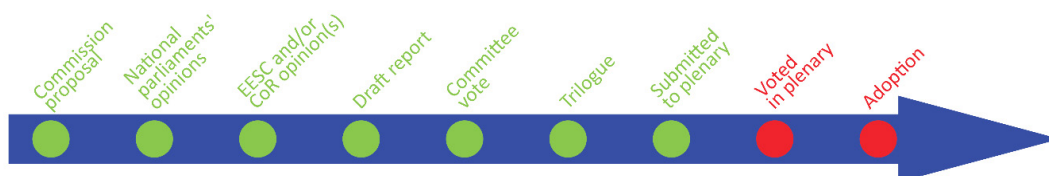
Despite significant progress for some social groups in the area of work-life balance, there has been a general trend of decline since 2011, and progress amongst Member States has been uneven. This proposed directive (complemented with non-legislative measures) should lead to the repeal of the existing Framework Agreement on Parental Leave, made binding by Council Directive 2010/18/EU (the Parental Leave Directive). The new directive contains proposals for paternity, parental and carers' leave.

Stakeholders have been divided over the level of ambition of the proposed measures. Trilogue negotiations started in September 2018, and a provisional agreement among the three institutions was reached after the sixth trilogue meeting, in January 2019. The provisional agreement is less ambitious than the original Commission proposal and the Parliament's position, which had, in some ways, gone further than the Commission. The text was approved by the Parliament's Employment and Social Affairs Committee in February 2019, and now needs to be adopted in plenary.

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 , 26.4.2017, 2017/0085(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Employment and Social Affairs (EMPL)
Rapporteur:	David Casa (EPP, Malta)
Shadow rapporteurs:	Maria Arena (S&D, Belgium); Jana Žitňanská (ECR, Slovakia); Renate Weber (ALDE, Romania); Tania González Peñas (GUE/NGL, Spain); Miroslavs Mitrofanovs (Greens/EFA, Latvia); Laura Agea (EFDD, Italy); Joëlle Mélin (ENF, France)
Next steps expected:	First-reading vote in plenary



2 April 2019

Third edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

Please note this document has been designed for on-line viewing.

[Introduction](#)[Existing situation](#)[Parliament's starting position](#)[Council starting position](#)

Introduction

The work-life balance of working families contributes to increasing the inclusiveness of the labour market and to raising individuals' quality of life. It is a comprehensive measure that not only addresses women's under-representation on the labour market and the insufficient support available for their career advancement, but also their unequal treatment and opportunities in the labour market. Furthermore, it encourages the strengthening of men's roles as carers in the family, thereby promoting non-discrimination and fostering gender equality. The gender employment gap in the labour market is most acute for parents and people with other caring responsibilities. It overwhelmingly affects women, who are also far more likely to work part-time due to caring responsibilities. This contributes substantially to the gender pay gap, which risks turning into a gender pension gap, rendering women more vulnerable to social exclusion and poverty. In 2015, following the withdrawal of the 2008 proposal to amend the 1992 Maternity Leave Directive, the European Commission committed to replacing that proposal with a work-life balance package, branded the '[New Start Initiative](#)'. The initiative is also strongly linked to the implementation of the principles of the [European Pillar of Social Rights](#), particularly those focusing on gender equality, equal opportunities, work-life balance, childcare and support to children, and long-term care.

Existing situation

Currently, there are several pieces of EU legislation that contribute to the establishment of better work-life balance in the Member States, the two most relevant being the Maternity Leave Directive and the Parental Leave Directive.

The 1992 [Maternity Leave Directive](#) set the minimum period for maternity leave at 14 weeks, with two weeks' compulsory leave before and/or after confinement and an adequate allowance subject to national legislation. The [2008 proposal](#) suggested that the maternity leave period be set at 18 weeks, with at least six weeks of compulsory leave after confinement and an allowance amounting to a full salary. The European Parliament proposed extending the maternity leave period to 20 weeks and added two weeks of paternity leave under the same conditions as those applicable to maternity leave. It also suggested further measures to ensure appropriate working conditions for pregnant workers and for those who return to work after having given birth. In October 2010, Parliament concluded its first reading of the amended proposal, but remained blocked in the Council of the EU for four years, due to a lack of agreement on the alignment of social measures. Consequently, in its [2015 work programme](#), the Commission indicated that, if no agreement was reached within six months, it would withdraw the proposal and replace it with a new initiative, as part of its [Regulatory Fitness and Performance Programme](#) (REFIT). On 1 July 2015, the Commission thus withdrew the proposal. It also launched its 'New Start Initiative' on work-life balance.

[Council Directive 2010/18/EU](#) (the Parental Leave Directive) replaced [Directive 96/34/EC](#), following the adoption of a revised [Framework Agreement on Parental Leave](#), concluded by the [European social partners](#) on 18 June 2009. The Parental Leave Directive sets minimum requirements for parental leave for male and female workers, and for related employment protection. The main elements of this directive are: workers are entitled to parental leave on the birth or adoption of a child; men and women workers get equal treatment, irrespective of their type of employment contract; parental leave must be granted for at least four months as an individual right of both parents; provisions on taking leave; provisions on the right of workers to return to work after taking parental leave, and on their right to non-discrimination.



Introduction

Existing situation

Parliament's starting position

Council starting position

Further directives that are important for the legal context of this new initiative are: [Directive 97/81/EC](#) on part-time work, [Directive 2010/41/EU](#) on self-employment and [Directive 2006/54/EC](#) (the Equal Pay Directive). The current equal-pay legislation on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, replaced a number of earlier legislative acts.

Parliament's starting position

Since the withdrawal of the 2008 proposal on extending the Maternity Leave Directive, the Parliament has pressed for a new initiative on work-life balance. In its [resolution](#) of 20 May 2015, the Parliament called on the Commission not to withdraw the proposed directive. It also urged Member States' ministers to resume talks and agree upon a position. In case of withdrawal of the proposal by the Commission, Parliament also pressed for the tabling of a new legislative initiative before the end of 2015 and reiterated its call for fathers to be entitled to at least 10 working days of paid paternity leave.

On 12 May 2016, the Parliament adopted a [resolution](#) on the application of the Parental Leave Directive, prepared by the Employment and Social Affairs Committee (EMPL). The report welcomed the fact that Member States had transposed the measures of the directive beyond the stipulated minimum and in a manner that allowed workers some degree of flexibility. It noted that the gender imbalance in taking parental leave persists, as do the differences between Member States regarding the maximum duration and statutory form of parental leave, and their systems for pay during the leave period. It urged the activation of the review clause in EU parental leave legislation and called for extending the minimum duration of parental leave to six months. It also stressed the need to guarantee that family rights assigned by public policies, including parental leave, are equal in terms of individual rights and are equally accessible to both parents. It also called on the Commission to come forward with an ambitious proposal on work-life balance (including maternity leave).

A [resolution](#) on 'Creating labour market conditions favourable for work-life balance', prepared by the EMPL Committee and the Committee on Women's Rights and Gender Equality (FEMM), was adopted in plenary on 13 September 2016. It called on the Commission to revise the Maternity Leave Directive by extending its duration 'with a diverse formula of payment to allow for accommodation of specific needs and traditions in different Member States'. Simultaneously, it also called for the introduction of a paternity leave directive with minimum mandatory and non-transferable paid leave for fathers and for the preparation of an implementation report on the Parental Leave Directive by the Commission.

On 13 December 2016, Parliament adopted a [resolution](#) on the 'Situation of fundamental rights within the EU', in which it reiterated that it awaits further action by the Commission following the withdrawal of the maternity leave proposal in the field of leave policies, including maternity, paternity, parental and carers' leave. The report was prepared by the Civil Liberties, Justice and Home Affairs Committee (LIBE).

Finally, in its [resolution](#) of 6 July 2016 on the 'Strategic priorities of the Commission Work Programme 2017', Parliament called for improvement of the living and working conditions of European citizens. In this context, it highlighted the importance of addressing the challenges related to maintaining a work-life balance, so that both women's and men's talents can be fully unleashed in all their activities, which, in turn, is one of the main pillars of a competitive and inclusive economy.



Introduction

Existing situation

Parliament's starting position

Council starting position

In relation to the gender pay gap, Parliament has repeatedly called for the revision of the Equal Pay Directive, due to the ineffective enforcement of its provisions. In its [resolution](#) of 8 October 2015 on 'Equal opportunities and equal treatment of men and women in matters of employment and occupation', Parliament asked the Commission to identify the weak points of the Equal Pay Directive and to draw up a legislative proposal to replace it as a matter of urgency. It underlined that progress has been extremely slow, that the gender pay gap still stands at an average of 16.4 % across the EU, and that transposition of EU law into national law has not led to full application and effective enforcement of the directive's provisions. As well as including the measures on strengthening pay transparency set out in the [Commission's 2014 recommendation](#) on strengthening the principle of equal pay between men and women through transparency, the new proposal should provide more effective means of supervising implementation and enforcement in the Member States. Parliament called once again for revision of the Equal Pay Directive in its resolutions of 14 March 2017 on '[Equality between women and men](#) in the EU in 2014-2015', and 14 June 2017 on '[The need for an EU strategy to end and prevent the gender pension gap](#)'. The latter noted that only two Member States have transposed the directive satisfactorily. It also highlighted the cumulative impact of gender imbalances in pay, overall earnings, family and caring responsibilities and career patterns on women's pension entitlements, and urged the Commission to address the underlying causes, including unequal pay, in a new communication setting out a strategy for equality between women and men up to 2020.

Council starting position

The 2008 proposal on revising the Maternity Leave Directive reached an impasse in the Council. However, several recent sets of Council conclusions have called for policies to help to reconcile work and family life. The June 2016 conclusions on '[Gender equality](#)' called on the Commission to come forward with new initiatives on the work-life balance of working parents and care-givers. The 8 December 2016 conclusions on '[Women and poverty](#)' also called for ensuring a better work-life balance by supporting women's labour market participation, which in turn reduces the risk of poverty and social exclusion. The 3 March 2017 conclusions on '[Enhancing skills of women and men](#) in the EU labour market' called for giving priority to removing barriers to women's participation in the labour market, including reconciliation measures.

In addition, at the July 2017 informal meeting of the Employment, Social Policy, Health and Consumer Affairs (EPSCO) ministers, there was an exchange of views and best practices for facing challenges that come with new forms of living and working conditions. There was a strong emphasis on men having more responsibilities in the home and family. Moreover, the then-incoming Estonian and forthcoming Bulgarian and Austrian Presidencies signed a [trio declaration](#) of their intention to promote gender equality in the 18 months up to December 2018.



Proposal

Preparation of the proposal

In August 2015, the Commission created a [roadmap](#) on a forthcoming comprehensive package of legislative and non-legislative measures on work-life balance. As a first step, the Commission launched a [public consultation](#) and a two-stage consultation with the social partners in [2015](#) and [2016](#), which aimed at looking into possible improvements to EU legislation on work-life balance. The proposal was expected to include a revision of the maternity, paternity and parental leave directives.

By the end of the consultation, the social partners had not reached agreement on entering into negotiations and no agreement was concluded to amend the framework agreement made binding by the Parental Leave Directive. They expressed diverging views as to the need for and the aim of legislative action: whilst trade unions advocated a revision of the Parental Leave Directive, employers did not see the need to negotiate.

It was in this [context](#) that, on 26 April 2017, the Commission presented its [proposal on work-life balance](#), including legislative and non-legislative initiatives as part of the European Pillar of Social Rights. The main points included enhancing the existing parental leave scheme by facilitating its uptake by women and men through the introduction of new measures on payment, flexibility and non-transferability. In addition, it introduced a proposal for carers' leave and paternity leave, and the use of flexible working arrangements by all working parents of children up to 12 years of age and carers with dependent relatives. It also promoted non-legislative measures so as to provide more and better care facilities. Finally, it invited the co-legislators to reach a swift agreement on the legislative measures proposed. Once such an agreement has been reached, the framework agreement made binding by the Parental Leave Directive would be repealed and would no longer be part of Union law.

The Commission's proposal was based on a [detailed 2017 study](#) on the costs and benefits of possible EU measures to facilitate the work-life balance of parents and carers, which fed into the [impact assessment](#) (IA) of the proposal. The study showed that the largest impact in terms of GDP and employment gains is achieved by the following options: a one-week paternity leave, paid at least at sick pay level; a four-month parental leave with a flexible uptake a child up to 12 years of age, paid at least at sick pay level and entirely non-transferable; carer's leave of five days per relative per year, paid at least at sick pay level; and parents and carers' right to request flexible working arrangements.

The Commission IA stated that the EU has been addressing work-life balance through a legislative framework (the Maternity and Parental Leave Directives) and other measures (the [European Semester](#), different funds and policy guidance), and that progress in the Member States has been uneven. EU action based on minimum standards should help to avoid the risk of downward competition between Member States and companies.

A quantitative analysis of the costs and benefits of the combination of preferred options described above shows a positive expected impact on GDP (+€839.7 billion, net present value (NPV) 2015-2055), employment (+ 1.6 million in 2050) and the labour force (+1.4 million in 2050). The total impact of the preferred options on companies is expected to be -€172.7 billion (NPV 2015-2055). The IA explained that the initiative applies to all workers who have an employment contract or employment relationship as



Preparation of the proposal

The changes the proposal would bring

defined by the various Member States. The self-employed are not explicitly covered as there are existing instruments for self-employed activities.

The EPRS [initial appraisal](#) of the impact assessment states that, because of the lack of comparable data – openly admitted in the impact assessment – core indicators have been identified to monitor the impact of the preferred mix of options, and that more attention could have been paid to the impact on micro-enterprises and small and medium-sized enterprises (SMEs), and to the internal market context. In addition, an earlier [implementation appraisal](#) of the Parental Leave Directive conducted by EPRS stated, quoting a [study](#) prepared for the FEMM committee, that the Parental Leave Directive, adopted on the basis of a social partners' agreement, is not able to provide guidance to all Member States in the transposition of effective parental leave.

The changes the proposal would bring

The Commission proposal aims to go beyond just a revision of the Maternity Leave Directive and puts forward a comprehensive package so as to address a slow paradigm shift in traditional gender roles in the work-life balance context. The combination of legislative and non-legislative measures addresses minimum standards and leaves scope for national decisions, while achieving the objectives of increasing female participation and gender equality. In addition, the new provisions build on the existing legislation, but take it further.

The new paternity leave directive would give fathers 10 days of leave around the birth of their child, compensated at sick pay level. This measure would favour bonding between father and child and would result in improved cognitive development of the child, while also lowering the father's stress levels around the birth of his child. Additionally, introducing the right to paternity leave should have a positive impact on female participation in the labour market, since it should have a strong leverage effect on the take-up of parental leave by men. The proposal modifies the current Parental Leave Directive by maintaining the four-month period, yet enhancing it by introducing compensation at least at sick pay level, and making the whole period non-transferable from one parent to another. Parents should also have the right to request to take leave in a flexible way (as part-time or in a piecemeal way) until their child is 12 years old. Currently, there is no EU legislation on carers' leave, except in situations of 'force majeure' integrated into the Parental Leave Directive, which allows workers to take a short time off for urgent and unexpected family reasons. The new proposal provides that working carers will be able to take five days per year with compensation at sick pay level. Currently, the Parental Leave Directive provides the right to request reduced and flexible working hours upon return from parental leave. The [Part-time Work Directive](#) provides for the right to request part-time work and flexible working hours upon return from parental leave for all workers. The new proposal sets out that all parents of children up to 12, and carers, can request reduced working hours; flexible working hours; and flexibility at the place of work. It also includes the introduction of protection against dismissal for workers making use of the above rights.

In order to complement the legislative proposal, the package also contains a set of non-legislative measures to support Member States in achieving some common goals. In the area of family-related leave and flexible work arrangements (FWA), the main deliverable is the proposal for a directive, but it also puts forward initiatives to support enforcement of current legislation with regard to protection against



Preparation of the proposal

The changes the proposal would bring

dismissal, improvement of data collection and funding of innovative projects (for instance, through the EU programme for Employment and Social Innovation ([EaSI](#))).

In the areas of formal care services and economic disincentives for second-earners to work, the EU does not have the competence to legislate. In these areas, the Commission presented measures as part of the proposal to address shortcomings in Member States in the form of action on improving data collection; monitoring in the context of the European Semester; encouraging the sharing of good practices; and funding (European structural and investment funds ([ESIF](#)), European Fund for Strategic Investments ([EFSI](#))).

The Commission proposal addresses several issues repeatedly raised by the Parliament, including a comprehensive approach to the issues of work-life balance, non-transferability of parental leave and ten days of paid paternity leave. It also partially, but not sufficiently, addresses issues around the gender pay gap that have been raised by the Parliament.

[Advisory committees](#)[National parliaments](#)[Stakeholders' views](#)

Views

Advisory committees

The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) adopted their opinions in December 2017, and both welcomed the Commission proposal in general. The [EESC](#) emphasised that the application of the proposal should be in line with the Member States' national law, and that difficulties businesses and SMEs might encounter in relation to the proposal should be taken into account. It also emphasised the need for more investment in high-quality, affordable and available services. Finally, it regretted that the proposal does not deal sufficiently with tax systems, which have a strong influence on people's participation in the labour market. The [CoR](#) opinion emphasised the importance of multi-level governance in the implementation of the proposal. It regretted that the proposal is limited to workers with an employment contract and that its provisions do not have a stronger link with the issue of providing care to young children from birth to compulsory school age (the [Barcelona targets](#)). Finally, it emphasised that it should be up to the Member States to define the conditions of access and detailed arrangements for the application of parental leave, where there are more than two applicants for such leave.

National parliaments

The deadline for expressing subsidiarity concerns was 28 June 2017. The Dutch and Polish parliaments put forward [reasoned opinions](#). The Polish Parliament claimed that the proposal is incompatible with the principle of subsidiarity as expressed in Article 5(3) of the Treaty on European Union (TEU). It further pointed out that there is a sufficient volume of national legislation in the areas covered by the Commission's proposed directive, which, particularly in the part concerning the non-transferability of the four months of parental leave, would be an excessive interference in the legal systems of the Member States.

Likewise, the Dutch Senate also expressed its subsidiarity concerns in a reasoned opinion. It emphasised that work-life balance is not a transnational problem and that it belongs to the social domain, which is a national concern. The Commission replied to the opinion, explaining that by creating minimum standards the EU is establishing a level playing field and is supporting Member States in making progress in the area of work-life balance. The Dutch parliament discussed the reply and consulted the government in early 2018.

Additional observations were made by some other national parliaments. The [Slovenian National Assembly](#) expressed concern in relation to the non-transferability of parental leave, claiming that such a provision would create an excessive financial burden in terms of the need to balance the state budget, which it is 'obliged to ensure in accordance with the constitutionally provided fiscal rule'. The [Romanian Chamber of Deputies](#) emphasised the importance of education and extra-curricular activities, and also the development of childcare services infrastructure, as regards work-life balance. The [Danish Parliament](#) raised serious concern as to whether the Commission proposal really respects existing national arrangements on work-life balance as it claims to do, and whether the social partners and the Member States have been sufficiently involved in determining the specific provisions for these arrangements. It further pointed out that a small minority of its members find that the Commission proposal violates the principle of subsidiarity, and that the majority of members will urge the Danish government to actively challenge the proposal during negotiations. Regret about the lack of agreement among the social partners at European level was shared by

[Advisory committees](#)[National parliaments](#)[Stakeholders' views](#)

the [German Bundesrat](#). Consequently, the latter called on the German government for active involvement of the social partners during the implementation of the directive. Finally, the [Irish Parliament](#) decided that while the Commission proposal for a directive does not warrant further scrutiny, the communication on non-legislative measures on work-life balance does.

Stakeholders' views¹

Trade unions and non-governmental organisations (such as the European Confederation of Independent Trade Unions ([CESI](#)), [COFACE](#) Families Europe, and the [European Social Network](#)) welcomed the proposal and suggested modifications to ensure that the final directive could benefit more people. These included: the scope of the directive should also apply to workers in unusual work arrangements; clearer conditions should be defined as to when and why requests for flexible work arrangements can be denied; it should be made clear that there is no difference in employment rights between people working in an occupation with pension entitlements and as carers with no entitlements; 100 % remuneration and not sick leave pay should be granted for the time of the paternity leave; there is a need to include an additional provision for single-parent families and for women in blended families, and here women should have the right to say to whom the paternity leave should be granted; an exception of non-transferability should also be introduced in the case of the modified Parental Leave Directive for single-parent and blended families; the category of carer should be extended beyond first-degree relatives; in relation to carers' leave, the days should be extended from the suggested five to 12 days, and the implementation of this provision should go hand in hand with further development of social services. The stakeholders finally stressed the risk that the proposal would not help the most vulnerable, as it does not include policies on how to bring about accessible, good quality, early-childhood education and care services, and on how to make flexible work arrangements possible for all.

By contrast, employers' organisations (such as the [CEEP](#), [HOTREC](#) Hospitality Europe) expressed worries that employees' longer periods of absence due to leave could lead to economic pressures for their employers, who would be required to pay them for these periods. This would be particularly problematic for micro-enterprises, SMEs and others employing a large percentage of young women. Some of the arguments put forward were that the scope of the proposal is not clear, nor is it clear whether its objective is to reduce women's under-representation in the labour market or to promote the gender balance in caring responsibilities, and that in any case, the new directive would not encourage job creation. Other arguments highlighted the lack of social dialogue, in contrast to the existing Parental Leave Directive; the huge financial and administrative burden the implementation of the directive would bring, particularly to SMEs; and the potential negative impact of carers' leave on public services, where most employees are women.

Academic views

Despite effective progress for some groups in the field of work-life balance, the most recent [Quality of Life Survey](#) by Eurofound shows that the general trend is of decline since 2011. This is particularly the case for young and middle-aged women, as well as for blue-collar workers and workers with fixed-term contracts.

¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Advisory committees

National parliaments

Stakeholders' views

This situation ultimately affects children's lives. Furthermore, men cannot always benefit from their parental rights, and caring responsibilities outside childcare are barely mentioned in policy discussions.

There is a long tradition of research that points out that the answer to this situation is to provide 'reconciliation policy mixes'. These include parental care and a wider framework of leave policies with individual rights for time off to care for sick children. They also support fathers' involvement in providing childcare, as well as the possibility of flexible working arrangements and the availability of affordable, accessible and quality childcare.

A recent [article](#) by Eugenia Caracciolo di Torella describes the Commission's new work-life balance package as a major step in this direction and as a potential transformative approach to equality, in which care should become an integral part of society. It welcomes the integrated approach of the package, which should also help to go beyond gender stereotyping, but also points to its weaknesses. The package privileges parents of young (and healthy) children over carers of adults. Moreover, the system of leave provided for by the proposed directive is supported by a prohibition on discrimination for making use of the rights; however, a general right not to be discriminated against on grounds of caring responsibility is not provided.



Legislative process

In the Parliament, the committee responsible for the [dossier](#) is EMPL, with David Casa (EPP, Malta) appointed as rapporteur. The European Commission presented its proposal to the EMPL committee on 23 January 2018, and a hearing took place in the committee on 21 February. The [report](#) was voted in the EMPL committee on 11 July (34 votes for, 14 against, 4 abstentions) and the mandate for trilogue negotiations was confirmed during the plenary session in September.

The original [draft report](#) put particular emphasis on the importance of the availability of affordable early childhood education and care, as well as on the possible burden the directive might put on micro- and small and medium- sized enterprises (MSMEs), and on 'determining the statues of worker as established by the case law of the Court of Justice of the European Union'. It proposed that the worker receives a payment or allowance at least equivalent to 75 % of the gross wage during their leave, including in the case of carers, and that the right to request flexible working arrangements, and to make use of parental leave, for all working parents of children should be possible until the child reaches the age of 10 instead of 12.

The Women's Rights and Gender Equality Committee (FEMM) was associated under Rule 54 (rapporteur: Agnieszka Kozłowska-Rajewicz, EPP, Poland). Its [opinion](#) put particular emphasis on men taking up paternity leave so as to achieve more equality between men and women, and highlighted the need to take into consideration children's well-being in designing leave policies. It stressed the need to take account of economic considerations for the feasibility and success of the new proposal. Hence it highlighted the importance of protecting companies (particularly MSMEs) from loss of productivity, and therefore the need for clear notice periods as well as qualifying periods for leave and for flexible working arrangements. Finally, it suggested that special support for disadvantaged families (including single parents, and families with children with disabilities) should be decided at Member State level and that the measures of the proposal should be also extended to the self-employed.

The Committee on Legal Affairs (JURI, rapporteur: Joëlle Bergeron, EFDD, France) also provided an opinion. The [JURI opinion](#) put particular emphasis on equal treatment of both parents in terms of leave and remuneration, which in turn should serve the best interests of the child. It suggested to make parental leave possible to both parents up to the child's 13th birthday, and at the same time stressed that leave for carers should also be better regulated to protect employers (particularly small companies) against abuses of the system.

In addition to the two opinions, EMPL members tabled 660 amendments. The adopted amendments to the proposal kept the rapporteur's original amendments mentioned above, but also extended the directive to the case of stillbirth and called for an allowance of at least 78 % of the gross wage during the leave period, in the case of both parents and carers. It also called on Member States to assess the need for special support in the application of paternity leave and also the working arrangements for families with children or parents with disabilities.

During the Estonian Presidency, the Council working party on social questions discussed the proposal in several meetings, focusing on the most contentious articles: paternity leave, carers' leave and parental leave, together with the article on an adequate allowance. Along these lines, a [progress report](#) was prepared in November 2017. The majority of delegations entered reservations on the concept of defining the minimum level of adequate income in the directive (Article 8) and tying it to the sick pay level. In order to facilitate



reaching an agreement and to clarify the provisions in Article 8, the presidency proposed dividing it into separate paragraphs. Paragraph 1 would contain the minimum compensation levels for (a) paternity leave, (b) (i) the non-transferable part of parental leave, (b) (ii) transferable part of parental leave, and (c) carers' leave. Paragraph 2 establishes the possibility for Member States to set a ceiling on compensation to be paid during paternity leave and on the non-transferable portion of parental leave.

After further meetings at working party level, a [general approach](#) was reached by the Council on 21 June 2018. A number of open questions from the progress report were resolved. The setting of the adequate level of remuneration would be left to the Member States, to be paid for at least 1.5 months of the minimum non-transferable period of parental leave (two months) guaranteed under the directive. In the case of parental leave, the setting of the age limit of the child would be up to the Member States, who are asked to ensure that the age limit set should allow for the effective take-up of the leave by both parents. In relation to carers' leave (where the concept of carer was redefined), both the minimum standard for remunerating carers' leave and the specification that the leave has to be at least five-days long are removed. The Commission's proposal to extend flexible working arrangements to carers as well as remote working was supported.

Interinstitutional negotiations started in September 2018. A [provisional agreement](#) between the three institutions was reached during the sixth trilogue meeting, in January 2019. This was endorsed by Coreper and then approved by the EMPL committee in February 2019. The main elements of the agreement are in line with the Council's general approach in the above-mentioned problem areas. The areas where it differs include:

- > paternity leave can also be taken in the case of stillbirth;
- > payment during paternity leave should be at sick pay level for the minimum period of the leave, and Member States are encouraged to make the payment for paternity leave equal to the payment or allowance granted for maternity leave at national level;
- > carers' leave is up to five days per year per worker;
- > the payment for carers' leave should be decided by the Member State;
- > it should be possible for Member States to limit the duration of flexible working arrangements so that using them does not lead to lower social security contributions, and in turn, to lower levels of pension entitlements;
- > Member States are also to assess whether the leave arrangements and the flexible working hours should be adjusted to particular needs, such as those of single parents, adoptive parents, parents with a disability, parents with children with a disability, or a long-term illness, or in the case of premature births or multiple births;



- > a 'passerelle clause' provides that any kind of family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available under national legislation and/or collective agreements should count towards fulfilling the requirements for one or more of the leaves covered by this new directive or in Directive 92/85/EEC, provided that all minimum requirements established therein are met and that the general level of protection afforded to workers in the field covered by the two directives is not reduced.

The agreed text is less ambitious than the original proposal by the European Commission but it should contribute to some progress towards reducing inequalities between men and women in the labour market and beyond.



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