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**FIRST PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154
TFEU ON POSSIBLE ACTION ADDRESSING THE CHALLENGES OF WORK-
LIFE BALANCE FACED BY WORKING PARENTS AND CAREGIVERS**

FIRST PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU ON POSSIBLE ACTION ADDRESSING THE CHALLENGES OF WORK-LIFE BALANCE FACED BY WORKING PARENTS AND CAREGIVERS

1. INTRODUCTION

The purpose of this document is to consult the social partners, in accordance with Article 154(2) TFEU, to request their views on the possible direction of European Union action concerning legislative measures to address the challenges of work-life balance faced by women and men.

In August 2015, the Commission published a Roadmap¹ for the initiative ‘A new start to address the challenges of work-life balance faced by working families’ to replace the 2008 Commission proposal to revise the Maternity Leave Directive. The objective for this initiative is to address the low participation of women in the labour market by modernising and adapting the current EU legal and policy framework to today's labour market to allow for parents with children or those with dependent relatives to better balance caring and professional responsibilities, to encourage a better sharing of care responsibilities between women and men and to strengthen gender equality. This initiative would contribute to the Commission's priorities on jobs and growth.

As outlined in the Roadmap, given the range of measures that can affect work-life balance and women's labour market participation, any new initiative must address these issues in a comprehensive manner by considering mutually reinforcing measures, legislative and non-legislative, in all relevant areas to improve work-life balance for women and men, such as leave policies, flexible working arrangements, childcare and long-term care, and tax-benefit disincentives.

2. CONTEXT

Women are increasingly well qualified and even out-performing men in terms of educational attainment², and yet they continue to be under-represented in the labour market.³ In the EU, the participation of women in the labour market has not increased very significantly since 2006. Parenthood still has striking negative impacts on employment rates of women and evidence shows that when having children, women are less likely to be in paid employment and spend more time doing unpaid care work, while men are more likely to be in paid employment. Moreover, a higher proportion of women than men work part-time⁴, especially parents. Women are often trapped in low productivity, low-skilled and low-paid sectors and jobs⁵ and are overrepresented in fixed-term contracts⁶. Many women, especially mothers, are

¹ http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_xxx_maternity_leave.en.pdf

² In 2014, 42.3% of women (aged 30-34) had tertiary education or higher compared to 33.6% of men.

³ In 2014, 75% of working-aged men were in employment vs. 63.5% of women (EU28).

⁴ 32.9% of working women vs. 9.9% of working men worked part-time in 2014. Though part-time work can help parents to reconcile work and care responsibilities, it can come with a cost to long-term career and earning prospects due to lower hourly earnings, fewer training and promotion opportunities, less job security, less access to unemployment insurance and reduced pension entitlements later on (OECD, 2012). Mean hourly earnings are lower in the case of part-time work (13.27 euros) compared to full-time work (14.31 euros) (Eurostat).

⁵ See Citi (2015), *Women in the economy, Global Growth Generators*; see also the Council of Economic Advisors (2014) *Work-life balance and the Economics of Workplace Flexibility*, which cites a study of over 700 firms in the United States, United Kingdom, France and Germany (Bloom, Krestchmer and Van Reenen, 2006) that found a significant positive relationship between work-life balance practices and total

under-employed in jobs below their skill level. Overall, women's lower pay, higher concentration in part-time work and greater interruptions in their careers due to care contribute to a greater risk of poverty and social exclusion as well as a large gender pension gap (39%). Furthermore poverty risk among children is higher when only one parent is employed, resilience to economic downturns is weakened and families are worse off.

Women's underrepresentation in the labour market also represents a sub-optimal allocation of skills and competences acquired through education and a waste of resources for the EU economy. Preliminary findings from Eurofound have estimated the economic loss due to the gender employment gap to around €325 billion per year (2.5% of EU GDP)⁷. Conversely, the OECD has shown that female employment is a major factor for economic growth, and increasing women's labour market participation would drive productivity, reduce the economic drag of adverse demographics and substantially improve the skill mix of the global economy⁸. Estimates from the Commission⁹ also show that women are the group with the highest potential to contribute to the Europe 2020 target to raise employment to 75%.

The availability of work-life balance solutions influences people's decision to leave the labour market or reduce their working hours after having children, the choice whether or when to have children, or how many children to have. These policies have been shown to play a crucial role in removing obstacles to employment for parents, especially women¹⁰.

Without sufficient leave arrangements and flexibility in working arrangements, some women and men leave the labour force altogether and for a longer time rather than facing working conditions that do not allow for balancing their work and family responsibilities. This is particularly the case for single parents, which leads them to face a higher risk of poverty and social exclusion¹¹. Lack of paid leave arrangements for fathers relative to mothers, or insufficient incentives to make use of them, can further reinforce gender differences between work and care. With women being the main users of family-related leave, their position in the labour market is weakened as regards employability, pay or career development¹². Women without children may also experience discrimination from employers, due to the perception that they may, in future, have children¹³. Lack of formal care services also entrenches the role of women as primary care-givers for children and elderly or frail relatives. Member States

factor productivity; this same study contains references to a large number of papers that document a positive correlation between flexibility and outcomes like productivity; Konrad and Mangel (2000), as quoted by the Council of Economic Advisors, also note that, among professionals, work-life conflicts tend to arise when employees reach their peak productive years in their 30s and 40s. Thus, the workers who most need work-life balance policies could also be the most productive.

⁶ European Union Labour Force Survey 2015.

⁷ Eurofound (forthcoming) *The Gender Employment Gap - Challenges and Solutions* estimates the public finance costs (income transfers/benefits) as well as foregone income (e.g., foregoing earnings, foregone taxes and social security contributions) of the gender employment gap.

⁸ See, for instance, OECD (2012) *Closing the Gender Gap*.

⁹ In its 2014 Communication *Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth* the Commission has estimated that around 16 million additional men and women in employment would be needed to meet the 75% employment target.

¹⁰ See, for instance, OECD (2012) *Closing the Gender Gap*.

¹¹ European Commission (2014) *Single parents and Employment*. For the EU as a whole, 49.9% of single parent households were at risk of poverty or social exclusion in 2013 (Eurostat).

¹² According to the OECD (2012), as mothers generally make much wider use than fathers of parental leave options, part-time employment opportunities, and other flexible working arrangements like teleworking, the result can reinforce traditional gender roles both at home and in the minds of employers.

¹³ European Network of Legal Experts in the Field of Gender Equality (2012) *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood*. The application of EU and national law in 33 European countries.

have committed to improve the provision of childcare through the setting of the EU's Barcelona objectives, but progress towards their attainment has been slow and uneven and many parents still experience difficulties in finding available, affordable, quality childcare for a suitable number of hours¹⁴. Only seven EU Member States guarantee a right to childcare to each child soon after its birth, often immediately after the end of childcare leave. Long-term care services are also still underdeveloped and therefore fail to reach demand in many Member States, which remains a major impediment to female employment and growth¹⁵. Women are more likely than men to assume care responsibilities for elderly family members with long-term care needs and are thus far more likely to reduce their working hours¹⁶. Unavailability of flexible working arrangements can also lead some parents and those who provide care for elderly relatives to leave the labour market because of difficulties balancing their time between work and family responsibilities¹⁷. While some employers develop family-friendly policies in order to attract and retain highly-skilled women (and, increasingly, men), in general, attitudes to the organisation of work tend to remain fixed around on-the-job presence for full-time hours (or more).

Progress towards a more equal sharing of caring and domestic activities between women and men is also slow. Employed women still spend on average more hours on unpaid caring or domestic work than employed men and the gender gap is the widest in couples with young children¹⁸.

Despite existing EU legislation and complementary support measures to improve work life balance and female labour market participation, Member States' reform efforts to better support work-life balance and female labour market participation have been uneven.

The European Parliament, the Council, the social partners, the Advisory Committee on Equal Opportunities for Women and Men and other stakeholders have called for developing a comprehensive set of measures to address women's underrepresentation in the labour market and to support more equal sharing of family responsibilities. In June 2015, EPSCO Council Conclusions¹⁹ highlighted that measures could include improving the provision of childcare and long-term care, flexible working arrangements, addressing financial disincentives for both parents (and single parents) to participate in paid work, as well as supporting smoother transitions for women and men between part-time work and full-time employment, and between care-related leave periods and employment. The European Social Partners have also recognised that work-life balance and gender inequality in the labour market remain serious challenges. They have made promoting better reconciliation of work, private and family life and gender equality to reduce the gender pay gap a priority in their new joint work programme for 2015-2017.

¹⁴ In 2002, the Barcelona European Council set objectives '*to provide childcare by 2010 to at least 90 % of children between 3 years old and the mandatory school age and at least 33 % of children under 3 years of age*'. A Commission report (2013) shows that a majority of Member States have not attained the targets, even after the 2010 deadline.

¹⁵ Draft Joint Employment Report 2015.

¹⁶ Social Protection Committee (2014) *Adequate social protection for long-term care needs in an ageing society*.

¹⁷ See for Instance, the European Commission's draft Joint Employment Report 2015.

¹⁸ Women spend 26 hours a week on unpaid caring or domestic or caring work, compared to 9 hours a week for men, on average, see European Working Conditions Survey (2010). In couples with young children, both employed women and men increase the time they spend on unpaid work, but while men increase it to about 17 hours per week, women do so to nearly 40 hours per week, see Eurofound (2013).

¹⁹ 2015 EPSCO Council Conclusions on the Gender Pension Gap.

Improved work-life balance would not only benefit workers with caring responsibilities, but would also lead to benefits for employers with regard to attraction and retention of workers, reduction of absenteeism, increased productivity of workers and reduction of skills mismatches²⁰.

3. CURRENT EU LEGAL FRAMEWORK

Several directives address issues that are relevant for work-life balance in areas such as parental leave and maternity leave. Social partners have been instrumental in creating, through negotiated agreements, important parts of the legislative framework in this area, such as the Parental Leave Directive and the Directive on Part-Time Work.

The revised **Parental Leave Directive (2010/18/EU)**²¹ entitles men and women workers to a minimum of four months' leave after the birth or adoption of a child. At least one month shall be provided on a non-transferable basis. Member States, or where implemented through collective agreements, social partners, are free to decide whether or not this leave is paid, and whether or not this leave can be taken in a piecemeal way or part-time. Parents who return from parental leave have the right to request (but are not entitled to) changes to their working hours and/or patterns for a certain period of time. The Directive provides protection against dismissal and less favourable treatment on the ground of applying for or taking parental leave. It also provides that workers may also request limited time off work for urgent family reasons (force majeure).

The **Pregnant Workers (Maternity Leave) Directive (92/85/EEC)** provides for paid maternity leave (at least at level of sick pay) for 14 weeks²². Pregnant workers and workers on maternity leave are protected against dismissal.

Relevant EU legislation also exists in the area of equal treatment between women and men in employment. The Gender Equality **Recast Directive (2006/54/EC)** guarantees the right to return to the same job or an equivalent job after maternity leave, as well as after paternity or adoption leave where such leaves are provided under the law of Member States.

In terms of EU-level instruments on flexible working arrangements, the **Directive on Part-Time Work (97/81/EC)** has the purpose of eliminating discrimination against part-time workers, the vast majority of which are women, and improving the quality of part-time work. The Parental Leave Directive provides for limited rights to request flexible working arrangements (see above).

In addition to the legal instruments set out above, the EU has been addressing work-life balance issues through complementary support measures. These include guidelines on work-life balance for Member States' employment policies²³, policy guidance²⁴, country-specific

²⁰ See European Commission (2008) Study on the costs and benefits of options to improve provisions for the reconciliation of work, private and family life; and more recently OECD, World Bank, IMF and ILO (2014) *Achieving stronger growth by promoting a more gender-balanced economy*, report prepared for the G20 Labour and Employment Ministerial Meeting, Melbourne, Australia, 10-11 September 2014.

²¹ 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 L68, 18.3.2010, p.13-20.

²² Directive 2010/41/EU on self-employed workers and assisting spouses also grants a maternity allowance that is sufficient to enable an interruption of occupational activities for at least 14 weeks for female self-employed workers or female spouses of self-employed workers.

²³ The new guidelines for the employment policies of the Member States highlight the importance of increasing female labour market participation and ensuring gender equality including equal pay, and refers specifically to the reconciliation of work and family life.

recommendations in the European Semester²⁵, financial support²⁶, analytical support²⁷, awareness-raising activities²⁸, and quantitative targets to improve the provision of childcare²⁹.

4. ISSUES WITH THE CURRENT EU LEGAL FRAMEWORK

The existing EU legal framework has, over the years, been a driving force without which the protection of rights in the area of family leave and work-life balance would not be where they stand today. Nevertheless, the situation across Member States in terms of the labour market participation of parents, especially women, is very diverse. Evidence shows that despite the current EU legislative provisions in this area, significant obstacles still exist in many Member States for women to enter the labour market, work full time and further their careers because of a lack of adequate work-life balance policies for women and men.

The Roadmap has highlighted issues in the current EU legal framework, such as scope for greater flexibility in working and leave arrangements as well as adjustments to incentivise a greater use of work-life balance arrangements by fathers. It also outlined the possible scope for improving protection for workers who need to take leave to care for elderly or dependent relatives, as well as improving entitlements to flexible working arrangements for parents and carers.

As concerns the **Parental Leave Directive**, there are no provisions entitling workers to take parental leave on a piecemeal or part-time basis. Greater flexibility in parental leave arrangements as well as a higher maximum age of the child (currently left to Member States) could enable greater take-up by fathers and also facilitate women's earlier return to employment. The remuneration of parental leave has been shown to have a positive effect on the take-up of these entitlements, especially for fathers³⁰.

Regarding the **Maternity Leave Directive**, there are several relevant issues concerning the adjustment to the needs of working families in today's labour market, in particular easing mothers' transition back into work – for example provisions to enable women to return to work while continuing breastfeeding – such as the provision of appropriate breaks and/or privacy, and increasing protection against dismissal.

Provision at EU level for **other forms of leaves** could also be considered, such as **special leave reserved for fathers**. Evidence shows that the introduction of father-specific leave entitlements (such as paternity leave) help to increase the involvement of fathers in caring and household responsibilities later on and thus the possibility for both parents to balance work

²⁴ The 2013 Social Investment Package (SIP) and accompanying Recommendation on Investing in Children called on Member States to support the employability and participation of parents in paid work and provide accessible quality early childhood education and care (ECEC) services.

²⁵ The Commission has been monitoring female labour market participation and identifying obstacles to participation due to lack of work-life balance policies. In the 2015 European Semester 8 Member States received CSRs to remove obstacles to women's labour market participation, notably through improving the provision of childcare.

²⁶ The European Structural and Investment (ESI) Funds, in particular the European Social Fund (ESF) and the European Regional Development Fund (ERDF), have been providing financial support investments to improve access and quality of childcare services.

²⁷ For instance, the Working Group on ECEC delivered the Proposal for key principles of a Quality Framework for Early Childhood Education and Care (2014) supporting Member States to improve these services.

²⁸ For instance, dedicated seminars in those Member States who received country-specific recommendations on improving the provision of early childhood education and care.

²⁹ Common targets to improve the provision of childcare, the 'Barcelona Targets', were set by the European Council in 2002.

³⁰ OECD (2012) *Closing the Gender Gap*; Olivier Thévenon and Anne Solaz (2013) *Labour Market Effects of Parental Leave Policies in OECD Countries*.

and family life³¹. Another new form of leave at EU level that could be considered would be **carers' leave**. The realities of demographic change and age-related health conditions call for specific attention to those caring for ill, disabled or frail relatives. Temporary leave can enable an employee to care for a dependent relative or to have time to arrange formal care services without having to leave the labour market altogether.

A key aspect of managing work-life balance is **flexibility in working arrangements**. New rights could be provided at EU level to allow workers to benefit from more flexible working arrangements for both women and men in order to meet the needs of parents, carers and employers, taking into account opportunities offered by modern working patterns and technology. Currently, there are no general provisions for workers, nor for working parents/carers in particular, to ask for flexible working arrangements (e.g. flexible working hours or telework) depending on their personal situation, except for the possibility for parents returning from parental leave to have such requests duly considered. As guaranteed for existing leaves, in any initiative on new type of leave or flexible working arrangements the adequate form of protection against adverse treatment of workers for claiming their entitlements would have to be considered, in order to protect parents and carers from discrimination or less favourable treatment, including in relation to the use of such entitlements.

5. AIM OF THE CONSULTATION

Under Article 154(2) of the Treaty on the Functioning of the European Union, before submitting proposals in the social policy field, the Commission must consult management and labour on the possible direction of Union action. The Commission will examine the views expressed by the social partners. If, having considered those views, the Commission concludes that there is a need for action at EU level, it will launch a second-phase consultation of the social partners on the content of any proposal for action, in accordance with Article 154(3) TFEU.

The questions on which the Commission would be grateful for the views of the social partners at this first stage are as follows:

- Do you agree with the description of the issues in this paper as correct and sufficient?
- Do you consider that improvements should be made to EU legislation to improve work-life balance for parents and people with caring responsibilities in view of the issues raised in point 4 of this document, and if so what type of improvements?
- Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 4 of this consultation?

³¹ OECD (2012) Closing the Gender Gap.