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REPORT

From:	Presidency
To:	Permanent Representatives Committee (Part 1)/Council
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Subject:	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 - Progress report

I. INTRODUCTION

On 26 April 2017, the Commission submitted its proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. The proposal is based on Article 153 of the Treaty on the Functioning of the European Union (TFEU).

The general objective of the proposal is to improve access to work-life balance arrangements throughout the EU, such as leaves and flexible working arrangements, as well as to increase the take-up of family-related leaves by men, thus contributing to increasing female labour-market participation. In particular, the proposal would reinforce the minimum standard on (i) parental leave and (ii) flexible working arrangements, and introduce new minimum standards on (iii) paternity leave and (iv) carers' leave.

The proposed legal basis requires that the European Parliament and the Council act in accordance with the ordinary legislative procedure.

The European Parliament has not yet delivered its position.

In line with the envisaged preamble to the Directive, on 10 May 2017, the Committee of Permanent Representatives approved an optional consultation of the European Economic and Social Committee (EESC) and of the Committee of the Regions (CoR). The EESC is expected to adopt its opinion on 6 December and the CoR on 30 November.

Remaining reservations:

All delegations are considered to have maintained their general scrutiny reservations on the proposal and amendments thereto. The majority of delegations have entered reservations on the concept of defining the minimum level of adequate income in the Directive and tying it to the sick-pay level (Article 8).

The Commission has affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

DK, NL and UK have parliamentary scrutiny reservations.

HR and SE have linguistic reservations.

II. THE COUNCIL'S WORK UNDER THE ESTONIAN PRESIDENCY

The Social Questions Working Party (SQWP) has started examining the proposal and discussed the file on six occasions.¹ It devoted two meetings to general comments, the related IA and the first round of analysis of the proposal. The outcome of the work under the Estonian Presidency can be found in Annex I.

¹ Meetings took place on 10 July, 4-5 September, 18 September, 9-10 October, 7 and 17 November.

In line with the Interinstitutional Agreement on Better Law-Making, the Commission carried out an impact assessment (IA) of potential policy options which evaluated their economic, social, regulatory and overall efficiency and coherence with wider EU objectives. The IA was thoroughly examined by the SQWP on 4 September 2017. 25 Member States replied to a questionnaire sent to delegations, in line with the indicative guidance as set out in doc. 16024/14. The summary of these discussions on the IA can be found in Annex II.

The Working Party made considerable progress, notably on the following parts:

1. Paternity leave (Recital 13, Articles 3(a), 4, 8(1)(a) and 8(2))

In Article 4, the Commission proposed introducing an EU-wide minimum standard of 10 working days of paternity leave. In general, delegations are in support of such a leave.

To clarify what is meant by "ten working days" and the modalities of the take-up of paternity leave, the Presidency has included paragraph 3 in Article 4. Most delegations can agree on the proposed duration of 10 working days to be taken around the time of the birth of the child, as well as with the new paragraph 3. A few delegations would like to see a shorter period of paternity leave and some other delegations would prefer to see further clarification on the modalities of the leave and how it is calculated.

A broad consensus has been reached on the definition of "paternity leave" in Article 3(a). However, some delegations would like to see the use of a more gender-neutral term for this leave, while others strongly oppose this suggestion.

In Article 8(1)(a) on paternity leave, the Presidency has maintained the compensation level as proposed by the Commission at sick-pay level. While this part of Article 8 seems to be the least problematic, only a handful of delegations have expressed their positive views on it and further discussion is therefore needed.

The Presidency considers that while further discussions might be warranted, especially on the compensation level, Article 3(a), Article 4 and the corresponding Recital 13 have gained a broad consensus.

2. Carers' leave (*Recital 17, Articles 3(ba)-(d), 6 and 8(1)(c)*)

In Article 6, the Commission proposed introducing an EU-wide minimum standard of 5 working days of carers' leave. A large number of delegations questioned the need to legislate on this at EU level and expressed doubts as to whether the introduction of such a leave would really contribute to the equal treatment of women and men on the labour market, as five days of carers' leave would not significantly change the division of caring responsibilities between women and men. Therefore, a number of delegations maintained reservations.

Substantial discussion took place on the scope of carers' leave (Article 3(ba), (c) and (d)). The Commission proposed to grant this leave to all workers who have a relative in need of care due to serious illness, a serious medical condition or a disability. Many delegations found the concept of "a serious medical condition" difficult to define and distinguish from "serious illness". The Presidency has therefore deleted "serious medical condition" from the scope. However, several delegations have asked for the scope to be further restricted.

Due to the strong opposition of a considerable number of delegations to the creation of such a leave entitlement at the EU level, and given the even broader opposition to defining a minimum compensation level for it in the Directive, the Presidency replaced the reference to sick-pay level compensation with "*a payment or an adequate allowance, to be defined by the Member State and/or the social partners*".

While some delegations can now support Article 8(1)(c), a large number of delegations maintain their reservations and would not like to see minimum pay levels defined for carers' leave at all.

The Presidency considers that progress has been made both on the scope of carers' leave and on defining the corresponding compensation. Further work is needed and the current text serves as a good basis for future deliberations.

3. Parental leave (Recitals 14 and 15, Articles 3(b), 5, 8(1)(b) and 8(2))

In Article 5, the Commission proposed enhancing the existing minimum standard on parental leave, as set out in the Parental Leave Directive (2010/18/EU), which provides for an individual right of four months for each worker, out of which one month should be non-transferable. The Commission has proposed increasing the non-transferable period to four months, and changing the age of the child by which the leave should be used from "*up to eight years*" to "*at least twelve years*".

At the outset, a large majority of Member States were unable to accept the change in the age of the child by which the leave can be used. They consider that there is insufficient evidence as to how this change would contribute to achieving the aims set out in the Directive, the considerable impact on planning national budgets, as well as the large number of different national schemes already in place for supporting working parents, including day care facilities.

A group of delegations supports the Presidency compromise which decreased the age limit from "*at least twelve*" to "*at least eight*", while another group would like to revert to the current Parental Leave Directive wording of "*up to eight years*".

One of the most challenging aspects of parental leave was the proposed increase of the number of non-transferable months to four. In search of compromise, the Presidency proposed keeping four months of individual entitlement to parental leave, but reducing the number of non-transferable months to three (Article 5(2)). While most delegations found this to be a step in the right direction, they still deemed three months to be excessive. Some delegations are ready to support the proposal in this paragraph.

Recognising the concerns of many delegations regarding the potential impact of the Commission proposal on the financial sustainability of their social security systems, the Presidency proposed to differentiate between the transferable and non-transferable months of parental leave (Article 8(1)(b)).

Thus the Presidency proposed to maintain the sick-pay level, subject to the possibility to set a ceiling (see point 5 below), for the non-transferable months, and leave the definition of "*a payment or an adequate allowance*" for the transferable portion to the Member States and/or social partners. While delegations did not yet have the chance to discuss Article 8(1)(b) as presented in Annex I, the Presidency considers that the approach presented is a step towards a compromise. It is evident that further discussions are necessary.

4. **Adequate income** (*Recital 19, Article 8*)

As mentioned above, the majority of delegations have entered reservations on Article 8 in its entirety, on the grounds that an EU Directive should not define the minimum level of compensation for paternity, parental and carers' leaves. Furthermore, delegations argued that tying these allowances to the level of sickness benefit, especially in the case of parental leave, is inappropriate, since sickness benefits are set with a view to generally short-term, health-related issues, whereas the leaves proposed in this Directive are intended for facilitating the reconciliation of work, family and private life.

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 now contains the minimum compensation levels for (a) paternity leave, (b) (i) 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 the non-transferable portion of parental leave.

The ceiling proposed by the Presidency in Article 8 paragraph 2 aims to limit the expected financial impact on Member States' social security systems. It would allow Member States, if they deem it necessary, to limit the maximum amount to be paid for paternity or parental leave in case of high-earners. It has to be noted that since the Commission proposal states that "*the level of the allowance should be at least equivalent to what the worker concerned would receive in case of sick leave*", Member States could apply any ceiling they have on sickness benefits without the need for any amending provisions.

However, there are Member States who do not have and do not wish to impose a ceiling on their sickness benefits. To even out the playing field and accommodate for the situation of these Member States, the Presidency proposed the possibility of placing a separate ceiling specifically on parental and paternity leave benefits. This, however, should not be done to the detriment of the objective of the proposed Directive. Therefore the ceiling should contain a safeguard ensuring that the level of allowance is not restricted unreasonably. The reference "*average national monthly gross wage*" was chosen as a benchmark because it is widely calculated across the Member States.

While the Presidency believes that this proposal can be a step towards finding a compromise, the reference value and details of application of the ceiling as well as the minimum compensation levels should be subject to further discussions.

5. Equality Bodies (Recital 27, Article 15)

The Commission has suggested that the existing equality bodies, (referred to in Article 20 of Directive 2006/54) dealing with the promotion, analysis, monitoring and support of equal treatment on the grounds of sex, be competent in areas falling within the scope of the proposed Directive.

A few delegations were hesitant to reallocate tasks that in some Member States are dealt with by other bodies, such as labour inspectorates. The vast majority of delegations expressed support for the Presidency's latest proposal, whereby equality bodies should be competent for non-discrimination issues falling within the scope of the Directive, without prejudice to the competencies of labour inspectorates or other bodies. Further discussion on this issue might be necessary.

III. CONCLUSIONS

Having invested considerable efforts into advancing this file, further discussion at the technical level is needed on a number of issues, including the following:

- 1) **Paternity leave:** What level of compensation should be the benchmark for paternity leave? Should there be a possibility for Member States to set a ceiling on compensation during paternity leave? If so, within what limits?
- 2) **Carers' leave:** What should be the scope of carers' leave? At what level should it be compensated?
- 3) **Parental leave:** What should the reference age of the child for the purpose of granting parental leave be? How many months should be non-transferable? At what level should parental leave be compensated? Should there be a possibility for Member States to set a ceiling on compensation during parental leave? If so, within what limits?

Furthermore, only a limited discussion took place on certain provisions, including Articles 2, 3(f), 7, 9-22 and the corresponding recitals. A number of technical details still need work.

Overall, the Estonian Presidency considers that the basis for a final compromise has been established on a number of provisions. With a view to finalise the work in the Council as soon as possible, further discussions should focus on the remaining issues outlined above.

The Council (EPSCO) is invited to take note of this Progress Report.

Proposal of the Estonian Presidency

*Changes in relation to the Commission proposal (doc. 8633/17) are marked in **bold**; the changes in relation to the last Presidency compromise proposal (doc. 13990/17) in **bold underlined**.*

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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(1)(i) and (2)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p. .

³ OJ C , , p. .

Whereas:

- (1) Article 153(1)(i) of the Treaty on the Functioning of the European Union (TFEU) enables the **European** Union to support and complement the activities of the Member States, in the field of equality between men and women with regard to labour market opportunities and treatment at work.
- (2) Equality between men and women is a fundamental principle of the Union. According to Article 3 of the Treaty on European Union, the promotion of equality between women and men is one of the Union's aims. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union requires equality between women and men to be ensured in all areas, including employment, work and pay.
- (3) Article 33 of the Charter of Fundamental Rights of the European Union provides for the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child, to reconcile family and professional life.
- (4) The Union is party to the United Nations' Convention on the Rights of People with Disabilities. The provisions of that Convention are thus, from the time of its entry into force, an integral part of the European Union legal order and Union legislation must as far as possible be interpreted in a manner that is consistent with the Convention. The Convention provides, among other things, in its Article 7 that Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
- (5) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, **the equal sharing of care [...]** responsibilities **between men and [...]** women, and closing gender gaps in earnings and pay. Such policies should take into account demographic changes including the effects of an ageing population.

- (6) At Union level, several Directives in the fields of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular Directive 2006/54/EC of the European Parliament and of the Council⁴, Directive 2010/41/EU of the European Parliament and of the Council⁵, Council Directive 92/85/EEC⁶, Council Directive 97/81/EC⁷ and Council Directive 2010/18/EU⁸.
- (7) Work-life balance remains however a considerable challenge for many parents and workers with caring responsibilities, with a negative impact on female employment. A major factor contributing to the underrepresentation of women in the labour market is the difficulty of balancing work and family obligations. When they have children, women tend to work less hours in paid employment and spend more time fulfilling unpaid care responsibilities. Having an ill or dependent relative has also been shown to have a negative impact on female employment, leading some women to drop out of the labour market entirely.

⁴ 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, 26.7.2006, p. 23).

⁵ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

⁶ 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) (OJ L 348, 28.11.1992, p. 1).

⁷ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9).

⁸ Council 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, 18.3.2010, p. 13).

- (8) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. Lack of paid paternity and parental leave in many Member States contributes to the low take-up of such leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender differences between work and care. Conversely, use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.
- (9) The Commission has undertaken a two-stage consultation with the social partners on the challenges related to work-life balance, in line with Article 154 TFEU [...]. There was no agreement among social partners to enter into negotiations on those matters, including on the parental leave. It is however important to take action in this area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the open public consultation carried out to seek the views of various stakeholders and citizens.
- (10) It is appropriate to repeal and replace Directive 2010/18/EU which currently regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds, in particular, upon the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights.
- (11) This Directive lays down minimum requirements related to paternity, parental and carers' leave and to flexible working arrangements for parents and workers with caring responsibilities. By facilitating the reconciliation of work and family life for parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.

- (12) This Directive should apply to all workers who have employment contracts or other employment relationships. As is currently the case under Clause 1(3) of the Annex to Directive 2010/18/EU, this should include contracts relating to employment or employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.
- (13) In order to encourage a more equal sharing of caring responsibilities between women and men, **and to allow for an early creation of a bond between fathers and children**, the right to paternity leave for fathers **should be introduced. The leave should be taken around the time of the birth and be clearly linked to this event. It is for the Member States to determine whether the leave can also be taken before or only after the birth of the child, as well as whether and under which conditions it can be taken in consecutive or non-consecutive days or in other flexible forms. Member States can specify whether carers' leave is expressed in working days, weeks or other time units, taking into account that five working days correspond to one calendar week.** In order to take account of differences among Member States, the right to paternity leave should be irrespective of marital or family status as defined in national law.
- (14) As the majority of fathers do not avail themselves of their right to parental leave or transfer a considerable proportion of their leave entitlement to mothers, in order to encourage the second parent to take parental leave, this Directive, while maintaining the right of each parent to at least four months of parental leave currently provided for by Directive 2010/18/EU, extends from one to **three** months the period of parental leave which cannot be transferred from one parent to the other.

(15) In order to provide greater possibility for parents to use parental leave as their children grow up, the **minimum period of [...]** four months of parental leave guaranteed under this Directive should be granted until the child is at least **[eight years old]**. Member States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and to decide whether the right to parental leave may be subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating the period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether they define if the employer may be allowed to postpone the granting of parental leave under certain circumstances. In such cases, the employer should provide justification for the postponement.

Given that flexibility makes it more likely that second parents, in particular fathers, will take up their entitlement to such leave, workers should be able to request to take parental leave on a full-time or part-time basis or in other flexible forms. It should be up to the employer whether or not to accept such a request for parental leave in other flexible forms than full-time. Member States should also assess if the conditions and detailed arrangements of parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.

(16) In order to facilitate the return to work following parental leave, workers and employers should be encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and practice.

(17) In order to provide greater opportunities to remain in the workforce for men and women **who are caring [...]** for relatives in need of care, workers with a relative **[...] who has a serious illness or a disability** should have the right to take time off from work in the form of carers' leave to take care of that relative. **Member States can specify whether carers' leave is expressed in working days, weeks or other time units, taking into account that five working days correspond to one calendar week.** To prevent abuse of that right, proof of the serious illness or **disability [...]** may be required prior to granting the leave.

- (18) In addition to the right to carers' leave provided for in this Directive, all workers should maintain their right to take time off from work on the grounds of force majeure for urgent and unexpected family reasons, currently provided for by Directive 2010/18/EU, under the conditions established by the Member States.
- (19) To increase the incentives for workers with children and caring responsibilities, men in particular, to take the periods of leave provided for in this Directive, they should have the right to an adequate allowance while on leave. **For the minimum period of paternity leave and for the non-transferable part of parental leave guaranteed under this Directive, the level of the allowance should be at least equivalent to what the worker concerned would receive in case of sick leave. This level of allowance can be subject to a ceiling which, with a view to achieving the objectives of this Directive, should not be lower than [two times the average national monthly gross wage, as calculated by the competent body in the Member State]. For the transferable part of parental leave and for the minimum period of carers' leave set out in this Directive, an appropriate level of allowance should be defined by the Member States and/or social partners.** Member States should take into account the importance of the continuity of the entitlements to social security, including healthcare.
- (19a) This Directive should be without prejudice to the coordination of social security under Regulation 883/2004, Regulation (EU) No 1231/210 and Regulation (EC) No 859/2003. The Member State competent for social security of a person is determined by application of those Regulations.**

- (20) In accordance with Directive 2010/18/EU Member States are required to define the status of the employment contract or employment relationship for the period of parental leave. In accordance with the case-law of the Court of Justice of the European Union, the employment relationship between the worker and his employer is therefore maintained during the period of leave and, as a result, the beneficiary of such leave, remains, during that period, a worker for the purposes of Union law. When defining the status of employment contract or employment relationship during the period of the leaves covered by this Directive, including as regards entitlements to social security, the Member States should therefore ensure that the employment relationship is maintained.
- (21) In order to encourage working parents and carers to remain in the work force, those workers should be able to adapt their working schedules to their personal needs and preferences. Working parents and carers should therefore be able to request flexible working arrangements, meaning the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for caring purposes. In order to address the needs of workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including a reduction in working hours. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children, long periods of reduced working hours may lead to lower social security contributions translating into reduced or non-existing pension entitlements. The ultimate decision as to whether or not to accept a worker's request for flexible working arrangements should lie with the employer. Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore not only have the right to return to their original working patterns at the end of a given agreed period, but should also be able to request to do so at any time where a change in the underlying circumstances so requires.

- (22) Leave arrangements are intended to support working parents and carers during a specific period of time, and are aimed at maintaining and promoting their continued attachment to the labour market. It is therefore appropriate to make express provision for the protection of the employment rights of workers taking leave covered by this Directive and in particular their right to return to the same or an equivalent post, and not to suffer any detriment in their terms and conditions as a result of their absence. Workers should retain their entitlement to relevant rights already acquired, or in the process of being acquired, until the end of such leave.
- (23) Workers exercising their rights to leave or to request flexible working arrangements should be protected against discrimination or any less favourable treatment on that ground.
- (24) Workers exercising their rights to take leave or to request flexible working arrangements provided for in this Directive should enjoy protection from dismissal and any preparations for a possible dismissal on the grounds that they applied for, or have taken such leave or have exercised the right to request such flexible working arrangements. **The concept of "preparations for a possible dismissal" should be seen in the light of the case law of the Court of Justice of the European Union, in particular its judgement in Case C-460/06.** Where workers consider that they have been dismissed on those grounds, they should be able to ask the employer to provide duly substantiated grounds for the dismissal.
- (25) The burden of proof that there has been no dismissal on the grounds that workers have applied for, or have taken, leave referred to in Article 4, 5 or 6 or have exercised the right to request flexible working arrangements referred to in Article 9 should fall on the employer when workers establish, before a court or other competent authority, facts from which it may be presumed that they have been dismissed on such grounds.

- (26) Member States should provide for effective, proportionate and dissuasive penalties in the event of breaches of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. **Penalties may take the form of a fine. They may also comprise payment of compensation.** The effective implementation of the principle of equal treatment requires adequate judicial protection of workers against adverse treatment or adverse consequences resulting from a complaint or proceeding relating to the rights under this Directive. Victims may be deterred from exercising their rights on account of the risk of retaliation and therefore should be protected from any adverse treatment where they exercise their rights provided for by this Directive. Such protection is particularly relevant as regards workers' representatives in the exercise of their function.
- (27) With a view to further improving the level of protection of rights provided for in this Directive, national equality bodies should [...] be competent **for the tasks in relation to non-discrimination falling within the scope of [...]** this Directive.
- (28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. **Allowing one parent to transfer their non-transferable part of the parental leave entitlement to the other would not constitute a more favourable provision for that individual worker.** Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union legislation in this field nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.
- (29) In particular, nothing in this Directive should be interpreted as diminishing previously existing rights under Directive 2010/18/EU and Directive 2006/54/EC, including its Article 19. All references to the repealed Directive 2010/18/EU should be construed as references to this Directive.

- (30) This Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Member States are therefore invited to assess the impact of their transposition act on SMEs in order to make sure that SMEs are not disproportionately affected, with specific attention for micro-enterprises and for administrative burden.
- (31) The Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (32) Since the objectives of this Directive, namely to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work across the Union, cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work through facilitating the reconciliation of work and family life for working parents and carers.

To that end, it provides for individual rights related to:

- (a) paternity leave, parental leave and carers' leave; **and**
- (b) flexible working arrangements for working parents and carers.

Article 2

Scope

This Directive applies to all workers, men and women, who have an employment contract or employment relationship.

Article 3

Definitions

For the purposes of this Directive, the following definitions [...] apply:

- (a) "paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child;
- (b) "parental leave" means leave from work **for parents** on the grounds of the birth or adoption of a child to take care of that child;
- (ba) "carers' leave" means leave from work for carers in order to provide personal care or support to a relative in need of care or support due to a serious illness or a disability;**
- (c) "carer" means a worker providing personal care or support **to a relative in need of care or support due to a serious illness or a disability [...]**;
- (d) "relative" means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law;

- (e) [...]
- (f) "flexible working arrangements" means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours.

Article 4

Paternity leave

1. Member States shall take the necessary measures to ensure that fathers have the right to [...] paternity leave of [...] ten working days **to be taken around the time of the birth of the child. Member States may determine whether the leave can also be taken partly before or only after the birth of the child, as well as whether it can be taken in flexible forms.**
2. The right to paternity leave referred to in paragraph 1 shall be granted irrespective of marital or family status as defined in national law.
3. **The reference to ten working days in paragraph 1 shall be understood as referring to the full-time working pattern, as defined in the Member State in question. A worker's entitlement to paternity leave may be calculated proportionally to the working time, in line with the worker's individual working pattern as specified in the contract of employment.**

Article 5

Parental leave

1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of [...] four months to be taken before the child reaches a given age which shall be at least **[eight years]**.

2. Where Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that **three [...]** months of parental leave cannot be transferred.
3. Member States shall establish the period of notice to be given by workers to employers when exercising the right to parental leave. In doing so, Member States shall take into account the needs of both employers and workers. Member States shall ensure that the worker's request specifies the intended beginning and end of the period of leave.
4. Member States may make the right to parental leave subject to a period of work qualification or a length of service qualification which shall not exceed one year. In the case of successive fixed-term contracts, within the meaning of Council Directive 1999/70/EC⁹, with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.
5. Member States may define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, may be allowed to postpone the granting of parental leave by a reasonable period of time on the grounds that it would seriously disrupt the good functioning of the establishment. Employers shall justify any postponement of parental leave in writing.
6. Member States shall take the necessary measures to ensure that workers have the right to request parental leave also on a part-time basis, in blocks separated by periods of work or in other flexible forms. Employers shall consider and respond to such requests, taking into account the needs of both employers and workers. Employers shall justify any refusal of such a request in writing.

⁹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

7. Member States shall assess the need for the conditions of access and detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents having a disability and parents with children with a disability or long-term illness.

Article 6

Carers' leave

1. Member States shall take the necessary measures to ensure that workers have the right to carers' leave of [...] five working days per year, per worker. Such right may be subject to appropriate substantiation of the medical condition of the worker's relative.
2. **The reference to five working days in paragraph 1 shall be understood as referring to the full-time working pattern, as defined in the Member State in question. A worker's entitlement to carers' leave may be calculated proportionally to the working time, in line with the worker's individual working pattern as specified in the contract of employment.**

Article 7

Time off from work on grounds of force majeure

Member States shall take the necessary measures to ensure that workers have the right to time off from work on grounds of force majeure for urgent family reasons in cases of illness or accident making the immediate presence of the worker indispensable. Member States may limit the right to time off from work on grounds of force majeure to a certain amount of time per year or per case, or both.

Article 8

Adequate income

1. In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to **the** social partners, Member States shall ensure that workers exercising the rights to leave referred to in Articles 4, 5 or 6 will receive **a payment or an adequate allowance as follows: [...]**
 - (a) **for the minimum period of paternity leave provided for in Article 4, a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of sick leave, including any ceiling in case of sick leave set by Member States;**
 - (b) **for the minimum period of parental leave provided for in Article 5:**
 - (i) **for the non-transferable portion provided for in Article 5(2), a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of sick leave, including any ceiling in case of sick leave set by Member States; and**
 - (ii) **for the transferable portion, a payment or an adequate allowance, to be defined by the Member State and/or the social partners; and**
 - (c) **for the minimum period of carers' leave provided for in Article 6, a payment or an adequate allowance, to be defined by the Member State and/or the social partners.**
2. **The payment or adequate allowance referred to in paragraphs 1(a) and 1(b)(i) may be made subject to a separate ceiling set by the Member State, which shall not be lower than [two times the average national monthly gross wage].**

Article 9

Flexible working arrangements

1. Member States shall take the necessary measures to ensure that workers with children up to a given age, which shall be at least twelve **years**, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.
2. Employers shall consider and respond to requests for flexible working arrangements referred to in paragraph 1, taking into account the needs of both employers and workers. Employers shall justify any refusal of such a request.
3. When **the** flexible working arrangements referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern whenever a change of circumstances so justifies. Employers shall be obliged to consider and respond to such requests, taking into account the needs of both employers and workers.

Article 10

Employment rights

1. Rights acquired or in the process of being acquired by workers on the date on which leave **as** referred to in Article 4, 5 or 6 starts shall be maintained until the end of such leave. At the end of such leave, those rights, including any changes arising from national law, collective agreements or practice, shall apply.
2. Member States shall ensure that, at the end of leave **as** referred to in Article 4, 5 or 6, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled **had they not taken the leave [...]**.

3. Member States shall define the status of the employment contract or employment relationship for the period of leave referred to in Article 4, 5 or 6, including as regards entitlements to social security, while ensuring that the employment relationship is maintained during that period.

Article 11

Non-discrimination

Member States shall take the necessary measures to prohibit less favourable treatment of workers on the ground that they have applied for, or have taken, leave **as** referred to in Article 4, 5 or 6, or on the ground that they have exercised **the rights as provided for [...]** in Article 9.

Article 12

Protection from dismissal and burden of proof

1. Member States shall take the necessary measures to prohibit the dismissal and all preparations for dismissal of workers, on the grounds that they have applied for, or have taken, leave **as** referred to in Article 4, 5 or 6, or have exercised the right to request flexible working arrangements referred to in Article 9.
2. Workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave **as** referred to in Article 4, 5 or 6 or of exercising the right to request flexible working arrangements referred to in Article 9 may request the employer to provide duly substantiated grounds for the dismissal. The employer shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when workers referred to in paragraph 2 establish, before a court or other competent authority, facts from which it may be presumed that there **has** been such dismissal, it shall be for the respondent to prove that the dismissal was based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Member States need not apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal procedures, unless otherwise provided by the Member States.

Article 13

Penalties

Member States shall lay down rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. Member States shall take all measures necessary to ensure that those penalties are applied. Penalties shall be effective, proportionate and dissuasive.
[...]

Article 14

Protection against adverse treatment or consequences

Member States shall introduce measures necessary to protect workers, including workers who are employees' representatives, from any adverse treatment by the employer or adverse consequences resulting from a complaint lodged within the undertaking or any legal proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

Article 15

Equality bodies

Without prejudice to the competencies of labour inspectorates or other bodies, including social partners, enforcing worker's rights, Member States shall ensure that the body or bodies designated, pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of **all persons** [...] without discrimination on grounds of sex, are [...] competent for **non-discrimination** issues falling within the scope of this Directive.

Article 16

Level of protection

Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive. [...]

Article 17

Dissemination of information

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1 of this Directive, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

Article 18

Reporting and review

1. **Member States shall**, at the latest by ... [*OJ: please insert the date equivalent to seven [...] years from the entry into force of this Directive*], communicate to the Commission all relevant information concerning the application of this Directive. **On the basis of this information**, [...] the Commission **shall** draw up a report to the European Parliament and the Council on the application of this Directive.
2. On the basis of the information provided by Member States pursuant to paragraph 1, the Commission shall submit to the European Parliament and the Council a report in which it reviews the application of this Directive, accompanied, if appropriate, by a legislative proposal.

Article 19

Repeal

Directive 2010/18/EU is repealed with effect from ... [*OJ: please insert the date equivalent to two years from the entry into force of this Directive*]. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table **set out** in the Annex.

Article 19a

Transition

1. **Notwithstanding the repeal of Directive 2010/18/EU, any period or separate cumulative periods of parental leave taken by a worker, or transferred by that worker pursuant to that Directive prior to ... [*OJ: please insert the date equivalent to two years from the entry into force of this Directive*] may be deducted from that worker's parental leave entitlement under Article 5 of this Directive.**
2. **Article 8 of this Directive shall not apply to any period of parental leave taken pursuant to Directive 2010/18/EU prior to ... [*OJ: please insert the date equivalent to two years from the entry into force of this Directive*] and which has been deducted from the total parental leave entitlement under Article 5 of this Directive, as specified in paragraph 1 above.**

Article 20

Transposition

1. [...] Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, by ... [*OJ: please insert the date equivalent to [...] two years from the entry into force of this Directive*]. They shall **immediately inform** [...] the Commission **thereof**.

When Member States adopt those **measures**, they shall contain a reference to this Directive or **shall** be accompanied by such a reference on the occasion of their official publication. The methods of making such reference **shall be laid down by Member States**.

2. Member States shall **also** communicate to the Commission the text of the main **measures** of national law which they adopt in the field covered by this Directive.
3. Member States may entrust **the** social partners with the implementation of this Directive, where **the** social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

Article 21

Entry into force

The Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

Summary of the Working Party discussion on the Impact Assessment (IA)

In general, most delegations considered that the **policy context** and the **legal basis** of the initiative were explained correctly in the IA. A few delegations thought that it should have been explained more explicitly, and one delegation raised concerns over whether Article 8 of the proposal was in compliance with paragraph 4 of Article 153 TFEU.

All delegations agreed that the **problem definition** had been clearly or to some extent clearly outlined; however many raised concerns over the IA not reflecting the situation in the Member States correctly, for example not taking into account all benefits and leaves intended to support working parents when raising children. Delegations also wanted to see a more comprehensive legal and financial framework overview for all MS. Some delegations also would have wished to see cultural and economic differences across the MS being taken into account.

Other delegations suggested that the labour market participation of women and men was influenced by a multitude of factors and pointed out that the proposal and the IA only briefly touch upon the situation of the increasing number of people with non-standard work contracts for whom securing work-life balance may be even more difficult. Some others pointed out that convincing underlying evidence was missing for justifying the proposal on carers' leave and on making parental leave available at least until the child reaches the age of 12 years.

The majority of delegations agreed that the **policy objectives** and the **policy options** presented in the IA were clear or partially clear and consistent. At the same time, many delegations felt there was a lack of analysis on measures to improve the provision of quality and affordable childcare and long-term care facilities. It was also noted that the indicators used were not always fully justified.

Several delegations raised the question why only long-term projections were made, for years 2030 and 2050, and no short- or medium-term assessment was carried out. Some delegations further pointed out that employers' organisations were not favourably disposed towards the proposal and that it would have been useful if the IA provided more detailed analysis on why their cost concerns had been discarded.

While most delegations believed that the IA explained sufficiently well the **justification for EU action**, many delegations raised concerns regarding the definition of a minimum level of pay for the leaves at EU level, as in their view, this encroached on Member States' competence for defining and organising their social security systems and might impact on their sustainability.

Most delegations considered the analysis of **impacts** for each option presented in the IA to be relatively clear. Many delegations stressed that there were gaps in the **data** used, and that the analytical methods were not sufficiently explained. Several delegations mentioned that the long-term model presented by the Commission in the IA for 2030 and 2050 was only one of many possible scenarios.

Furthermore, many delegations lacked a detailed, quantified **budgetary impact analysis** broken down by Member States. Some delegations thought that the economic impact analysis on SMEs was not detailed enough, whereas many others were satisfied with the assessment to some extent. Most delegations concurred that the **impact on regulatory costs** and on local or regional authorities had been analysed to some extent.

As for the **social impacts**, most delegations were satisfied to some extent with the assessment. Some delegations would have liked to see national differences taken into account to a greater extent, and see an analysis per Member State on what the social impacts could be. An overwhelming majority of delegations thought that the **impact on fundamental rights** had been satisfactorily analysed.

Delegations were divided on whether the assessment of **environmental impacts** was satisfactory. However, most Member States found that **international aspects** and the impacts on third countries were not analysed, while at the same time admitting that it might not even be relevant for this Directive.

Most delegations felt that the comments and **recommendations of the Regulatory Scrutiny Board (RSB)** had been taken into account or taken into account to some extent. The majority of delegations responding to the question thought that the appropriate **methodology** had been applied and that the limitations and uncertainties had been clearly explained.

While delegations were generally satisfied or satisfied to some extent with how the IA outlined the different possible **monitoring** and **evaluation arrangements**, they were divided on whether the IA contained sufficient information on the impact of the **transposition deadline**.
