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CONSULTATION DOCUMENT

**Second-stage consultation of the social partners at European level
under Article 154 TFEU
on possible action addressing the challenges of work-life balance
faced by working parents and caregivers**

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1. INTRODUCTION

The purpose of this document is to consult the social partners at EU level, in accordance with Article 154(3) of the Treaty on the Functioning of the European Union (TFEU), on the content of the envisaged Commission proposal addressing the challenges of work-life balance faced by working parents and caregivers, and to ask whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.

The Commission announced in its work programme for 2016 that it would present a package of measures to address the challenges of work-life balance faced by working parents and caregivers in 2016. This followed the publication in August 2015 of the Commission Roadmap for a new initiative to replace the 2008 Commission proposal to revise the Maternity Leave Directive with a broader approach. The objective of this initiative is to promote equality between men and women with regard to labour market opportunities and treatment at work and thereby address the low participation of women in the labour market and support the equal use of occupational rights.

The initiative aims to modernise and adapt the current EU legal and policy framework to today's labour market by improving measures to facilitate work-life balance and incentivising their equal use by women and men. By enhancing women's participation in the labour market, this initiative would contribute to the Commission's priorities on jobs and growth, in the context of demographic challenges.

On 11 November 2015, the European social partners were invited to give their views on the possible direction of EU action in a first-stage consultation as provided for under Article 154 TFEU. A public consultation was also carried out to seek the views of different stakeholders about the need for such an initiative, its scope, form and possible content. The Advisory Committee on equality between women and men has also been consulted.

Following the responses received, the Commission is now launching a second-stage consultation of the social partners on the content of the envisaged proposal, as required under the Treaty.

This document brings together the main results of the first-stage consultation. It sets out potential avenues for EU-level action and the parameters that have been identified for any possible future measures. It is accompanied by an analytical document giving further background information and analysis. It sets out the problem that the Commission aims to address and the objectives of the initiative, a summary of the results of the first-stage consultation and the public consultation, a description of the regulatory framework at EU level and the situation in the Member States, the legal basis for EU action, the added value of EU action and the measures that could be considered as possibilities for EU action.

2. THE FIRST-STAGE CONSULTATION OF SOCIAL PARTNERS

The first stage of social partner consultation closed on 4 January 2016.

The social partners agreed, to a large extent, with the Commission's objective of improving women's labour market participation and the description of the challenges related to work-life balance and female employment. The trade unions and the employers' organisations however did not agree on the case for further EU-level legislative action in the field, with the trade unions favourable to amendments to the current legal instruments and the introduction of new measures and the employers against further legal action.

The trade unions believe that the EU legal framework could be improved to provide strengthened protection against dismissal upon return from maternity leave. ETUC would additionally like to see maternity leave guaranteed at full pay level and coverage ensured for all workers in atypical forms of employment. They would also like to introduce payment for parental leave, as well as introduce EU legislation for paternity leave and carers' leave. CEC and Eurocadres also appeared favourable towards paternity leave and carers' leave, but they cautioned that the latter should be designed so as not to reinforce expectations for women to provide informal care. ETUC considered that flexible working arrangements could be taken up at EU level whilst leaving the development of detailed solutions to collective agreements, and CEC and Eurocadres were also favourable to measures to facilitate greater flexible working. CESI is particularly in favour of further EU-level legislative action in the areas of flexible working arrangements, part-time work, childcare and care for other family members.

Employers' organisations, on the other hand, found the current EU-legislative framework in the area of work-life balance to be sufficient. They consider that this area is primarily the responsibility of Member States and social partners. Businesseurope, UEAPME, CEMR, HOTREC, CER, EuroCommerce and ECEG also warned that new EU-level legislation in this field could create high costs for employers. Some organisations specifically referred to the disproportionate burdens that SMEs could face (notably HOTREC, ECEG).

All of the trade unions have indicated their willingness to enter into negotiations on all forms of leave mentioned in the first-stage consultation. CESI also indicated that they would like the legislator to act in the case negotiations are not possible. The employers' organisations are not favourable to entering into negotiations at this stage.

Businesseurope has expressed particularly strong reservations about re-opening the discussion on parental leave. They also underlined that as the social partners have a framework agreement on parental leave, the Commission should respect the autonomy of the social partners in this area and not reopen the Directive. However, ETUC and CESI consider that this Directive should be revised and do not object to the Commission proposing to do so, declaring that, should discussions and negotiations between social partners not lead to any concrete outcome to improve work-life balance, the Commission should provide the necessary initiative and come up with legislative proposals.

Though the consultation did not request the social partners' views on possible non-legislative measures in the area of work-life balance, the social partners nevertheless discussed such measures.

Businesseurope was favourable to EU-level support in the area of childcare and long-term care services. ETUC indicated their desire for strengthened EU policy guidance, EU-level

financial support, clearer guidance to national/regional/local authorities on how existing EU funds can be used, and further awareness-raising activities. UEAPME highlighted that the EU could play a role in promoting mutual learning and the exchange of good practices, especially in the area of childcare for children under 3 years of age.

CEMR, CESI, CEEMET, ECEG and EuroCommerce see the usefulness of further non-legislative actions to support work-life balance e.g. through the European Semester, policy guidance, awareness raising activities, tackling gender stereotypes and increased funding.

Finally, in terms of more general points, ETUC expressed criticism of the Commission's launch of a broader public consultation in parallel to the social partner consultation, arguing that this creates confusion among stakeholders and does not respect the autonomy of the social partners. BusinessEurope reiterated their request for a dedicated meeting on work-life balance between the social partners and the Commission.

3. PROBLEMS RELATED TO WORK-LIFE BALANCE FOR PARENTS AND CAREGIVERS

The key issue that this initiative aims to address is the low participation of women in the labour market and support the equal use of occupational rights between men and women such as leave arrangements.

Women are increasingly well-qualified, even surpassing men in terms of educational attainment in Europe today, yet remain considerably under-represented in the labour market. In 2014 the employment rate of women (age 20-64) in the EU28 reached 63.4%, compared to 75% of men in the same age group. When measured in full-time equivalents, the employment rate of women (age 20-64) in the EU28 stood at 54.6%, compared to 72.7% of men in the same age group. Women's participation has not increased very significantly since 2006, where it stood at 62.2%. Female employment in the EU is on average below that of other major industrialised countries such as Switzerland (77.4%), Japan (67.6) and the United States (70.6%).

The availability or design of leave arrangements has been shown to have a strong influence on female employment. Inadequate leave arrangements can make it harder for women and men to reconcile work and caring responsibilities, leaving many women to drop out of the labour market entirely in order to care for children or other dependents, rather than return to work too early.

The availability, lack and structure of leave arrangements for fathers in addition to mothers have equally been shown to have a considerable impact on female employment. The limited use of leave arrangements by fathers to spend more time with their children and take more care responsibilities does not sufficiently allow for a faster and more effective return of women to the labour market and a better work-life balance for all. Moreover, fathers' take-up of leave arrangements has been shown to have a positive impact on their involvement in bringing up children later on, reducing the relative amount of unpaid work undertaken by women compared to men and allowing for greater participation in formal employment.

The availability of flexible working arrangements, such as telework and flexitime, also influence female employment. Although flexible working arrangements are easier to provide thanks to modern technology and could accommodate the needs of people with caring responsibilities, the organisation of work tends to remain fixed around on-the-job presence for

full working hours or more. Insufficient availability of flexible working arrangements can lead to people with caring responsibilities, particularly women, to drop out of the labour market altogether, or to change their job to one that is perceived as offering more flexibility. This may lead to or foster gender wage gaps, with impacts on wage growth, career progression and gender pension gaps, as well as skills shortages and mismatches for employers and the wider economy.

Eurofound suggests that, given that a significantly higher proportion of women work short part-time hours while a significantly higher proportion of men work long hours, male and female employees aspire to some convergence of working time: shorter full-time hours or longer part-time hours for both. Eurofound has also reported that an overwhelming share of mothers would be willing to work if they could better choose working hours. Insufficient possibilities to reduce working hours can also lead to women changing their job to one that is perceived to allow reduced work hours, which is often below their skill level or for less pay.

The lack of affordable, high-quality childcare and long-term care are also important obstacles to the participation of parents and caregivers, especially women, in employment.

Tax and benefit disincentives can also discourage women from entering the labour market or working more hours and can further interact with work-life balance policies. For instance, high out-of-pocket costs for childcare and long-term care services coupled with high marginal effective tax-rates for a second earner in a household can magnify the financial disincentives for women to enter work or work more hours.

4. THE NEED FOR EU ACTION

There is already an EU legislative framework in place in relation to family-related leave and working arrangements. One of the drivers of the problem is that this legislative framework, which has laid the groundwork for protecting not only the health and safety of pregnant workers and mothers but also for facilitating female labour market integration (maternity leave and parental leave), is not adequate and complete for dealing with the challenges of managing work and family life in today's economic, social and demographic situation, as shown in the analytical document. Inefficiencies in the labour market continue to persist, with many women, especially those with caring responsibilities, either not in paid work or working part-time or in jobs below their skill level because of difficulties in balancing work and family life.

No considerable change in the situation can be expected to occur if the issue is dealt with at Member State level only. In principle, Member States could take measures to improve the situation, however the track record to date shows that they have not all done so, or not done so effectively, leading to large variations in female employment outcomes and sub-optimal results in many Member States. There may be in some cases a hesitation to act at national level, where the long-term benefits of work-life balance measures may not always be fully appreciated, perhaps due to perceived short-term costs in relation to their implementation or perceived risks of putting companies at a short-term competitive disadvantage. Action at EU level could ensure a level playing field, as unfavourable and very different national approaches can lead to distortions of competition, as well as being a barrier to the movement of labour within the internal market. Action at EU level could therefore reduce inefficiency in the EU labour market as a whole.

The problems do not concern only one or a few Member States and constitute obstacles to the achievement of the overall Union objectives in relation to equality between women and men with regard to labour market opportunities. Women's under-representation in the labour market translates, across the EU, to their lower earnings, pension entitlements and fiscal contributions, as well as higher rates of poverty, with significant implications for the social protection systems and for public finances in the Member States. Moreover, higher economic inactivity rates of women also exacerbate the negative impact of an ageing population on the sustainability of public finances. In view of demographic ageing and the projected shrinking of the working age population, Europe needs to better harness its available labour supply for economic growth and fiscal sustainability now and in the future. Women are expected to be the largest group in terms of contribution to improved labour supply for Europe.¹ This highlights the necessity of policies that support women and men to better balance work and family life.

Moreover, in its aim to increase its global competitiveness, Europe cannot afford not to use all its human capital. In particular, it cannot afford to waste the talent and skills of workers with children or other dependents by denying them reasonable possibilities to reconcile work and caring responsibilities.

Finally, the non-legislative dimension of EU policy making, including through the open method of coordination or through the European Semester and country-specific recommendations, are of great importance – including and in particular where there is no EU competence to legislate (e.g. in relation to childcare or elderly care) - and should be developed further; however in this field they have been proven to be inadequate to ensure alone that these issues are addressed. A comprehensive package that includes legislation is therefore needed.

5. POSSIBLE AVENUES FOR EU LEGISLATIVE ACTION

The Commission has identified possible avenues for EU action, on which it would like to seek the views of social partners, including with regard to the possible initiation of negotiations between them. The elements of the various avenues for action and the key parameters for consideration are set out below. All the avenues for EU action – which could be combined – are detailed in the accompanying analytical document.

5.1. Maternity leave

EU legislation provides for 14 weeks' maternity leave, paid at least at the level of sick pay, with the right to return to the same or an equivalent job and protection against dismissal from the beginning of pregnancy until the end of maternity leave. In the case of a dismissal in exceptional circumstances not connected to the pregnancy, the employer must provide duly substantiated grounds for her dismissal in writing. The vast majority of Member States provide for at least 18 weeks of maternity leave.

¹ Estimates from the Commission show that women are the group with the highest potential to contribute to the Europe 2020 target to raise employment to 75%; Commission Communication *Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth*, 2014.

One possibility to ensure the greater retention of women in the labour market after having a child could be to improve dismissal protection for pregnant workers and women who have recently given birth and to improve workplace conditions so as to facilitate the transition back into work after leave, for example with respect to the following parameters:

- extension of the period of dismissal protection (e.g. until six months after the end of maternity leave);
- prohibition, in addition to dismissal, of any preparatory steps for dismissal²;
- provision for a right to written reasons for dismissal during the full period for which dismissal protection is provided;
- entitlements for breastfeeding mothers in relation to breaks and/or facilities for breastfeeding.

Dismissal protection measures could, *inter alia*, codify existing case law of the Court of Justice and, rather than being costly, could save businesses expenses related to invalid dismissals and resulting litigation. They could take steps to address the problem of pregnancy discrimination in the EU and improve the position of women in the labour market.

Breaks and facilities to allow for breastfeeding could ease women's transitions back into work after taking maternity leave, and thus allow for a faster return to employment.

Other parameters of relevance in the context of maternity leave relate to the length of leave and the level of allowance payable. In this context, however, it is useful to recall the Commission's proposal in 2008 to extend the length of maternity leave from 14 to 18 weeks. The European Parliament adopted a position calling for a further extension to 20 weeks, and other measures including full pay for the entire duration, which was not acceptable to the Council. Discussions between the co-legislators reached a stalemate. The Commission withdrew the proposal in 2015, noting that in the meantime many Member States had increased maternity leave to at least 18 weeks, and that a new and broader approach was needed in order to take into account changes in the national policies of Member States, as well as the changing labour market and societal context. The Commission also acknowledged that more opportunities for women and men to share caring responsibilities could have a strong positive effect on mothers' employment, and would therefore look beyond length and pay of maternity leave to examine options that would allow for greater female labour market participation and allow for a better sharing of care responsibilities.

5.2. Paternity leave

Another possibility could be to introduce paternity leave, i.e. a short period of leave reserved as a non-transferable right for fathers to have time off work around the time of birth or adoption of a child. There is currently no paternity leave at EU level, although many Member States have some provision for paternity leave, ranging from one or two days to several weeks.

Regarding the choice of measures to be adopted, the main parameters for consideration in relation to paternity leave are:

² Such as, for example, the recruitment of a replacement employee on a permanent basis.

- the length of paternity leave, which could, for example, be set at around two weeks, and
- the level of allowance, which could range, for instance, from unpaid to the level of sick pay or full pay.

Paternity leave enables early involvement of fathers in caring for children and it has a leverage effect for fathers' longer-term involvement in caring responsibilities. Paternity leave thus facilitates work-life balance for men as well as stronger labour market integration of women. Enhancing fathers' possibilities to take leave after having a child could also help to reduce the risk of labour market discrimination against women because they are more likely to take leaves after having children than men. Since it is a relatively short period of time, similar in length to a holiday (typically one or two weeks) the administrative costs are low. Costs relating to the allowance payable would depend on the level of allowance and the duration. In Member States that have paternity leave, there is usually some allowance at least equivalent to sick pay.

5.3. Parental leave

A further possibility could be to introduce changes to the EU legal framework on parental leave. EU legislation currently provides for an individual right to four months' parental leave, with one month non-transferable, for parents of children up to an age determined by the Member States of up to eight years. There are no stipulations at EU level as to whether leave can be taken on a full-time or part-time basis, in one block or in a number of blocks; nor are there any stipulations as to the level of allowance payable.

Regarding the choice of measures to be adopted, the main parameters for consideration in relation to parental leave are:

- the flexibility with which it can be taken (full-time, part-time, in one or more blocks, as well as the age of the child in respect of whose care parental leave can be requested);
- the level of allowance payable and the duration of payment (i.e. for the full period of leave or only for part of the period); and
- the length of the non-transferable period as well as the overall length of leave.

Improving the overall conditions of parental leave in order to improve work-life balance for parents and in particular incentivising men to take their leave, through measures such as greater flexibility, remuneration, and/or increasing the non-transferable period (which could be considered in combination with an appropriate increase in the length of leave), could facilitate labour market integration of women and the equal use of occupational rights by men and women. It could also help to reduce the risk of labour market discrimination against women because they are currently more likely to take long leaves of absence relative to men. Costs of providing flexibility as to how leave can be taken and extending the non-transferable period would be rather low. Costs in relation to any allowance payable would depend on the level and duration of allowance, bearing in mind that allowances are payable in a majority of Member States. Costs in relation to the duration of parental leave would largely depend on

whether that leave is remunerated, while some additional costs to employers could be incurred where replacements are made for the additional period of leave.

5.4. Carers' leave

A further possibility would be to introduce carers' leave at EU level. Carers' leave is understood as leave to care for ill, disabled, frail, elderly or dependant relatives over the age of 12 and spouses/life partners. There is currently no provision at EU level for carers' leave and in several Member States there are no provisions for carers' leave beyond a right to very short periods of time off for urgent family reasons ("*force majeure*" leave). Having an elderly relative who requires care has been shown to negatively impact female employment; women assume the role of informal carers more commonly than men with the result that they drop out of the labour market or reduce their working hours.

Regarding the choice of measures to be adopted, the main parameters for consideration in relation to carers' leave are:

- the length of leave, which could, for instance, have a duration of a few weeks for each dependent relative or could be an account of care-related leave credits that workers can have access to over their working lives;
- the level of allowance payable, which could range, for instance, from unpaid to paid at the level of sick pay or even full pay. It could also be paid for the full period or only for part of the leave period ; and
- the flexibility with which it can be taken (e.g. full-time, part-time, in one or more blocks).

Introducing carers' leave could significantly improve the work-life balance situation of employees caring for dependent family members. It could provide carers with the possibility to take time off to care for dependent relatives (for instance spending time with a terminally ill relative) or with the time needed to ensure arrangements for formal care or to spend time with someone in care, while remaining in employment. Such measures could strengthen carers' attachment to the labour force (particularly women who are more likely to be carers), by allowing them to take a temporary period of absence and then return to work, rather than compelling them to drop out of the labour market altogether. Flexibility in take-up could enable employees to better maintain their connection to the workplace, for their benefit and that of their employer. With the ageing population and the increasing prevalence of age-related health conditions, the challenges of work-life balance for workers with dependant relatives are only set to increase.. The costs would depend on the length of leave and whether an allowance is payable. The flexibility with which leave can be taken would not generate significant cost implications.

5.5. Flexible working arrangements

A further possibility would be to extend to more parents and carers the existing rights set out in the Parental Leave Directive to request changes to working patterns or time. This right currently only applies to parents returning from parental leave. The employer is under an obligation to consider the request, having regard to the employer's and the employee's need, and to reply, but the decision on whether to grant the requested temporary change is at the

employer's discretion. In addition, parental leave is limited to parents of children below a given age up to 8 years to be defined by Member States or social partners, so the right to request a return to changed working hours and/or pattern is limited accordingly.

Regarding the choice of measures to be adopted, the key parameters for consideration are:

- the type of flexible working arrangements requested (e.g. changes to working schedules with no reduction of working hours or changes to working location other than the usual place of employment);
- the possibility to request a temporary reduction in working hours;
- the nature of the right (e.g. a right to request and have the request duly considered; a right to obtain, subject to refusal by the employer for serious operational or business reasons; an absolute right that cannot be refused in any circumstances; a right to return to the previous arrangements after a set period of time); and
- the eligibility conditions of the right (for example, whether flexible working should be available for certain categories of parents and caregivers, such as parents of children up to a certain age or all parents and caregivers).

Generalising possibilities for flexible working arrangements, including reduced working hours, for parents and caregivers beyond those who have taken parental leave could improve work-life balance for parents and caregivers and increase their labour market participation, particularly that of women who would have otherwise dropped out of employment. This is particularly the case where workers are looking for flexible working arrangements in the format of flexible working schedules, patterns or location, or temporary reduction of working hours. Benefits would also be likely to accrue for parents and caregivers, particularly women, able to continue in higher-level jobs rather than working in jobs below their skill level in order to have the desired level of flexibility, as well as for their employers and the wider EU economy, as skills shortages and mismatches are more capable of being addressed. The potential costs would vary in accordance with the strength of the right and what businesses would have to do to implement it. These could be expected to be limited in the case of changes to working schedules and more significant for changes to the place of work, depending on factors such as the use of technology, and for changes to working hours. A possibility of refusal by the employer when granting the request would substantially disrupt work organisation, would avoid disproportionate costs for employers.

5.6. Impact of measures

Further elaboration on the costs and benefits of the various possible avenues for EU action is indicated in the accompanying analytical document. In the case that the Commission decides to put forward a legislative proposal or proposals, the impacts will also be thoroughly assessed in an impact assessment. In order to feed the development of the next stage of its work, the Commission would appreciate the social partners' views on the potential impacts of the identified measures.

6. POSSIBLE AVENUES FOR EU NON-LEGISLATIVE ACTION

In addition to the legal instruments set out above, the EU addresses work-life balance issues for parents and caregivers through complementary supporting policy measures. These include guidelines for Member States' employment policies, policy guidance, country-specific

recommendations in the European Semester, financial support, analytical support, awareness-raising activities, and monitoring of the Barcelona targets and the Education and Training 2020 target to improve the provision of childcare³. The Commission will further develop this framework of policy measures with particular focus on childcare, care services and infrastructure for the elderly, and how tax and benefit systems can better ensure that women, particularly mothers, are not discouraged from working and working more hours.

7. NEXT STEPS

The Commission will take into account the results of this consultation in its further work to develop its proposals to address the challenges of work-life balance faced by working parents and caregivers. In particular, it may suspend such work if the social partners decide to negotiate between themselves and communicate a decision to do so **within six weeks** of the launch of this consultation. In the event that the social partners do not decide to negotiate, the Commission will consider bringing forward proposals to modify and/or complement the existing legislation, which would be supported by an impact assessment.

8. QUESTIONS TO THE SOCIAL PARTNERS

The Commission therefore seeks the views of the social partners on the following questions:

1. What are your views on the possible legislative avenues for EU action and the related parameters set out in section 5 of this document?
2. Are the EU social partners willing to enter into negotiations with a view to concluding an agreement with regard to any of the elements set out in section 5 of this document under Article 155 TFEU?

³ The ET 2020 targets specifically focus on "early childhood education and care", which is understood in this context to be encompassed by the term "childcare", covering care facilities for young children from birth to compulsory school age.