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**IMPACT ASSESSMENT**

*Accompanying the document*

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

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## Abstract

### I. POLICY CONTEXT

The 'New Start' initiative follows the withdrawal of the Commission's 2008 proposal to revise Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (hereinafter the Maternity Leave Directive). Following the withdrawal, the Commission announced its intention to prepare a new initiative that would undertake a broader approach taking into account the developments in society in the past decade whilst still promoting the objectives of the previous proposal and providing minimum protection<sup>1</sup>.

The "New Start" initiative is more holistic and extends the scope of the previous proposal by offering a wider range of legislative and non-legislative measures that can help improve the protection of working parents and carers, allow them to better reconcile their professional and private life, and contribute to addressing women's underrepresentation in the labour market<sup>2</sup> and the unequal sharing of caring responsibilities between women and men. This widened scope is in line with calls from the European Parliament as well as many Member States, social partners and stakeholders. It follows the alarming observation that in 2015 the gender employment gap still exceeds 11 percentage points and 18 percentage points when referring to full-time equivalent employment.

While women's underrepresentation in the labour market is influenced by a combination of drivers, the scope of the initiative is limited to modernising and adapting the current EU legal and policy framework in order to ensure a more equal distribution of caring responsibilities between women and men. Evidence shows that well-designed policies to help both parents and carers reconcile their work and family responsibilities - such as paid leaves, flexible working arrangements – can be very effective in reducing gender inequalities in employment.

While many Member States have already planned policy measures in order to improve parents and carers' work-life balance, the projections on the baseline scenario show that the above challenges will not be sufficiently addressed without EU action. The gender gap in activity rates is expected to still amount to 9 percentage points in 2055. In addition, budget measures in the context of the economic and financial crises have affected family-related leave schemes and led to cuts in the public or publicly subsidised provision of childcare services in some Member States.

This initiative would contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities and equal treatment at work and of

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<sup>1</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach*

<sup>2</sup> See the European Commission Roadmap, *New Start to Address the Challenges of Work-Life Balance faced by working families*, 2015

promoting a high level of employment in the EU. It would equally contribute to the Commission's priorities on jobs and growth, as outlined in President Juncker's political guidelines for the European Commission. This initiative will also be linked to the forthcoming European Pillar of Social Rights initiative, which seeks to strengthen the social dimension of Union and enhance Member States' upward convergence in social performance.

This initiative builds on the existing EU legislative and non-legislative frameworks. With regards to EU legislation on family-related leaves, this initiative stems from an assessment of the limits of the Maternity Leave Directive (92/85/EEC) and of the Parental Leave Directive (2010/18/EU)<sup>3</sup> in achieving the objectives set out by the co-legislator<sup>4</sup>, including the Parental Leave Directive objective of achieving a better balance of caring responsibilities between women and men. In the field of flexible working arrangements, EU legislation currently only provides a right for parents to request reduced working hours and flexible schedules when returning from parental leave (Directive 2010/18/EU) and to eliminate discrimination against part-time workers (Directive 97/81/EC)<sup>5</sup>. This initiative also has synergies with the EU acquis with regards to protection against discrimination and dismissal (in particular the Gender Equality Recast Directive 2006/54/EC)<sup>6</sup> and working time (Directive on Working Time 2003/88/EC)<sup>7</sup>. In addition to legislation, the EU has been addressing work-life balance issues and obstacles to female labour market participation through the European Semester<sup>8</sup>, the European Structural and Investment funds, and policy guidance, but this has not been sufficient to achieve the Europe 2020 target of 75% employment rate for women and men.

This initiative also builds on Member States' best practices in the area of work-life balance. For instance, with regards to family-related leaves, this initiative finds inspiration in Member States such as Sweden, where reserving parental leave to the father has led to a doubling in the number of days of leave taken by men and where female employment is among the highest in the EU. This initiative is also inspired by the example of the 2007 parental leave reform in Germany, where ensuring adequate remuneration has led to a rapid increase in father's take-up<sup>9</sup>. In the area of flexible working arrangements, this initiative stems from

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<sup>3</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L68, 18.3.2010, p.13-20.

<sup>4</sup> See Annexe 5 of the Impact Assessment

<sup>5</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L 14, 20.1.1998, p. 9

<sup>6</sup> 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) [Official Journal L 204 of 26.7.2006].

<sup>7</sup> Directive 2003/88/EC of the European and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

<sup>8</sup> For more information, please see [http://ec.europa.eu/europe2020/making-it-happen/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/index_en.htm)

<sup>9</sup> Recently published data by the Federal Statistics Office showed that the proportion of fathers taking parental benefit has risen significantly and steadily since its introduction in 2007. For births in 2013, parental benefit was taken up by 32 % of fathers (compared to 3.5 per cent of fathers in 2006. See: Statistisches Bundesamt [Federal Statistical Office] (2015) Statistik zum Elterngeld. Beendete Leistungsbezüge für im 2. Vierteljahr 2013 geborene Kinder [Statistics on parental allowance. Completed performance bonuses for children born in the second Quarter of 2013]. Wiesbaden: Statistisches Bundesamt.

examples from Member States such as Austria and The Netherlands who have taken measures to broaden such arrangements and tend to experience higher female employment rates.

A roadmap for the new initiative was published in August 2015<sup>10</sup> and this initiative has been included in the Commission's 2017 Work Programme. This initiative has been informed by an extensive consultation process. In line with the Treaty, the Commission completed a two-stage consultation with the EU social partners in 2015 and 2016. There was no agreement among social partners to enter into direct negotiations on any of the issues raised during the consultations. An open public consultation was also carried out to seek the views of different stakeholders and citizens on the issue, and the EU Advisory Committee on equality between women and men was also consulted<sup>11</sup>.

## 2. PROBLEM DEFINITION

As outlined in the Roadmap of this initiative, the problem to be addressed is women's under-representation in employment, particularly due to the lack of equal sharing of caring and professional responsibilities by parents with children or those with dependent relatives. In 2015 the gender employment gap (age 20-64) in the EU amounted to 11.6 percentage points (pps). Considering this initiative follows the withdrawal of the Commission's 2008 proposal to revise Council Directive 92/85/EEC, it aims to address the unequal distribution of caring responsibilities between women and men, which is one of the main drivers of this problem.

Gender gaps in the labour market are most acute for parents and people with other caring responsibilities. The gender employment gap has been shown to widen substantially after having children. On average in 2015, the employment rate of women with one child under 6 is 8.8 pps less than women without young children and in several countries this difference is over 30 pps<sup>12</sup>. Similarly, women are much more likely to assume the role of informal carers for elderly or dependent relatives than men<sup>13</sup>.

In addition to the role of gender stereotypes and discrimination in supporting an unequal sharing of caring responsibilities between women and men, one of the main reasons for this problem is inadequate work-life balance policies.

The availability, or lack thereof, of leave arrangements can strongly influence women's decisions to stay at home or return to the labour market after assuming care responsibilities<sup>14</sup>. On the one hand, the availability and attractiveness of leave arrangements for fathers also has a considerable impact on the division of work and care between parents, and in turn on overall female employment outcomes. The use of leave arrangements by fathers can lead to a more equal distribution of care between parents, allowing for women's faster return to the labour market after having children. Those Member States that have earmarked a significant portion

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<sup>10</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2015\\_just\\_012\\_new\\_initiative\\_replacing\\_maternity\\_leave\\_directive\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_012_new_initiative_replacing_maternity_leave_directive_en.pdf)

<sup>11</sup> See Annex for summary of stakeholders' views

<sup>12</sup> Gender gaps in employment are 24.7 pp among those with 1 child below 6 years of age, 25.6 pp among those with 2 children (youngest below 6 years of age) and 35.4 pp for those with three children or more.

<sup>13</sup> See for instance European Commission (2013) *Long term care in ageing societies*; Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

<sup>14</sup> See OECD (2012) *Closing the Gender Gap*

of leave to fathers and paid the leave at a relatively high replacement rate tend to experience higher take-up by fathers<sup>15</sup> and positive results in terms of mothers' employment outcomes<sup>16</sup>. For example, in Sweden, reserving parental leave to the father has led to a doubling in the number of parental leave days taken by men<sup>17</sup>. Currently there is no EU legislation on paternity leave and the EU legal framework gives very little incentives for fathers to take parental leave (the Parental Leave Directive does not foresee compensation and allows for most of the parental leave to be transferable to the other parent)<sup>18</sup>. On the other hand, the lack of adequate leave to take care of other dependent relatives also exacerbates the unequal sharing of caring responsibilities between women and men. Where there is no carers' leave provision, it is generally women who will work part-time or drop out of the labour market in order to take care of their relative for a short period of time. Currently there is no EU legislation on carers' leave.

In addition to inadequate or ill-designed leaves, the unavailability of flexible working arrangements can lead to some workers, particularly women, to drop out of the labour market altogether when taking on caring responsibilities<sup>19</sup>. Flexible working arrangements include remote working, flexible working schedules, and reduced working hours (part-time work). Insufficient availability of flexible working arrangements can also lead women with caring responsibilities to change their job to one that is perceived as offering more flexibility or reduced working hours, which is often below their skill level or for less pay<sup>20</sup>. This consequently can lead to or foster gender wage gaps and labour market segmentation. Currently only parents returning from parental leave have an entitlement to request reduced working hours and flexible work schedules<sup>21</sup>.

Difficulties in accessing affordable and quality formal childcare services can also lead many women to reduce their working hours or drop out of the labour market<sup>22</sup>. The Barcelona targets set by the EU in 2002 to improve the provision of formal childcare arrangements by 2010<sup>23</sup> and reaffirmed in the European Pact for Gender Equality spanning until 2020, are still

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<sup>15</sup> Escot L., Castellanos S. (2016), Do Fathers Who Take Childbirth Leave Become More Involved in Their Children's Care? The Case of Spain, *Journal of Comparative Family Studies*

<sup>16</sup> OECD, Policy Brief: *Parental Leave, where are the fathers*, 2016

<sup>17</sup> *ibid*

<sup>18</sup> 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.

<sup>19</sup> Plantenga, J. and Remery, C. (2009) *Flexible working time arrangements and gender equality*

<sup>20</sup> Over-qualification among university graduates is higher for women than for men in countries such as Spain, UK, Italy, Belgium, France Germany and The Netherlands; Conde-Ruiz and Marra de Artfñano (2016)

<sup>21</sup> 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.

<sup>22</sup> See, for instance, OECD (2012) *Closing the Gender Gap*

<sup>23</sup> In 2002, at the Barcelona Summit, the European Council set the targets of providing childcare to at least 33% of children aged 0-3 and 90% of children between 3 years old and the mandatory school age by 2010.

not reached today. The lack of formal long-term care arrangements can also lead many people with dependent relatives, most often women, to take on the role of informal carers<sup>24</sup>, and lead them to take long leaves of absence from the labour market or dropping out completely.

Finally, economic disincentives such as tax-benefit disincentives, which discourage second-earners, often women, from entering the labour market, working more hours or remaining in the labour market, as well as the gender pay gap can reinforce the unequal distribution of work and caring responsibilities by putting on women the bulk of the burden of caring responsibilities.

These challenges have negative consequences on individuals, companies and the wider society. On an individual level, these problems reduce women's career opportunities and this, in addition to their longer career interruptions and concentration in lower paid jobs exacerbates the gender pay gap. Women's underrepresentation in the labour market also results in their higher risk of poverty and social exclusion, especially in old age. This has negative consequences on their families and children, who are under higher stress and at higher risk of poverty. Inadequate work-life balance policies also have negative consequences on men, who tend to work longer hours after having children. On a company level, the underrepresentation of women in the labour market leads to a reduced talent pool and poor work-life balance impedes on workers' motivation and productivity. For the society, the costs of these inequalities between women and men in employment amounted to an estimated €370 billion euros in 2013, equivalent to 2.8% of EU-GDP<sup>25</sup>, and this is only exacerbated by the demographic challenge.

### **3. POLICY OBJECTIVES**

The general policy objective of this initiative is to address women's underrepresentation in the labour market and to promote equality between men and women with regard to labour market opportunities by modernising the current EU legal and policy framework and adapting it to today's labour market to allow for parents with children or workers with dependent relatives to better balance caring and professional responsibilities<sup>26</sup>.

The specific objectives of this initiative are therefore defined as follows:

- to improve access to work-life balance arrangements – such as leaves and flexible working arrangements
- to increase take-up of family-related leaves and flexible working arrangements by men.

The specific objectives seek to respond to the drivers set out in the problem definition in the following way:

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<sup>24</sup> The incidence of providing informal care to elderly relatives is highest among the 50 to 64-year-olds. Working women are up to 1.6 times more likely to be informal carers than working men.

<sup>25</sup> Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

<sup>26</sup> Article 153(1) (i) TFEU: " equality between men and women with regard to labour market opportunities and treatment at work.



The availability of leaves and flexible working arrangements have been shown to strongly mitigate the effect of caring responsibilities on women's employment outcomes. By providing parents and carers with tools for greater choice in how to organise work and caring responsibilities these measures avoid that they chose a job below their skill level and for less pay or that they drop out of the labour market altogether.

Moreover, the use of work-life balance policies by men (i.e. family-related leaves, flexible working arrangements) can help in rebalancing the distribution of care within the household, which usually falls principally on women<sup>27</sup>. However, opportunities and incentives for men to make use of work-life balance arrangements are generally scarce, and their take-up is accordingly low in most Member States. Improving the gender-balanced design of these arrangements can help address this.

It should also be noted that other policy areas mentioned in the problem definition are not covered in this impact assessment. With regards to the provision of formal care services and 'economic disincentives, this is due to the limited EU competence in these areas. Considering their significant influence on the addressed problem, the initiative could foresee measures to enhance current efforts in these areas, in particular in relation to the monitoring of Member States' policies in the EU Semester and to the use of EU funding in the case of formal care services. Furthermore, the options presented below are expected to indirectly mitigate some of the other drivers mentioned above such as gender stereotypes and the gender pay gap.

#### **4. SUBSIDIARITY**

This initiative respects the principle of subsidiarity and has a strong added-value in addressing the challenges mentioned in the problem definition. First, the current situation demonstrates that EU action has a strong influence on Member States' legal frameworks. In the policy area covered by this initiative, it is only when EU legislation is in place (i.e., maternity and parental leave) that there is legislation in place in every Member State. When Member States do have legal entitlements, variations between Member States with regard to length and the generosity of the conditions could result in an unbalanced level of rights, an unequal protection for EU citizens across the EU and differences in the functioning of labour markets.

Secondly, the projections based on the available information clearly demonstrate that only EU action will ensure that sufficient progress is achieved in all Member States. Employers, particularly small and medium-sized enterprises, may be hesitant to provide greater work-life balance measures on their own, given the short-term costs and administrative burdens that may result<sup>28</sup>. Member States may hesitate to correct such a failure through regulation in this area because they may perceive a risk of putting their own companies at a disadvantage with companies from other Member States. Considering that a significant percentage of EU firms' trade is intra-EU, EU-level action could mitigate such concerns and establish a level-playing field while taking into account the need to avoid additional burdens on businesses, particularly SMEs, and ensuring that all Member States move in the same direction.

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<sup>27</sup> OECD (2013) *Closing the Gender Gap*

<sup>28</sup> OECD (2007) *Babies and Bosses*

Thirdly, EU-level intervention could mitigate trends in some Member-States to reduce work-life balance provisions. Indeed, as a result of the recent crisis, policy priorities diverge between Member States, and other issues (particularly those expected to produce short-term benefits) are focussing national authorities' attention.

Finally, there is a clear European horizontal dimension to the issues related to work-life balance and the underrepresentation of women in the labour market. Low labour market participation of women hinders the EU's goals in relation to gender equality, fighting poverty and supporting employment and growth.

## **5. POLICY OPTIONS**

The impact assessment outlines possible non-legislative and legislative options in the following areas: maternity leave, paternity leave, parental leave, carers' leave and flexible working arrangements. For each area, key parameters are identified on the basis of the analysis of stakeholders' views. Tables presenting the assessed options can be found in section 7 of the report.

### **Maternity leave**

The following parameters have been considered:

- Arrangements to enable breastfeeding mothers to work. Such measures can facilitate successful transitions between maternity leave and employment.
- The level of payment or allowance for part of the leave. Increasing pay for at least the compulsory period of leave is also considered as a parameter as it could provide additional income protection for women for whom this leave is compulsory, thereby supporting new mothers.
- The length: this parameter has been discarded because this consideration was one of the most contentious aspects in discussions among Member States in the Council. Moreover, providing greater opportunities for women and men to share leaves would have a more positive effect of reducing the imbalance in caring responsibilities between women and men.
- Dismissal protection: this parameter was discarded for legislative options because the evaluation of the Maternity Leave Directive<sup>29</sup> shows that the issue of discrimination at the workplace is mainly due to the fact that all employers do not respect the legal rules transposed by the Member States in this field and not to the legal provisions themselves

### **Paternity leave**

The following parameters have been considered:

- The length as this determines how much leave men can take to get involved in

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<sup>29</sup> See Annex 5

childcare at an early stage, also as this is important for how involved they will be in caring throughout the child's life.

- Payment as it provides income protection for fathers after having children and has also been shown to increase the likelihood of fathers making use of this leave.

### **Parental leave**

The following parameters have been considered:

- Payment as this encourages both parents to make use of their parental leave entitlements and as it is a strong factor in fathers' take-up of parental leave.
- The degree of transferability of the parental leave between parents as making the leave non-transferable can encourage a greater sharing of leave arrangements between parents and support women's faster return to the labour market after having children.
- The possibility to take leave on a flexible basis as this can facilitate the maintenance of parents' connections to the labour market during leave, and promote greater take-up of these leaves by fathers.
- Increasing the age of the child up to which parents can take leave from 8 to 12 years old in order to give more possibilities for parents to take part of their parental leave entitlement when their children grow up. This parameter has not been taken into account in the assessment of the quantitative impacts presented below but estimations of its impact on companies and Central governments can be found in the report.
- The length but this parameter was discarded given that there is no definitive evidence that a longer parental leave would help to further facilitate women's labour market participation.

### **Carers' leave**

The following parameters have been considered:

- Length in order to represent the variety of provisions in place in EU Member States.
- The level of payment as this could increase the likelihood of carers in general and men in particular to make use of the leaves.
- The possibility to take leave on a flexible basis as this can help workers achieve a better balance of their professional and caring responsibilities.

### **Flexible working arrangements**

The following parameters have been considered:

- The scope of the right thereby extending the concerned population as currently this right only exists under the EU Parental Leave Directive for parents returning from parental leave. Parents, who are not on leave, or other types of workers with dependent relatives, could also strongly benefit from such increased flexibility in order to better balance work and care responsibilities.
- The type of flexibility (flexible working schedules, remote working or reduced working hours).
- An extension of the level of the right to request flexible working as an absolute right for employees was discarded as a parameter, as it would create serious restrictions for employers to determine how work is organised in a firm.

## **6. EXPECTED IMPACTS AND HOW THE OPTIONS COMPARE**

A detailed analysis of how many and which Member States would need to adjust their legislation can be found in Section 8 of the report. No clear East-West or North-South pattern emerges in relation to the most relevant policy changes proposed. Expected impacts are quantified where possible and details on the methodology used are provided in Annex 4. Important efforts have been undertaken to collect the necessary data in order to quantify the impact on companies (including SMEs), Central Governments and the macro-economic impact of the options; however data available in this area is scarce. Many Member States do not collect administrative data on the use of various types of leave by sex and number of days. Data on the employment status of informal carers is also scarce. Nevertheless, data and robust evidence are available for several countries which underpin the assessment of impacts and allow overcoming certain data limitations, either by extrapolating data or by using assumptions based on the relevant economic literature. The limitations of such assumptions, especially when behavioural (on increase in take-up of entitlement rates for example), should be duly noted and a sensitivity analysis of key factors such as lost production and take-up assumptions as well as taking into account collective agreements is presented in the report. A qualitative assessment of impacts is also provided, to complement the quantitative analysis where necessary and give a more complete picture of the overall costs and benefits of the options outlined.

### **Maternity leave**

The non-legislative Option, which includes measures to enhance the enforcement of the current Directive in the area of dismissal protection and policy guidance on facilitating transitions between leave and employment, has been identified as the preferred option. The non-legislative option would have a positive impact on individuals by facilitating mothers' return to employment after taking leave as well as a positive impact on companies and Central Governments. The non-legislative Option only entails limited costs on companies due to the potential provision of breastfeeding facilities and breaks. It also entails benefits due to an increase in workers' productivity and a reduction in recruitment costs. In terms of its impact on Central Governments, the non-legislative Option does not foresee any additional payment of maternity benefits but does foresee savings due to a reduction in payment of unemployment benefits and hence has a more positive impact on Central Governments than the legislative options in the medium-term. In comparison, Options 1 (legal entitlement to breastfeeding breaks and facilities) and 2 (breastfeeding provisions and first two weeks fully paid) both have a small positive impact on companies, Option 1 has a positive impact on Central Governments due to a rise in tax revenues and a decrease in health care expenditures and Option 2 has a negative impact on Central Governments due to the rise in payment of benefits. In order to limit the costs due to introducing breastfeeding facilities and ensure that the decision of introducing such facilities takes into account employers' needs, the preferred option is the non-legislative Option.

### **Paternity leave**

Option 3 (an individual entitlement of 10 working days paternity leave paid at least at sick pay level) has been identified as the preferred option. Evidence of Member States' experiences suggests that where leave is remunerated, it has a strong positive impact on its take-up by

men, as well as female employment outcomes. Options 2 (individual entitlement of 5 working days paternity leave paid at least at sick pay level) and 3 would thus have a much higher individual positive impact than Option 1 that does not foresee pay and the non-legislative Option. Although Option 3 has the highest cost for companies, when disaggregated the cost represents only 14 € per company in 2030 and 43 € per company in 2050. Moreover, thanks to its longer duration, Option 3 is the option that best improves the possibilities for fathers to be involved in caring responsibilities directly following the birth of a child. Evidence also shows that the leverage effect on parental leave, which has highly positive impacts on GDP, labour force participation, employment and real incomes (see below), is more likely to occur with paternity leave of 10 working days or more.

### **Parental leave**

Option 3 (4 months non-transferable, paid at least at sick pay level, flexible uptake, rise of age of the child from 8 to 12) is identified as the preferred option for parental leave. As Option 3 provides for an individual entitlement to remunerated leave for the full four-month period that is non-transferable between parents, it entails much higher take-up by men and hence will have the highest positive impact on female employment. Significantly increasing the length of the non-transferable period has considerable benefits in terms of increased household incomes and individual well-being (for fathers, mothers and children). Option 3 is more costly for companies and Central Governments than Options 1 (flexible uptake but no change on pay and non-transferability) and 2 (flexible uptake, only one month paid and non-transferable, rise of age of the child from 8 to 12), but its higher costs remain modest in relative terms (88€ per company in 2030 and 145€ in 2050). In addition, it has much larger effects in terms of labour market participation as well as income security for workers taking leave. Furthermore, Option 3 also has much higher positive macro-economic effects. This Option hence appears to rank higher than the other parental leave options assessed.

### **Carers' leave**

Both Options 2 (4 weeks throughout the career paid at least at sick pay level, flexible uptake) and 3 (5 days/year/dependent paid at least at sick pay level) are expected to have high positive impacts on individuals, enabling them to take a short period of leave to care for their dependent relatives with a limited earnings loss. The quantitative assessment for both options reveals a neutral impact when estimated per company in 2050 and a high positive impact on Central Governments. Option 2 has slightly more positive macro-economic impacts than Option 3. Option 2 may however entail a higher administrative burden for companies/central governments than Option 3, given the need to track a ‘bank’ of leave throughout a worker’s career. Option 3 therefore appears to rank slightly higher in efficiency than the other carers’ leave options assessed and is therefore identified as the preferred option. In order to further increase the efficiency of Option 3, it would be considered to limit the scope of the entitlement to 5 days per year per worker (and not per dependent relative). This would limit the disruption and complexity due to introducing such as measure for companies, as well as possibly reduce its costs.

### **Flexible working arrangements**

Option 3 (right to request flexibility in place of work, flexible working schedules and reduced

working hours, employer has no obligation to grant the request) has been identified as the preferred option. While the quantitative analysis showed high positive impacts on female employment and central governments for all legislative options, they are the highest in Option 3. This is especially the case for the increase in employment which is foreseen to be comparable in Options 1 (only flexibility in place of work) and 2 (only flexibility in working schedules) and much higher in Option 3 thanks to the right to request reduced working hours it entails. In consequence Option 3 is expected to lead to a large increase in tax revenues for Member States. Although Option 3 has the highest cost for companies, when disaggregated the cost represents only 118 € per company in 2030 and 597 € per company in 2050. There can be mixed impacts on individuals, particularly in the use of part-time work because of the risk of women making much higher use of it, which is why it would be important to accompany these measures with awareness-raising and monitoring to facilitate improved gender balance in the take-up of such arrangements.

### Combination of preferred options

Policy Area	Preferred Combination of Options
<b>Maternity Leave</b>	<b>Non-legislative Option:</b> Policy guidance and sharing of good practices on facilitating successful transitions between maternity leave and employment (including on breastfeeding breaks and facilities)
<b>Paternity Leave</b>	<b>Option 3:</b> Individual right to two weeks of paternity leave compensated at least at sick pay level
<b>Parental Leave</b>	<b>Option 3:</b> Entitlement to flexible uptake, four months reserved for each parent, payment at least at sick pay level for the four months, age of the child raised from 8 to 12
<b>Carers Leave</b>	<b>Option 3:</b> Individual entitlement to a short-term leave of 5 days, per year, per child or dependent relative, paid at least at sick pay level <sup>30</sup>
<b>Flexible Working Arrangements</b>	<b>Option 3:</b> Right for parents (of children up to 12) or carers to request flexibility in working hours, schedule or place of work for a set period of time, automatic right to return to previous working hours, the employer has to consider the request but has no obligation to grant the requested change

### Expected impact of the combination of preferred options

The quantitative analysis shows that the combination of preferred options has a positive impact on GDP (+ € 840 billion, NPV 2015-2055), employment (+ 1.6 million in 2050) and the labour force (+ 1.4 million in 2050). The analysis shows that the increases in employment and labour force participation will mainly concern women. Real incomes are also expected to increase by 0.52% in 2050. Although relatively small, the combination represents a cost for companies. However, the majority of this cost is driven by the flexible working arrangements option which assumes a very high level of demand for and accommodation of flexible working arrangements although employers can refuse requests for flexible working,

<sup>30</sup> It is to be noted that despite the fact in section 8 it is determined the preferred option would only consider 5 days of carers' leave per worker (and not per dependent relative), the Option that has been used to calculate the quantitative impact of the combination is Option 3 as described in section 7.

particularly where it would cause a cost to the company. The total cost for companies of the combination could hence be significantly lower.

<b>Total impact on companies, NPV 2015-2055</b>	- € 172.7 billion
<b>Total impact on government/social security, NPV 2015-2055</b>	+ € 343.6 billion
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	€ 839.7 billion (0.21%)
<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	768 000/ 1 441 000 (0.32%/0.62%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	1 094 000/1 597 000(0.46%/0.71%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	+ € 11.6 billion /+ € 120 billion (+0.09%/+0.52%)

It should also be taken into account that the preferred options of the combination have strong synergies and that the costs of the combination of preferred options could be lower than the sum of the individual costs for each option. For example some costs linked to the provision of an IT system to monitor leaves and flexible working arrangements could be combined for several preferred options and this would lead to a decrease in the burden for companies and Central governments. Conversely, in the long-term this initiative is expected to have wider positive impacts than those assessed in this report. Indeed, the measures presented above will facilitate reaching a gender-balanced sharing of care responsibilities between women and men, thereby giving women and men equal opportunities in the labour market.

As mentioned in the problem definition, this would have a series of positive impact that were not quantified in this report. These include increasing the pool of talents, increasing the motivation of workers, increasing the number of women in management positions, etc. The long-term effect of the positive impact on children's personal and cognitive development was also not quantified.

## 1. INTRODUCTION

In 2015, the employment rate of women aged 20-64 was 11.6 percentage points lower than that of men. As a substantially higher proportion of women work part-time, the gender employment differences in full-time equivalents are even larger with a gap of 18.1 percentage points for the EU as a whole<sup>31</sup>. The gender employment gap is particularly acute for parents and people with caring responsibilities. Upon having children or taking on caring responsibilities, women tend to reduce their working hours, take long leaves of absence or drop out of the labour market altogether, while the opposite is true for men. On average across Europe, the employment rate of women with children is 8.8 percentage points lower than women with no children. In some countries, this difference is greater than 30 percentage points<sup>32</sup>. This trend has negative consequences on women and their families, in terms of increased stress, lower earnings and increased risk of poverty. It also has negative consequences on employers and on the wider economy, as the gender employment gap in the EU estimated to cost 370 billion euros per year, or 2.8% of the EU's GDP<sup>33</sup>.

The 'New Start' initiative therefore aims to modernise the current EU legal and policy framework and adapt it to today's labour market to allow for parents or other workers with dependent relatives to better balance caring and professional responsibilities. In doing so, the initiative would address women's underrepresentation in the labour market. It would thereby contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities and equal treatment at work and of promoting a high level of employment in the EU. This initiative is linked to the forthcoming European Pillar of Social Rights initiative, which seeks to strengthen the social dimension of Union and enhance Member States' upward convergence in social performance.

This initiative would also contribute to the Commission's priorities on jobs and growth, as outlined in President Juncker's political guidelines for the European Commission. Evidence shows that enhancing work-life balance would benefit companies through improved skill matching, improved productivity and increased retention of workers. Enhancing women's participation in the labour market has also been shown to be a key driver for economic growth, and can contribute to mitigating the negative impact of demographic ageing on budgetary sustainability<sup>34</sup>.

Following the withdrawal of the Commission's 2008 proposal to revise Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (hereinafter the Maternity Leave Directive), the Commission announced its intention to present a broader initiative. The Commission announced that this initiative "will continue to promote the objectives of the previous proposal and provide minimum protection"

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<sup>31</sup> Labour Force Survey (emp\_a), Eurostat

<sup>32</sup> Labour Force Survey (hheredch), Eurostat

<sup>33</sup> Eurofound (2016) The Gender Employment Gap: Challenges and Solutions

<sup>34</sup> OECD (2013) Closing the Gender Gap



while taking "into account the developments in society over the past decade and [using]the best mix of available policy tools to deliver results as effectively as possible"<sup>35</sup>.

A roadmap for the new initiative was published in August 2015<sup>36</sup> and this initiative has been announced in the Commission's 2017 Work Programme. In addition, this initiative has been informed by an extensive consultation process. In line with the Treaty, the Commission completed a two-stage consultation with the EU social partners in 2015 and 2016. Between November 2015 and January 2016, the social partners were first invited to give their views on the possible direction of EU action. A second-stage consultation ran from July to September 2016, in which social partners provided their views on a range of possible EU-level measures. There was no agreement among the social partners to enter into direct negotiations on any of the issues raised during the consultations. An open public consultation was also carried out to seek the views of different stakeholders and citizens on the issue, and the EU Advisory Committee on equality between women and men was also consulted<sup>37</sup>.

Considering the evidence that shows that well-designed policies to help parents reconcile their work and family responsibilities can be very effective in reducing gender disparities in employment<sup>38</sup>, the 'New Start' initiative adopts a comprehensive approach which will include family-related leaves, flexible working arrangements and formal care services. It will also consider the needs of women and men with caring responsibilities for ill, elderly or dependent relatives. This widened scope is in line with calls from the European Parliament as well as many Member States, social partners and stakeholders, who felt that the previous proposal was too narrow in its scope. Finally, this initiative would fully complement and reinforce existing activities to enhance female employment, such as the European Semester country-specific recommendations, the monitoring of progress to achieve the Barcelona targets in the area of childcare<sup>39</sup> and EU funding.

This initiative applies to all workers who have an employment contract or employment relationship as defined in the Member States. The self-employed are not explicitly covered by this initiative due to very diverging national systems as regards the status of persons engaged in a self-employed activity. The decision on whether the self-employed should benefit from this initiative should be left to the Member States. It needs to be noted, however, that there are already a number of existing instruments which cover self-employed activities<sup>40</sup> Furthermore,

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<sup>35</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach*

<sup>36</sup> European Commission (2015), *Roadmap: A new start to address the challenges of work-life balance faced by working families*

<sup>37</sup> See Annex 2 for summary of stakeholders' views

<sup>38</sup> Relevant evidence is presented in the Problem Definition section (section 3)

<sup>39</sup> See [http://ec.europa.eu/invest-in-research/pdf/download\\_en/barcelona\\_european\\_council.pdf](http://ec.europa.eu/invest-in-research/pdf/download_en/barcelona_european_council.pdf)

<sup>40</sup> In particular, 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, Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security and 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.

in the context of the European Pillar of Social Rights initiative, the Commission will launch a first stage social partner consultation on access to social protection, with a focus on atypical contracts and on the self-employed.

In line with the requirements of the Better Regulation Guidelines, the Commission has undertaken an impact assessment of a potential range of legislative and non-legislative measures in the areas of family-related leaves and flexible working arrangements, which could enhance work-life balance for parents and carers. While formal care services and economic disincentives are two very relevant areas when tackling the problem of the underrepresentation of women in the labour market, measures in these areas were not assessed in this report. This is due to the limited EU competence in these areas. Considering their significant impact on the addressed problem, the initiative could foresee measures to enhance current efforts in these areas, in particular in relation to the monitoring of Member States' policies in the EU Semester and to the use of EU funding in the case of formal care services.

## 2. EU CONTEXT

Equality between women and men with regard to labour market opportunities and reconciliation of private and professional lives have long been on the EU's agenda. These issues are enshrined in EU primary law, and have been a longstanding part of the EU's policy priorities.

Work-life balance has been highlighted as a key policy area by the Member States. The Council of the European Union has repeatedly stressed the importance of work-life balance policies in removing barriers to women's participation in the labour market. The 2014 EPSCO Council Conclusions on Women in the Economy and most recently, the 2016 EPSCO Council Conclusions on Women in Poverty both called on Member States to step up work-life balance measures and allow the possibility for a better sharing of care responsibilities between parents. A number of earlier commitments can also be recalled, including the 2000 Council Resolution on Balanced participation of women and men in family and working life<sup>41</sup> and the 1992 Council recommendation on childcare (1992/ 241/CEE) recommending Member States should support reconciliation between work and family life and "*a more equal sharing of parental responsibilities between women and men.*"

The European Council also set targets to improve the provision of childcare, the 'Barcelona targets' in 2002<sup>42</sup>. They aimed to provide childcare by 2010<sup>43</sup> to at least 90% of children between 3 years old and the mandatory school age, and to at least 33% of children under 3 years of age<sup>44</sup>. In the context of the economic crisis and of budgetary cuts in services, these targets were not reached by 2010 and the European Council reaffirmed them in the European Pact for Gender Equality 2011-2020.

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<sup>41</sup> 2000/C 218/02

<sup>42</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/71025.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf)

<sup>43</sup> Member States have renewed their commitment to these targets through two successive European Pacts for equality between women and men putting a new end date to 2020.

<sup>44</sup> The Commission also sets targets in the area of early childhood education and care within the framework of Education and Training 2020.

The European Parliament has also been extremely active in this area. Most recently, the 2016 European Parliament Report, ‘Creating Labour Market Conditions Favourable for Work-Life Balance’ stressed "the need to eliminate gender inequalities in paid and unpaid work" and called on the European Commission to put forward a comprehensive package of legislative and non-legislative measures as part of the Commission Work Programme 2017. Many EU-level stakeholders, including social partners and NGOs, also give high priority to the topic of work-life balance. An overview can be found in Annex 2 on Stakeholders consultations.

Equality between women and men is a fundamental right in the European Union and an objective under the Treaty.<sup>45</sup> The right to family and professional life is also recognised under the EU Charter of Fundamental Rights.<sup>46</sup>

EU legislation provides for individual rights for workers in relation to work-life balance. In particular, several EU directives are relevant for family-related leaves and flexible working arrangements. Non-legislative support measures have also been developed. An overview of such measures is outlined below.

## 2.1. Legislative measures

The **Parental Leave Directive** (2010/18/EU)<sup>47</sup>, which incorporates in its annexe an agreement between the social partners, provides workers with an individual right to parental leave of at least four months on the grounds of birth or adoption of a child, until the child reaches a given age up to eight years (leaving Member States the possibility to specify a lower maximum age). Whereas the right of parental leave is an individual right and in principle non-transferable, Member States are allowed to make part of it transferable. The social partners had agreed that at least one month should be provided on a non-transferable basis, i.e. could not be transferred to the other parent and would be lost if not taken<sup>48</sup>. The Directive does not impose any obligations in relation to pay during parental leave. In addition it is up to Member States or social partners to define the detailed conditions and rules for parental leave – they are free to decide whether this leave can be taken on a full-time or part-time basis or whether it can be taken in a piecemeal way, i.e. in several blocks<sup>49</sup>. When returning from parental leave, parents have the right to request changes to their working hours and/or patterns for a certain period of time and to have such requests duly considered by the employer, taking into account both employers’ and workers’ needs<sup>50</sup>. The Directive provides protection against dismissal and less favourable treatment on the ground of applying for or taking parental leave<sup>51</sup>. It also provides that workers have to be entitled to limited time off

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<sup>45</sup> Articles 8, 10, 153 (1) (i), 157 TFEU; Article 23 of the Charter of Fundamental Rights.

<sup>46</sup> Article 33 of the Charter of Fundamental Rights.

<sup>47</sup> 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.

<sup>48</sup> See Clause 2(2) of the Annex to the Directive.

<sup>49</sup> See Clause 3(1) of the Annex to the Directive.

<sup>50</sup> See Clause 6 of the Annex to the Directive.

<sup>51</sup> See Clause 5(4) of the Annex to the Directive.

work for urgent family reasons (force majeure) in case of sickness or accident making the immediate presence of the worker indispensable<sup>52</sup>.

The **Pregnant Workers (Maternity Leave) Directive (92/85/EEC)**<sup>53</sup> sets out the basic rights of all female workers before and after pregnancy. The **general objective of the Pregnant Workers (Maternity Leave) Directive (92/85/EEC)** is to implement measures to encourage improvements in the health and safety at work of pregnant women in the workplace and women who have recently given birth or are breastfeeding. It provides for maternity leave paid at least at the level of sick pay for at least 14 weeks<sup>54</sup>. A minimum of two of those weeks are compulsory. The Directive also grants special protection against dismissal from the beginning of the pregnancy until the end of the maternity leave. During that period dismissals are in principle prohibited and admissible only in exceptional cases not connected to pregnancy or maternity leave which are permitted by national legislation and/or practice. In the event of any such dismissal the employer has to cite duly substantiated grounds in writing.

At EU level, there is currently no individual entitlement to paternity leave (Article 16 of Directive 2006/54/EC only provides for dismissal protection and the right to return to the same or equivalent job after having taken paternity leave in the Member States where it exists). With regards to carers' leave, there is only the right to time off for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable (Clause 7 of Directive 2010/18/EU, "force majeure").

In relation to flexible working arrangements, EU legislation provides the right under the Parental Leave Directive, for people returning from parental leave to request changes to their working hours and/or patterns for a certain period of time and to have such requests duly considered by the employer, taking into account both employers' and workers' needs. The **Directive on Part-Time Work (97/81/EC)**<sup>55</sup> has the purpose of eliminating discrimination against part-time workers, the vast majority of which are women<sup>56</sup>, and improving the quality of part-time work. The social partner agreement annexed to the Directive suggests that employers should give consideration, as far as possible, to requests by workers to transfer

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<sup>52</sup> See Clause 7 of the Annex to the Directive.

<sup>53</sup> 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

<sup>54</sup> 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-employer workers or female spouses of self-employed workers., OJ L 180, 15.7.2010, p. 1–6.

<sup>55</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L 14, 20.1.1998, p. 9

<sup>56</sup> Such protection against discrimination already being provided under the case-law on indirect sex discrimination. See for an overview E. Traversa 'Protection of Part-Time Workers in the Case Law of the Court of Justice of the European Communities', *International Journal of Comparative Labour Law and Industrial Relations* Issue 2 (2003), pp. 219-241; See also for example Case 96/80 J.P. Jenkins v Kingsgate (Clothing Productions) Ltd. [1980] ECR 911; Case 170/84 Bilka - Kaufhaus GmbH v Karin Weber von Hartz [1986] ECR 1607; Case 171/88 Ingrid Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH & Co. KG [1989] ECR 2743 (Rinner-Kühn); Case C-435/93, Francina Johanna Maria Dietz v Stichting Thuiszorg Rotterdam [1996] ECR 5223 (Dietz); Case C-385/11 Isabel Elbal Moreno v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS) [2012] I-000 .

from full-time to part-time work that becomes available in the establishment and to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise. It also provides for protection against the termination of employment due to the refusal to transfer from full-time to part-time or vice versa.

The **Directive on Working Time** (2003/88/EC)<sup>57</sup> provides for adequate rest periods for all workers and thereby also contributes to their work-life balance. By entitling workers to a maximum weekly working time as well as daily, weekly and annual rest periods, the Directive provides workers with greater possibilities to balance their professional and caring responsibilities.

Relevant EU legislation also exists in the area of equal treatment between women and men in employment and occupation. The **Directive on Gender Equality in Employment** (2006/54/EC)<sup>58</sup> guarantees the right to return to the same job or an equivalent job after maternity leave (Article 15), as well as protection against dismissal and less favourable treatment for workers taking paternity or adoption leave (Article 16), where such leaves are provided under the law of Member States.

The case-law of the Court of Justice in relation to Directive 2006/54 (and its predecessors) has clarified that any less favourable treatment of a woman related to pregnancy or birth of a child constitutes prohibited discrimination on grounds of sex<sup>59</sup>; dismissals for such reasons, even where they take place after the end of the period of maternity leave, are therefore also prohibited<sup>60</sup>.

## 2.2 Background of the 2008 proposal to revise the Maternity Leave Directive

In 2008, the Commission proposed a revision of Directive 92/85/EEC on maternity protection<sup>61</sup>. The proposed revision included an increase in the minimum duration of maternity leave from 14 to 18 weeks, an increase in the mandatory period of leave from 2 weeks to 6 weeks, to increase the flexibility for women to decide when to take maternity leave, whether before or after birth and to improve employment protection for women on, or returning from birth. The proposal had a two-fold objective of strengthening health and safety and equal opportunities of women and men in the labour market; it sought to assist women in

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<sup>57</sup> Directive 2003/88/EC of the European and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

<sup>58</sup> 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) [Official Journal L 204 of 26.7.2006].

<sup>59</sup> See for example the case law C-177/88 Dekker, C-32/93 Webb and C-460/06 Paquay.

<sup>60</sup> C-460/06 Paquay, para. 42.

<sup>61</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding {SEC(2008)2595} {SEC(2008)2596}

recovering after giving birth and to facilitate women's return to the labour market after having a child.

In its position at first reading adopted on 20 October 2010, the European Parliament was in favour of revising the Directive to a greater extent than the Commission's proposal. It took the view that maternity leave should last at least 20 weeks, arguing that the period of 20 weeks is recommended by the World Health Organisation and that such a right should be accompanied by full pay. The Parliament however considered a "passerelle" clause when Member States where maternity leave is shorter than 20 weeks offer family-related leave that fulfills the criteria set out in the Directive. The Parliament's opinion also set out that the Directive should give an entitlement to at least two weeks' paid paternity leave.

The Council Working Party on Social Questions held several meetings to discuss the file and the Council held several policy debates to clarify the delegations' views on the Proposal. While all delegations supported in general the proposal's objectives, a large majority of the delegations stressed that the Community rules were only minimum standards. In the policy debate held on 6 December 2010, after the adoption of the European Parliament's opinion at first reading, it was clear that the *length* and *pay* for maternity leave were the most controversial elements. Several Member States have stressed that extending leave entitlements only for women could risk further entrenching women's roles as primary carers and have a detrimental impact on women's employment and career progression. Furthermore, in the context of the economic crisis, a very large majority of delegations were not in a position to accept the Parliament's amendment extending minimum maternity leave to 20 weeks and to extend the minimum payment level to full pay. Many delegations also rejected certain amendments in the area of prevention of discrimination/protection against dismissal, which they considered to be adequately covered elsewhere in the EU legislation<sup>62</sup>.

The Commission engaged in intensive efforts to break the deadlock and on several occasions urged the Council to re-enter discussions with the European Parliament, which expressed a will to compromise on its earlier position. However, in view of the lack of progress by the co-legislators, and as the Latvian Presidency of the Council informed the Commission that there was no prospect for an agreement, the Commission decided to withdraw its proposal on 1 July 2015,<sup>63</sup>. It stated that it wished to break the current stalemate and to open the way for a new initiative to lead to real improvements in the lives of working parents and carers.

## **2.3 Enforcement and Evaluation of existing legislation**

### *2.3.1 Enforcement of existing legislation*

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<sup>62</sup> Council of the European Union (2011) *Progress report on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*

<sup>63</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach*

In its role of Guardian of the treaties, the European Commission monitors the state of transposition of the existing directives and supporting enforcement at national level.

Discussions with Member States and, if necessary, infringement procedures, have ensured that national laws transpose correctly the EU Directives.<sup>64</sup> This includes the requirement that discrimination based on applying for or taking existing leaves is prohibited<sup>65</sup> and that national gender equality bodies are in place and have the competence and resources to be able to assist such victims of discrimination.<sup>66</sup>

For example, infringement proceedings on the basis of non-conformity with Directive 2002/73/EC<sup>67</sup> were launched in 2006 against 23 Member States. Regarding Directive 2006/54/EC, questions were raised with 26 Member States on the conformity of their national legislation with the Directive's novelties.<sup>68</sup>

In this work the Commission draws on the expertise and assistance of a network of independent national legal experts.<sup>69</sup>

The Commission participates also in cases referred to the Court of Justice, to assist the Court of Justice in ensuring that EU law providing for leaves and prohibiting related discrimination is properly interpreted.

Moreover, in terms of supporting enforcement at national level, the Commission funds ongoing training for judges and legal practitioners to ensure enforcement and correct application at national level.<sup>70</sup>

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<sup>64</sup> See, for example, the *Report from the Commission on the implementation of council directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding*, COM/99/100 final, of 15.03.1999, which explains at page 4 that "Infringement procedures have been launched against a number of Member States for the incorrect implementation of certain provisions of the Directive".

<sup>65</sup> According to Articles 2(2)c) of Directive 2006/54/EC and Clause 5(4) of Directive 2010/18.

<sup>66</sup> As provided by Article 20 of Directive 2006/54/EC.

<sup>67</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269, 5.10.2002, p. 15. Among other relevant provisions, this Directive established that "Less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC shall constitute discrimination within the meaning of this Directive" (new Article 2, paragraph 7 of Directive 76/207, introduced by Directive 2002/73). Directive 76/207, which was amended by Directive 2002/73, was repealed and replaced by Directive 2006/54 in July 2006.

<sup>68</sup> Report on the application of Directive 2006/54/EC, COM(2013) 861 final of 6.12.2013, at page 3. See: [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/com-2013-861-final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/com-2013-861-final_en.pdf)

<sup>69</sup> <http://www.equalitylaw.eu/>. The current "European network of legal experts in gender equality and non-discrimination" resulted from the merger in December 2014 of the former network of legal experts in gender equality and the network on non-discrimination. See, for example, the 2012 report on "Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood" which can be found here: [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/discrimination\\_\\_pregnancy\\_maternity\\_parenthood\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination__pregnancy_maternity_parenthood_final_en.pdf)

The Commission supports the work of "Equinet", the EU network of Equality Bodies, on how to promote the enforcement of equality legislation and supports the sharing of best practices between equality bodies as well as between Member States.<sup>71</sup>

The Commission has also invested in awareness-raising activities, including, for example, brochures on "Know Your Rights in Equality and Non-Discrimination"<sup>72</sup> and on 'How to present a discrimination claim',<sup>73</sup> which explain in simple language what victims of discrimination should do when their rights are violated.

Nevertheless, as explained in detail below and in Annex 5, there is evidence that despite these efforts, problems of discrimination still exist. Moreover, there is still a gender employment gap and a gender pay gap, notably between women and men with caring responsibilities.

### 2.3.2 Evaluation of existing legislation (Maternity Leave Directive (92/85/EEC) and Parental Leave Directive (2010/18/EU))

The following section summarises some of the main findings of the Evaluation which can be found in Annex 5.

The **objectives** of the maternity, in the areas relevant to this initiative, and parental leave Directive have not been fully reached. In the context of this initiative, the relevant maternity leave Directive objective is that the protection of the health and safety of pregnant women and women who have recently given birth should not lead to women's unfavourable treatment on the labour market nor work. The relevant parental leave Directive objectives are to facilitate the reconciliation of parental and professional responsibilities for working parents<sup>74</sup> and to promote a more equal sharing of family responsibilities between women and men<sup>75</sup>.

This evaluation has shown that the existing framework, e.g. the maternity leave and parental leave directives fulfil to some extent the objectives but **to a large extent is not an effective and efficient tool to achieve the pursued objectives.**

Several factors contribute to this: with regard to *maternity leave*, despite the legal framework for dismissal protection, the evidence shows that all employers do not respect the legal rules transposed by the Member States in this field. Even though Member States did comply when transposing the provisions of the Directive, in practice the transposed EU rules are not

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<sup>70</sup>[https://era.int/cgi-](https://era.int/cgi-bin/cms?_SID=new&_sprache=en&_persistant_variant=/Our%20programme/Seminar%20series/EC%20Anti-Discrimination%20Legislation&_bereich=artikel&_aktion=detail&idartikel=121643)

[bin/cms?\\_SID=new&\\_sprache=en&\\_persistant\\_variant=/Our%20programme/Seminar%20series/EC%20Anti-Discrimination%20Legislation&\\_bereich=artikel&\\_aktion=detail&idartikel=121643](https://era.int/cgi-bin/cms?_SID=new&_sprache=en&_persistant_variant=/Our%20programme/Seminar%20series/EC%20Anti-Discrimination%20Legislation&_bereich=artikel&_aktion=detail&idartikel=121643)

<sup>71</sup> See, for example, the 2015 seminar of Equinet on "Work-Life Balance and Pregnancy and Parenthood related Discrimination": <http://www.equineteurope.org/Work-Life-Balance-and-Pregnancy-682>

<sup>72</sup> [http://ec.europa.eu/justice/discrimination/files/rights\\_against\\_discrimination\\_web\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/rights_against_discrimination_web_en.pdf)

<sup>73</sup> This document was written for the Commission by Lilla Farkas of the European Network of Legal Experts in the non-discrimination field:

[http://ec.europa.eu/justice/discrimination/files/present\\_a\\_discrimination\\_claim\\_handbook\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/present_a_discrimination_claim_handbook_en.pdf),

<sup>74</sup> Clause 1(1) of Directive 2010/18/EU

<sup>75</sup> Recital 12 of Council Directive 2010/18/EU



achieving the objective of combatting dismissal and discrimination of pregnant women. Hence, the problem of dismissals of pregnant women remains despite the initially intended role of the dismissal rules by the legislators to serve as a mechanism that effectively prevents discrimination and dismissals in relation to pregnancy. The **effectiveness**<sup>76</sup> of the dismissal protection rules is limited by the fact that some employers do not comply. This hampers this **objective** of the maternity leave Directive, even though all Member States comply with the transposition of these rules as laid down in the Directive.

With regard to *parental leave*, part of the **objectives** set by the Directive 2010/18 are **not sufficiently met and addressed**, such as the objective of achieving work-life balance through a better balancing of the caring responsibilities between women and men. The current design of the leave for parents leads in practice to an unequal uptake between women and men, with a vast majority of women taking leave. This was identified as being due to a lack of payment in many Member States and rules allowing one parent to transfer his or her individual entitlement to the other parent which all reinforce the take-up by women instead of reserving their individual entitlement to each parent. It can be observed that Member States have chosen various models for their legal transposition of the requirements of the two directives under assessment, while these directives included the core substance of the level of protection for workers in the area of work-life balance.

The assessment of **efficiency** for both Directives was hampered to some extent due to a lack of systematic European monitoring data. In order to be better able to assess the performance of legislation in this field, monitoring arrangements on EU and Member State level need to be strengthened in future.

With regard to *parental leave*, the need for minimum standards as such remains highly relevant today. EU action is also still relevant in the area of *maternity leave*, considering the need to ensure the principle of non-discrimination and a high level of protection for pregnant women in order to prevent still prevailing discrimination based on sex<sup>77</sup>.

In terms of **coherence**, it can be concluded that the evaluated directives are in principle coherent. Both Directives are **coherent**<sup>78</sup> both internally and with other EU policy actions. It is however recommended to reinforce the interaction between provisions within and between legal instruments in order to achieve coherent outputs.

In terms of **EU added value**, it has to be underlined that, EU action as regards maternity and parental leave created additional value and triggered even further action in Member States that would not have occurred without EU intervention. The EU added value can be seen in the causative effects of EU intervention to provide all working parents in the European Union with family-related leaves such as maternity or parental leave<sup>79</sup>.

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<sup>76</sup> See Section 5.1 for further details on effectiveness.

<sup>77</sup> See Section 5.3 for further details on relevance.

<sup>78</sup> See Section 5.4 for further details on coherence.

<sup>79</sup> See Section 5.5 for further details on EU added value.

## 2.4 Non-legislative measures

In addition to legislation, the EU has been addressing work-life balance issues and obstacles to parents' labour market participation through the European Semester<sup>80</sup>, and country-specific recommendations (CSRs) have been issued to several countries with the greatest challenges. Such recommendations include providing affordable and adequate childcare and long-term care services and removing economic disincentives to work. Moreover, the guidelines for Member States' employment policies adopted by the Council in October 2015 highlight the importance of increasing female labour market participation and ensuring gender equality including equal pay, and refer specifically to the reconciliation of work and family life.

The European Structural and Investment (ESI) Funds<sup>81</sup>, in particular the European Social Fund (ESF) and the European Regional Development Fund (ERDF), have focused inter alia, on the reconciliation of private and professional lives and supported work-life balance policies and investments to improve access and quality of childcare services. For instance, the reconciliation of work and family life is included in the 'Equality between women in men in all areas' investment priority for the ESF programming period 2014-2020 to which approximately 1.5 billion euros are allocated. The ERDF is additionally supporting the development of early childhood education and care infrastructure for children below 6 years of age, with 1.28 billion euros allocated for this purpose for the 2014-2020 programming period.

The EU has also set targets and provided some policy guidance in areas relevant to work-life balance. The 1992 Council Recommendation on Child Care encouraged initiatives for an enhanced provision of childcare, special leaves for employed parents, parent-friendly working environments and a more equal sharing of upbringing responsibilities between women and men. In 1996, the European Commission Network on Childcare and other Measures to reconcile Employment and Family Responsibilities presented quality targets in services for young children. The Commission's Education and Training 2020 strategy includes a target on 95% participation rate for children between age 4 and the start of compulsory schooling by 2020. The Commission's 2013 Social Investment Package (SIP)<sup>82</sup> urged Member States to remove barriers to women's labour market participation by addressing workplace discrimination, offering reconciliation measures (such as childcare services), adapted workplaces, including ICT-based solutions and removing tax-benefit disincentives for second earners to work. The SIP also contained a Commission Recommendation on Investing in Children<sup>83</sup>, calling on Member States to support the employability and participation of parents – notably single parents and second earners – in paid work, and to provide accessible quality early childhood education and care services (ECEC).<sup>84</sup>

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<sup>80</sup> For more information, please see [http://ec.europa.eu/europe2020/making-it-happen/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/index_en.htm)

<sup>81</sup> For more information, please see [http://ec.europa.eu/contracts\\_grants/funds\\_en.htm](http://ec.europa.eu/contracts_grants/funds_en.htm)

<sup>82</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444905511940&uri=CELEX:52013DC0083>

<sup>83</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0112>

<sup>84</sup> Already in 1992, the Council gave a Recommendation on child care (92/241/EEC, OJ L 123, 08/05/1992).

The Commission has also worked to facilitate European consensus<sup>85</sup> on approaches towards ECEC and steered development of an EU Quality Framework for ECEC<sup>86</sup> representing an agreement between experts from 25 Member States. This framework covers all areas that require action to improve access to and quality of early childhood education and care services. Moreover, the 2014 Report on Adequate social protection for long-term care needs in an ageing society, prepared by the Social Protection Committee and the Commission services, calls on Member States to ensure adequate access to affordable quality care and to make it easier for people taking care of elderly, dependent or frail family members to reconcile employment and care responsibilities.

Finally, the Commission organises awareness-raising events and exchanges of good practices between Member States on reconciliation policies and female labour market participation<sup>87</sup>.

## 2.5 Other relevant initiatives at EU level

In addition to the frameworks agreement adopted by Council Decision on Parental Leave and Part-Time work mentioned above, social partners also adopted an autonomous framework agreement on Telework in 2002<sup>88</sup>. Telework, a type of flexible working arrangement, can also contribute to parents and carers' reconciliation of professional and caring responsibilities. This autonomous framework agreement defines a general framework to facilitate the use of telework in enterprises and was implemented through social partner agreements, collective agreements, national legislation, guides and codes of good practice<sup>89</sup>.

## 3. PROBLEM DEFINITION

As outlined in the Roadmap of this initiative<sup>90</sup>, **the problem to be addressed is women's under-representation in employment** taking into account the reality of today's societies where increasing numbers of women wish to work, the increasing number of elderly and other relatives in need of care, and the fact that more men would like to take more care responsibilities in their families but don't feel encouraged to do so. There is a strong connection between the distribution of caring responsibilities between women and men and women's under-representation in employment.

### 3.1. Women's underrepresentation in the labour market

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<sup>85</sup> [Council Conclusions of 15 June 2011 on early childhood education and care: providing all our children with the best start for the world of tomorrow](#)

<sup>86</sup> See 2014 Report of the Working Group on Early Childhood Education and Care under the auspices of the European Commission.

<sup>87</sup> See [http://ec.europa.eu/justice/gender-equality/other-institutions/good-practices/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/other-institutions/good-practices/index_en.htm)

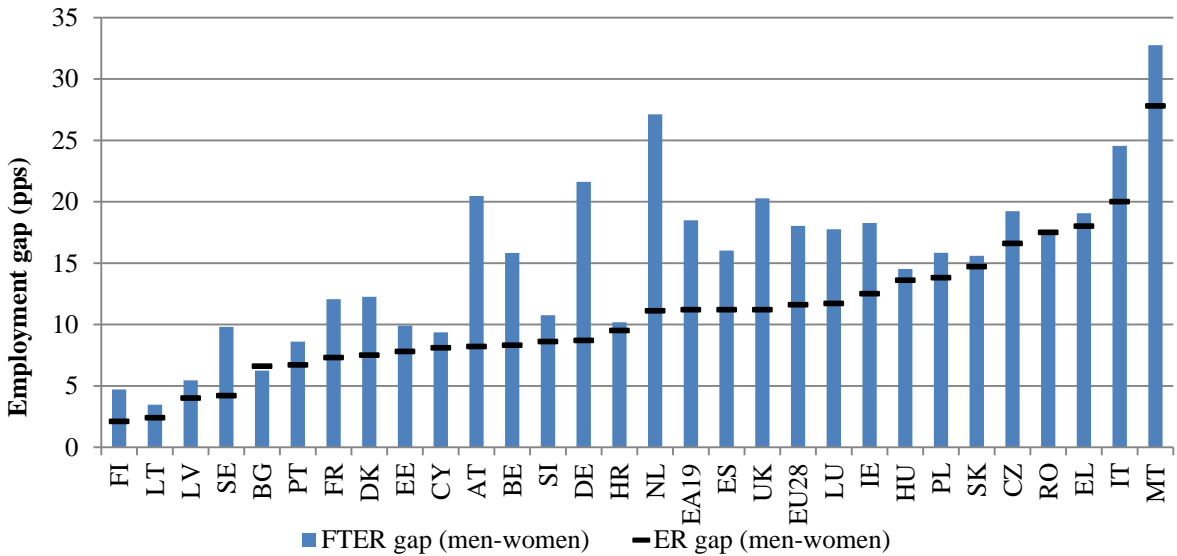
<sup>88</sup> ETUC, UNICE, UEAPME, CEEP, *European Framework Agreement on Telework*, 2002

<sup>89</sup> ETUC, UNICE, UEAPME, CEEP, *Press Release: European Social Partners Present the Results of the Implementation of the European Telework Agreement*, 2006

<sup>90</sup> European Commission (2015), *Roadmap: A new start to address the challenges of work-life balance faced by working families*

Women are increasingly well-qualified, even surpassing men in terms of educational attainment in Europe today, yet remain considerably underrepresented in employment relative to men<sup>91</sup>. In 2015 the gender employment gap (age 20-64) in the EU reached 11.6 percentage points (pp) (see Figure 1).

Figure 1: Gaps between male and female employment rates (ER) and employment rates in full-time equivalents (FTEr)<sup>92</sup> in 2015



Source: Eurostat, LFS (lfsi\_emp\_a) and European Commission, own calculations. Note: data refer to women and men aged 20-64.

There are gender differences in all Member States, with the gender employment gap ranging from 2.1 pp in Finland to 27.8 pp in Malta. The employment rate of women was 64.3% in the EU, compared to 75.9% for men.<sup>93</sup> At the current rate of change, female employment will only reach 75%, the current employment rate of men, by the year 2038<sup>94</sup>.

Women tend to be under-represented in management positions<sup>95</sup>. For example, in business and finance 95% of chief executive officers of the 613 largest publicly listed companies in the EU28 are men, 85% of the senior executives and 75% of non-executives<sup>96</sup>. Women are also frequently working in jobs below their skill level. The probability of being over-qualified for

<sup>91</sup> In 2014, 42.3% of women (aged 30-34) had tertiary education or higher compared to 33.6% of men.  
<sup>92</sup> Full time equivalents calculated with regard to the working time of a full-time full-year employee.  
<sup>93</sup> All figures based on EU Labour Force Survey 2015, unless otherwise stated.  
<sup>94</sup> European Commission (2014) *Report on Progress on equality between women and men in 2013*.  
<sup>95</sup> See European Commission database on women in decision-making positions [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm)  
<sup>96</sup> [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/executives-non-executives/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/executives-non-executives/index_en.htm)

a job among university graduates is higher for women than for men in several countries<sup>97</sup>. A substantially higher proportion of women work part-time (31.3% of women compared to 8.3% of men). As a result, the gender employment differences in full-time equivalents are even larger, with a gap of 18.1 percentage points for the EU as a whole (see Figure 1 above).<sup>98</sup>

This initiative aims to address the problem of the underrepresentation of women in the labour market by addressing one of its main drivers, which is the unequal distribution of caring responsibilities between women and men. Additional drivers such as economic disincentives, including the pay gap, are also discussed below as they tend to reinforce the unequal distribution of caring responsibilities between women and men. Other drivers are not addressed by this initiative, which seeks to preserve the intention of the Commission's 2008 proposal to improve the reconciliation of work and family life, while providing minimum protection<sup>99</sup>.

### **3.2 The addressed driver: the unequal distribution of caring responsibilities between women and men**

**Parenthood and other caring responsibilities appear to be an important driver for the employment differences between women and men.** In nearly all Member States, the gender employment gap widens substantially after having children<sup>100</sup>. On average in 2015, the employment rate of women with one child under the age of 6 is 8.8 percentage points (pp) lower than for women without young children, and in several countries this difference is over 30 pp<sup>101</sup>. Mothers tend to be less represented in the labour market than non-mothers across all educational levels and household types. The employment gender gap is particularly high for low-skilled women and single parents<sup>102</sup>. Conversely, parenthood has the opposite effect on the employment rates of men. In all EU Member States, fathers of one child under 6 are more likely to be employed than non-fathers. In 2015, the employment rate of fathers of one child under 6 was on average 12.2 pp higher than non-fathers, and in some countries this difference exceeded 18 pp (see Figure 2). The gender gap in part-time work is also more acute for parents, with 38.9 % of mothers working part-time as compared to 5.8% of fathers. Fathers tend to work more hours than non-fathers, despite the fact that many men report that they

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<sup>97</sup> This is the case, for example, in Spain, UK, Italy, Belgium, France Germany and the Netherlands, see Conde-Ruiz and Marra de Artñano (2016) *Gender Gaps in the Spanish Labour Market*

<sup>98</sup> See European Commission (2016), European Semester Thematic Factsheet: Labour Force Participation of Women, [https://ec.europa.eu/info/sites/info/files/european-semester\\_thematic-factsheet\\_labour-force-participation-women\\_en.pdf](https://ec.europa.eu/info/sites/info/files/european-semester_thematic-factsheet_labour-force-participation-women_en.pdf).

<sup>99</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach*

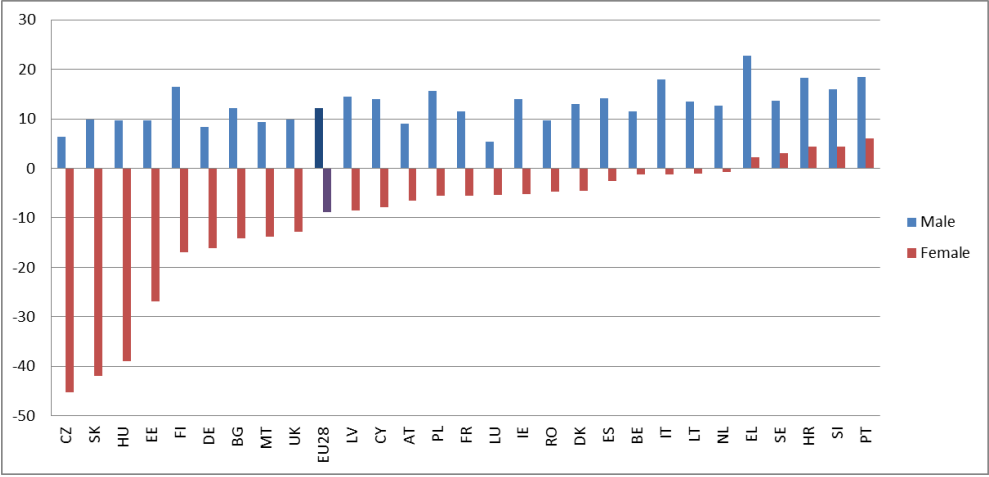
<sup>100</sup> Miani and Hoorens (2014) *Parents at work: men and women participating in the labour force*

<sup>101</sup> Gender gaps in employment are 24.7 pp among those with 1 child below 6 years of age, 25.6 pp among those with 2 children (youngest below 6 years of age) and 35.4 pp for those with three children or more.

<sup>102</sup> See European Commission (2016) The efficiency and effectiveness of social protection systems over the life course, chapter 3.2. in *Employment and Social Developments in Europe 2015*

want to work fewer than their actual hours, and this is specifically related to the jobs interfering with family life<sup>103</sup>.

Figure 2: Employment impact in percentage points of parenthood for one child under 6 on men and women (age 20-49), 2015



Source: EU Labour Force Survey 2015

Women are much more likely to assume the role of informal carers for elderly or dependent relatives than men<sup>104</sup>. In all Member States, the majority of informal carers for people with long-term care needs are women, ranging from 71% in Hungary; 66-64% in Estonia, Italy, Poland, Portugal, Spain, Sweden and the Czech Republic; 62-60% in France, Austria, Germany, Slovenia and Belgium; 58-57% in the Netherlands and the UK; and 54% in Denmark<sup>105</sup>. When informal care is provided, it is most typically performed by spouses, daughters or daughters-in-law<sup>106</sup>. Informal caring responsibilities strongly decrease the likelihood of remaining in employment<sup>107</sup>. This phenomenon is likely to increase further in the context of demographic ageing<sup>108</sup>.

<sup>103</sup> Kanji and Robin (2015) *Male Breadwinning Revisited: How Specialisation, Gender Role Attitudes and Work Characteristics Affect Overwork and Underwork in Europe*, available at: <http://soc.sagepub.com/content/early/2015/08/25/0038038515596895>.

<sup>104</sup> See for instance European Commission (2013) *Long term care in ageing societies*; Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

<sup>105</sup> European Commission and Social Protection Committee (2014) *Adequate social protection for long-term care needs in an ageing society*

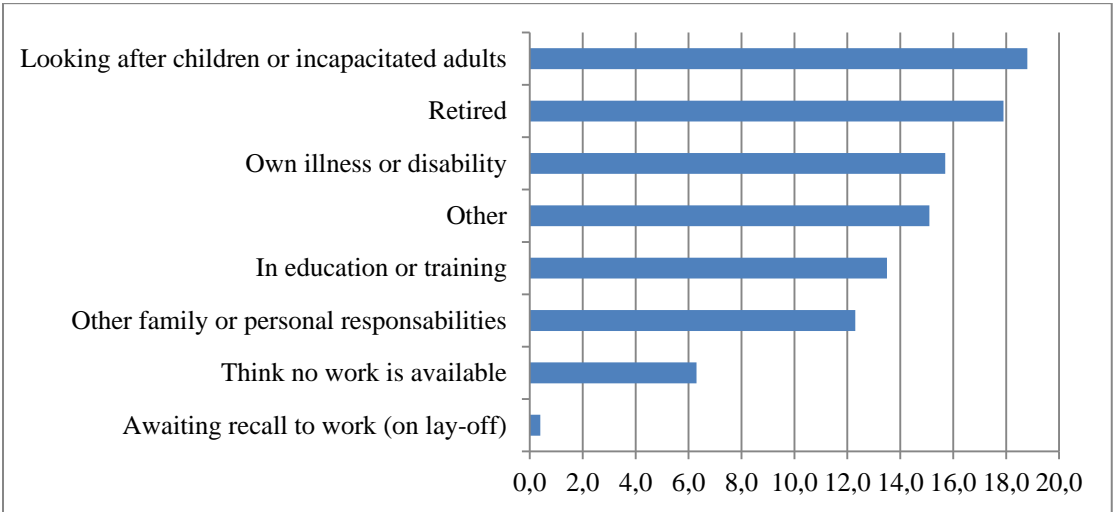
<sup>106</sup> Ibid

<sup>107</sup> European Social Policy Network (2016) *Work-life balance measures for persons of working age with dependent relatives in Europe*. Moreover, Pickard,L.,King,D. , Knapp, M. and M. Perkins ((2012), *Overcoming Barriers to Unpaid Care and Employment in England* suggest that a key threshold at which carers aged 50 and over are at risk of losing their employment can occur when care is provided for only 10 or more hours a week.

<sup>108</sup> Interlinks (2010) *Informal care in the long-term care system*. European Overview Paper. [http://www.euro.centre.org/data/1278594816\\_84909.pdf](http://www.euro.centre.org/data/1278594816_84909.pdf)

Overall, the disproportionate share of caring responsibilities taken by women leads them to take more and/or longer leaves of absences compared to men, reduce their working hours, and in some cases drop out of the labour market altogether<sup>109</sup>. Looking after a child or dependent relative is reported by women as the biggest reason for their inactivity in the labour market, while it is among the less frequently reported reasons for men (see Figures 3 and 4 below).

Figure 3: Reasons for women's inactivity in percentage of total women inactivity (aged 20-64), EU 28

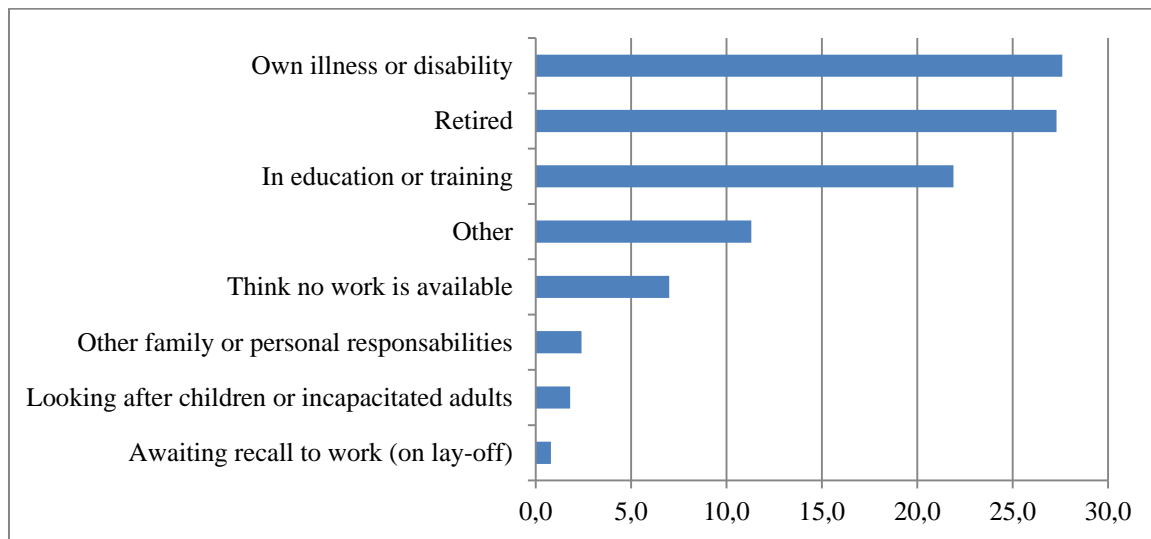


Source: EU Labour Force Survey 2015

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<sup>109</sup> See for instance, OECD (2012) Closing the Gender Gap; Conde-Ruiz and Marra de Artífano (2016) Gender Gaps in the Spanish Labour Market

Figure 4: Reasons for men's inactivity in percentage of total men inactivity (aged 20-64), EU 28



Source: EU Labour Force Survey 2015

**The underlying causes for why caring responsibilities impact women and men's employment outcomes differently are a mix of attitudes and policy factors.** The existence of **gender stereotypes and discrimination** clearly have an effect on women and men's roles in the workplace and at home. That being said, the design of **work-life balance policies** can have a strong impact in reinforcing or mitigating the influence of caring on the employment outcomes of women. An explanation of these different root causes is detailed below. It is also explained how these root causes interact - gender stereotypes and discrimination can be reinforced through policy design, while policy reform can play a role in changing attitudes. **Economic disincentives**, which are most acute for parents and carers, can further reinforce the unequal sharing of caring responsibilities by women and men.

### 3.2.1. Root cause 1: Gender stereotypes and discrimination

Part of the reason for why parenthood and caring responsibilities affect the employment of women and men differently is due to **expectations of which gender should be engaged in caring/household work and which gender should remain in formal employment.** In a 2014 Eurobarometer survey on gender equality<sup>110</sup>, a majority of respondents agreed that 'on the whole, family life suffers when the mother has a full-time job'. That being said, gender stereotypes have evolved over recent decades. A larger share of both women and men report today that both genders should contribute to household income and fewer respondents agreed

<sup>110</sup> European Commission (2014) *Special Eurobarometer 428: Gender Equality*  
[http://ec.europa.eu/justice/gender-equality/files/documents/eurobarometer\\_report\\_2015\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/eurobarometer_report_2015_en.pdf)



that men's job is to earn money and a woman's job is to look after the home. This evolution in attitudes over recent years has been accompanied to some degree by increased female labour force participation, however the shifts in attitudes and in labour force participation has been incremental and tempered by policy factors, as described later on.

Gender stereotypes are also closely linked to **gender discrimination in the workforce**. There is evidence that women can face various forms of discrimination at different stages throughout their career, often linked to the assumption that as a current or potential parent, they would not be sufficiently committed to their job in comparison with men<sup>111</sup>. Such discrimination can act as a barrier for women trying to enter a certain sector/job or in retaining a job once having a child or reaching an age when care responsibilities for other relatives may arise<sup>112</sup>.

The lack of effective protection against discrimination and dismissals for women returning from maternity leave strongly affects their participation in the labour market. Although dismissal protection is provided under EU law through the Maternity leave Directive, the Gender Equality (Recast) Directive and the Parental Leave Directive<sup>113</sup>, dismissal of women upon return from maternity leave and unfavourable treatment has been reported in many Member States<sup>114</sup>. One of the most fundamental reasons is that very often existing legislation is circumvented in practice<sup>115</sup>. The crisis has exacerbated this situation which de facto deprives many women of the possibility to exercise their rights. The lack of effective protection against discrimination and dismissals has also an indirect impact on inferring on men's perceptions regarding the risks for their careers of using their entitlements to family-related leaves.

**While gender stereotypes and discrimination can reflect individual or collective attitudes, they also strongly interact with policies**<sup>116</sup>. For instance, unavailable or relatively low paid family leave for fathers makes it more likely for women to take leave and care for the children. This may also lead to employers discriminating against women due to the expectation that they will take leave after giving birth, as opposed to fathers who can be expected to stay in employment after having a child and possibly even increase their work

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<sup>111</sup> European Network of Legal Experts in the Field of Gender Equality (2012) *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood*

<sup>112</sup> Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

<sup>113</sup> As explained in the EU context section, the Maternity Leave Directive ensures that during the period of leave dismissals are in principle prohibited and admissible only in exceptional cases not connected to pregnancy or maternity leave which are permitted by national legislation and/or practice. In the event of any such dismissal the employer has to cite duly substantiated grounds in writing. The Gender Recast Directive guarantees the right to return to the same job or an equivalent job after maternity leave, as well as protection for workers taking paternity or adoption leave when such leaves are provided under the law of Member States. The Parental Leave Directive provides that Member States and/or social partners shall take the necessary measures to protect against dismissal and less favourable treatment on the ground of applying for or taking parental leave. The Directive on Part-Time Work protects part-time workers from discrimination.

<sup>114</sup> See Annex 5

<sup>115</sup> idem

<sup>116</sup> International Monetary Fund (2016) *Individual Choice or Policies? Drivers of Female Employment in Europe*. Working Paper.

effort. Even in cases where fathers have access to paid leave arrangements or flexible working arrangements, employer attitudes as well as personal attitudes can lead fathers not to take up these measures<sup>117</sup>. This, in turn, can reinforce the expectations of women being the main carer, and can negatively impact their return to employment

### *3.2.2 Root cause 2: Ill-designed work-life balance policies*

The provision of policies to facilitate the reconciliation of work and family life has a strong impact in reinforcing or mitigating the assumption that women will carry the bulk of the burden caring responsibilities and hence can impact on the influence of caring responsibilities on the employment outcomes of women. In many Member States, the persisting deficiencies of work-life balance policies are exacerbating the female employment challenge, while in other Member States, well-designed measures are serving to remove barriers to women's participation in the labour market. Such policies can include family-related leaves for children and other dependents, flexible working arrangements, and formal care services.

**The availability, or lack thereof, of leave arrangements can strongly influence women's decisions to stay at home or return to the labour market after assuming care responsibilities.** Inadequate leave arrangements can make it harder for parents to reconcile work and care. As a result, many women end up dropping out of the labour market entirely in order to care for children or other dependents, rather than return to work too early<sup>118</sup>. Conversely, the provision of paid leave tends to boost female labour market participation by allowing women some time off to care for a child or dependent relative while strengthening their attachment to the labour market<sup>119</sup> immediately after child birth as well as several years later<sup>120</sup>. Minimum standards on the length of leave are set out in the Maternity and Parental Leave Directives, and while there are minimum requirements in terms of pay for maternity leave, no requirements exist for pay of parental leave. There is no EU-level provision on the right to paternity leave.

That being said, excessively long family-related leaves can also have scarring effects on women's careers, and make it more difficult for them to re-enter employment after very long leaves of absence<sup>121</sup>. The duration of what constitutes excessively long leave is subject to some academic debate. Some academic research<sup>122</sup> has found that the positive effects of parental leave tend to diminish after 20 weeks. Other academics<sup>123</sup> have found that there is a fairly strong case for leave for approximately six months, after which leave may begin to have an adverse effect on women's return to the labour market, a negative impact on wages, and on career prospects<sup>124</sup>. The OECD has cautioned against leaves longer than two years because of

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<sup>117</sup> Eurofound (2015) *Promoting uptake of parental and paternity leave among fathers in the European Union*

<sup>118</sup> See OECD (2012) *Closing the Gender Gap*

<sup>119</sup> OECD (2004) Economic Studies No. 37 2003/2

<sup>120</sup> Roslin-Slatte (2017) *Maternity and Family Leave Policy*, IZA Institute of Labor Economics

<sup>121</sup> See Thevenon (2013) *Labour market effects of parental leave in OECD countries*

<sup>122</sup> Jaumotte (2003) *Female labour force participation: Past trends and main determinants in OECD countries*

<sup>123</sup> Akgündüz and Plantenga (2013) *Labour market effects of parental leave in Europe*; Mandel and Semyonov (2005) *Family Policies, Wage Structures, and Gender Gaps: Sources of Earnings Inequality in 20 Countries*

<sup>124</sup> Plantenga (2015) *Searching for welfare, work and gender equality*

skill deterioration and large gaps in women's CVs which make it more difficult for them to re-enter employment<sup>125</sup>. In this context, the possibility to take leave on a flexible basis (e.g., part-time or in blocks), extending the age of the child up to which parents can take leave, as well as providing breastfeeding breaks and/or facilities in the workplace can be effective measures helping the transition of mothers back into the workplace<sup>126</sup>.

**The availability and attractiveness of leave arrangements for fathers, ie. paternity and parental leaves, also has a considerable impact on the division of work and care between parents, and in turn on overall female employment outcomes.** The use of leave arrangements by fathers can rebalance the distribution of care between parents, allowing for women's faster return to the labour market after having children. Moreover, fathers' take-up of leave arrangements has a positive impact on their involvement in bringing up children later on<sup>127</sup>, reducing the relative amount of unpaid 'family' work undertaken by women and leaving women more time for formal employment. This is true for parental leave, thanks to which the father has the time to effectively engage in the upbringing of the child, but also for paternity leave. While paternity leave is often short and has a minimal direct impact on the sharing of caring responsibilities between women and men, it has a strong leverage effect on the take-up of parental leave by fathers<sup>128</sup> and can therefore in the long run have a strong impact leading fathers to take on caring responsibilities. In Portugal, where entitlements to paternity leave have been significantly strengthened in recent years (including the introduction of an element of compulsory leave), data from the social insurance administration show that 80% of fathers who take-up paternity leave go on to use at least some of their parental leave. In Slovenia, data from the Ministry of Labour show that the take-up of parental leave increased from 2.2% in 2003 to 6.3% in 2009, following the gradual stepping-up in paternity leave entitlements<sup>129</sup>.

That being said, the opportunities and incentives for fathers to take leave range considerably across Member States. In 23 Member States<sup>130</sup>, new fathers are entitled to a **paternity leave**. In those countries where such leave exists, it is usually well-paid, with levels of pay ranging from 70% to 100% of their previous salary. However, the length of leave is typically short, between one day and one week in seven Member States<sup>131</sup>, between 1 and 2 weeks in a further seven Member States<sup>132</sup>. All Member States provide both mothers and fathers at least 4 months of **parental leave**, in line with the Parental Leave Directive. However, in six<sup>133</sup> Member States, parental leave is unpaid, and in many other countries it is paid at a low level,

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<sup>125</sup> OECD (2012) *Closing the gender gap*

<sup>126</sup> Vaganay, Canónico, Courtin (2016) Challenges of work-life balance faced by working families: review of Costs and Benefits, LSE Evidence Review

<sup>127</sup> Escot L., Castellanos S. (2016), Do Fathers Who Take Childbirth Leave Become More Involved in Their Children's Care? The Case of Spain, *Journal of Comparative Family Studies*

<sup>128</sup> Taskula, S. (2007). Parental leave for fathers? Research Report no 166. Finland. National Research and Development Centre for Welfare and Health

<sup>129</sup> See Supporting Study

<sup>130</sup> BE, BG, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, UK,

<sup>131</sup> IT, MT, EL, LU, HU, NL, RO

<sup>132</sup> SE, UK, PL, BE, DK, EE, LV

<sup>133</sup> EL, ES, IE, MT, NL, ES

making it less likely that fathers make use of these entitlements. In fifteen Member States<sup>134</sup>, parents have the possibility to transfer at least part of their parental leave entitlements to the other parent, which contributes to longer absences of women from the labour market and creates difficulties for their labour market reintegration later on. The current Parental Leave Directive facilitates this, as it only requires that at least one month of leave should be non-transferable between parents.

**Those Member States that have earmarked a significant portion of leave to fathers and paid the leave at a relatively high replacement rate tend to experience higher take-up by fathers<sup>135</sup> and positive results in terms of mothers' employment outcomes<sup>136</sup>.** For example, in Sweden, reserving parental leave to the father has led to a doubling in the number of parental leave days taken by men<sup>137</sup>. Female employment is among the highest in the EU in Sweden, and mothers with young children are more likely to be employed than non-mothers, whereas in the EU28 on average, mothers are far less likely to be in employment<sup>138</sup>. In Germany, a 2007 reform introducing pay for parental leave and bonuses to incentive fathers' take-up led to a significant and steady increase in the proportion of fathers taking leave<sup>139</sup> as well as improved female labour market participation and increased household income<sup>140</sup>. Portugal has introduced a bonus to couples where both parents take some parental leave, resulting in the percentage of fathers taking parental leave increasing from 0.5% in 2005 to 28.3% in 2013<sup>141</sup>. However overall, fathers' take-up of parental leave is low and, when fathers take leave, periods of leave are usually short.<sup>142</sup> In contrast, mothers generally make much wider use of parental leave options, as shown in Figure 5 below.

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<sup>134</sup> AT, BG, CY, CZ, DK, EE, FI, HR, IT, LT, PL, PT, RO, SI, SE

<sup>135</sup> Escot L., Castellanos S. (2016), Do Fathers Who Take Childbirth Leave Become More Involved in Their Children's Care? The Case of Spain, *Journal of Comparative Family Studies*

<sup>136</sup> OECD, Policy Brief: *Parental Leave, where are the fathers*, 2016

<sup>137</sup> *ibid*

<sup>138</sup> Source: Eurostat\_lfst\_hheredch

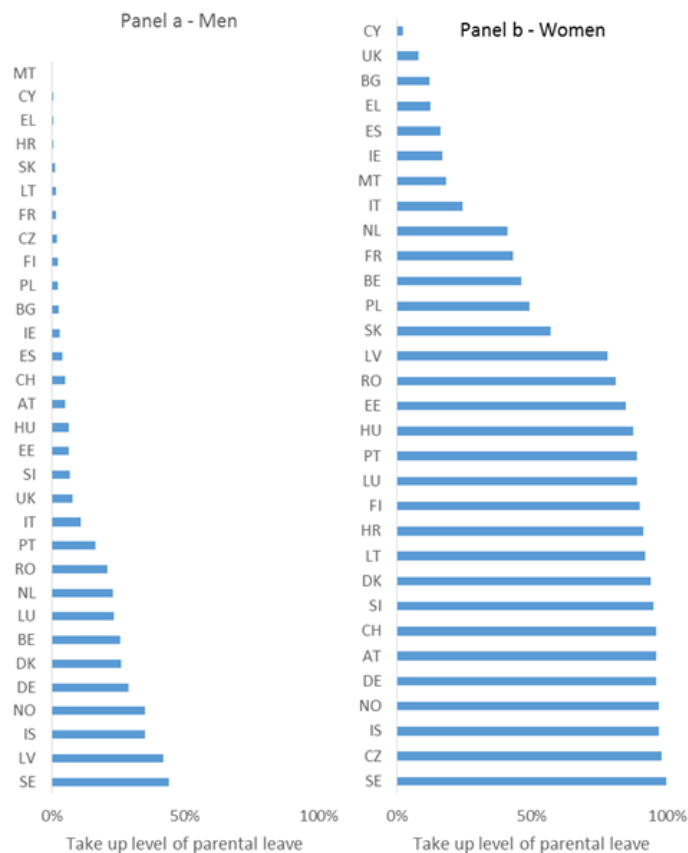
<sup>139</sup> Recently published data by the Federal Statistics Office showed that the proportion of fathers taking parental benefit has risen significantly and steadily since its introduction in 2007. For births in 2013, parental benefit was taken up by 32 % of fathers (compared to 3.5 per cent of fathers in 2006. See: Statistisches Bundesamt [Federal Statistical Office] (2015) Statistik zum Elterngeld. Beendete Leistungsbezüge für im 2. Vierteljahr 2013 geborene Kinder [Statistics on parental allowance. Completed performance bonuses for children born in the second quarter of 2013]. Wiesbaden: Statistisches Bundesamt.

<sup>140</sup> Kluve, J., Schmitz, S. (2014) *Social Norms and Mothers' Labor Market Attachment: The Medium-Run Effects of Parental Benefits*; Huebener, Muller, Spies and Wrohlich (2016) *The parental leave benefit: a key family policy measure, one decade later*.

<sup>141</sup> Eurofound (2015), Promoting uptake of parental and paternity leave among fathers in the European Union

<sup>142</sup> OECD (2012) *Closing the gender gap*

Figure 5: Level of take-up of parental leave by country and gender



Source: ICF national research and calculations<sup>143</sup>

**The lack of adequate leave to take care of other dependent relatives also exacerbates the unequal sharing of caring responsibilities between women and men.** Where there is no carers' leave provision, it is generally women who will work part-time or drop out of the labour market in order to take care of their relative for a short period of time. No EU-level minimum standards exist for workers with dependent relatives, except for a limited right under the Parental Leave Directive to take time off on grounds of *force majeure* for urgent family reasons<sup>144</sup>. Most Member States go beyond the minimum requirements and have some form of leave for people with dependent relatives. These can mainly be classified into three

<sup>143</sup> Figures are based on administrative or survey data made available by national competent bodies in AT, CZ, DE, DK, EE, FI, IT, NL, PT, UK (from various years between 2010-2015). Data from other countries (where available) have been calculated by ICF on the basis of estimates provided by competent authorities and stakeholders of the overall number of beneficiaries and the split between male and female beneficiaries. These numbers are subject to a certain level of uncertainty.

<sup>144</sup> Clause 7 of Directive 2010/18/EU which stipulates rules on time off from work on grounds of force majeure.

main kinds of carers' leave. Many Member States<sup>145</sup> provide for a short term leave which can allow care for a relative in an emergency situation (beyond the force majeure provisions of contained in the Parental Leave Directive) or to make arrangements for care. A fewer number of Member States provide for longer leaves of several weeks or months to directly care for a relative<sup>146</sup> and some Member States provide for palliative care leave<sup>147</sup>. The level of remuneration also widely varies across Member States: half of the countries do not provide any compensation for at least some of the forms of carers' leave (usually longer leaves)<sup>148</sup> and 9 Member States provide for leave paid at more than 90%<sup>149</sup>. In general, compensation rates are lower than for other family-related leaves<sup>150</sup>.

In addition to inadequate or ill-designed leaves, **the unavailability of flexible working arrangements can lead to some people, particularly women, to drop out of the labour market altogether when taking on caring responsibilities**<sup>151</sup>. Flexible working arrangements include remote working, flexible working schedules, and reduced working hours (part-time work). Insufficient availability of flexible working arrangements can also lead women with caring responsibilities to change their job to one that is perceived as offering more flexibility or reduced working hours, which is often below their skill level or for less pay<sup>152</sup>. This consequently can lead to or foster gender wage gaps and labour market segmentation.

Although flexible working arrangements, in particular telework, are easier to provide thanks to modern technology and have been shown to improve workers overall work-life balance and productivity<sup>153</sup>, the organisation of work tends to remain fixed around on-the-job presence for full working hours or more. Eurofound has reported that an overwhelming share of mothers would be willing to work if they could better choose working hours, and more than half of the inactive mothers would prefer to work part-time<sup>154</sup>. That being said, while such measures can be useful in allowing some women to remain in the labour market after having children, large gender differences in their take-up can result in wider gender gaps in terms of earnings and career progression opportunities, as well as pension entitlements later on, in particular for part-time work<sup>155</sup>.

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<sup>145</sup> For instance AT, BG, CZ, DE, EL, ES, FI, HR, IE, LT, LV, LU, NL, PL, PT, SI, SK and UK

<sup>146</sup> For instance DK, FR, HU, RO and SE

<sup>147</sup> For instance AT and SE

<sup>148</sup> BE (leave for urgent reasons), CY, DE (caring leave), EL, ES, FI, FR, HU, IE<sup>148</sup>, IT, LT, NL, PT, UK

<sup>149</sup> 90%: DE (short-term caring leave); 100%: AT, DK (leave to look after disabled relative), ES (short term care leave), IT, LI, LU, NL (emergency leave), SE<sup>149</sup>

<sup>150</sup> See supporting study

<sup>151</sup> Plantenga, J. and Remery, C. (2009) *Flexible working time arrangements and gender equality*

<sup>152</sup> Over-qualification among university graduates is higher for women than for men in countries such as Spain, UK, Italy, Belgium, France Germany and The Netherlands; Conde-Ruiz and Marra de Artñano (2016)

<sup>153</sup> Eurofound (2017) *Working anytime, anywhere: The effects on the world of work*

<sup>154</sup> Eurofound (2014) *Quality of life in Europe: Families in the economic crisis*

<sup>155</sup> This was shown to be particularly the case for UK, NL, AT and LU in the report: EU Expert Group on Gender and Employment (2013) *Flexible working time arrangements and gender equality*

Flexible working arrangements are commonly regulated at company or sectoral level, often through collective agreements, and tend to be prevalent when there is an underlying consensus amongst the social partners or employers that flexibility is valuable and a workplace culture exists that is supportive of flexible working<sup>156</sup>.

Some regulation on these arrangements also exists at EU and national level. The Parental Leave Directive provides that parents can request changes to their working hours or patterns for a set period of time and their request needs to be duly considered by the employer. However, this right is limited in time as they can only request that flexibility upon return from parental leave. Some Member States have gone further, extending such rights to all parents and carers or even all workers. Those Member States, such as Sweden, the Netherlands and Austria, who have taken measures to broadly enhance access to such arrangements tend to experience higher female employment. However, women tend to be the main users of flexible working arrangements and in particular part-time work. As mentioned above, in average in the EU, 31.9% of women work part-time compared to 8.3% of men. This leads to large differences in earnings and pension entitlements between women and men<sup>157</sup>.

**Difficulties in accessing formal childcare services can also lead many women to reduce their working hours or drop out of the labour market<sup>158</sup>.** These difficulties are particularly acute for young families and single parents<sup>159</sup>. The availability is however a problem, as the demand for these services outstrips the supply of childcare places in nearly all Member States<sup>160</sup>. Moreover, often a large gap exists between the end of maternity/parental leave and the moment when a childcare place becomes available for parents, compelling parents to find informal solutions where possible in order to be able to both return in employment. Affordability can also be a major barriers to the use of these services; 53% of mothers who declare that they do not work or that they work part-time for reasons linked to formal childcare services consider the costs to be an obstacle, and this figure is higher than 70% in some Member States<sup>161</sup>.

The accessibility of these services in terms of physical distance, perceived low quality of these services, and the lack of opening hours that are compatible with parental employment can also present obstacles to female employment. For school-age children, school hours and holidays are often incompatible with parents' full-time employment: a lack of provision for out-of-school hours<sup>162</sup> may also lead to women working fewer hours. Poor quality of services is also a barrier that needs to be addressed urgently with almost one third of parents not using childcare services due to their unacceptably low quality. Expansion of places, improving

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<sup>156</sup> OECD (2016) Policy Brief on Flexible Working Arrangements in OECD Family Database; Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

<sup>157</sup> See Eurostat, EU-SILC

<sup>158</sup> See, for instance, OECD (2012) *Closing the Gender Gap*

<sup>159</sup> See for instance, European Commission (2014) *Single parents and employment*

<sup>160</sup> Eurydice (2014) *Early childhood education and care*

<sup>161</sup> European Commission (2016) The efficiency and effectiveness of social protection systems over the life course, chapter 3.2. in *Employment and Social Developments in Europe 2015*

<sup>162</sup> These services provide a range of activities to children in pre-schools and primary schools before, between (lunch) and after school hours, as well as during school holidays.

quality and providing information on the benefits of early childhood education and care are also needed to bridge the childcare services to all families, including vulnerable families<sup>163</sup>. The EU set targets in 2002 to improve the provision of formal childcare arrangements by 2010<sup>164</sup> and reaffirmed in the European Pact for Gender Equality spanning until 2020, given that a majority of Member States have still not achieved them<sup>165</sup>.

**A lack of formal long-term care arrangements** can also lead many people with dependent relatives, most often women, to take on the role of informal carers<sup>166</sup>, and lead them to take long leaves of absence from the labour market or dropping out completely. At national level, formal long-term care services are very under-developed in many Member States, to the detriment of women's employment<sup>167</sup>.

Some Member States offer extensive medical and social services to older people in need of **long-term care** and devote a significant share of GDP to this, while other Member States rely heavily on the informal provision by families and have little public spending<sup>168</sup>. In general, few Member States (Denmark, Finland, the Netherlands and Sweden) have extensive long-term care systems based on public provision. Some Member States like Italy and Austria rely largely on cash benefits which older people can use to organise or purchase long-term care services including informal care from family members. EU-level action in this area has been mainly to promote exchange and mutual learning on the issue through the social Open Method of Coordination. As the share of dependent individuals is expected to increase significantly in the coming years<sup>169</sup> work-life balance challenges for people with dependent relatives can be expected to further increase and could be expected to further negatively impact female employment unless formal care services are further developed.

### *3.2.3 Reinforcing driver: economic disincentives for women to work*

Finally, **economic disincentives**, which discourage second-earners, often women, from entering the labour market, working more hours or remaining in the labour market, can reinforce the unequal distribution of work and caring responsibilities by putting on women the bulk of the burden of caring responsibilities.

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<sup>163</sup> Eurofund, 2015 Early childhood Care : Accessibility and quality of services

<sup>164</sup> In 2002, at the Barcelona Summit, the European Council set the targets of providing childcare to at least 33% of children aged 0-3 and 90% of children between 3 years old and the mandatory school age by 2010.

<sup>165</sup> FI, SI, ES, FR, NL, PT, LU, BE, SE, DK have reached the Barcelona target for the youngest children while SI, IT, ES, EE, SE, DK, FR, BE, MT reached it for the oldest children (irrespective of the hours of attendance).

<sup>166</sup> The incidence of providing informal care to elderly relatives is highest among the 50 to 64-year-olds. Working women are up to 1.6 times more likely to be informal carers than working men.

<sup>167</sup> European Social Policy Network (2016) *Work-life balance measures for persons of working age with dependent relatives*

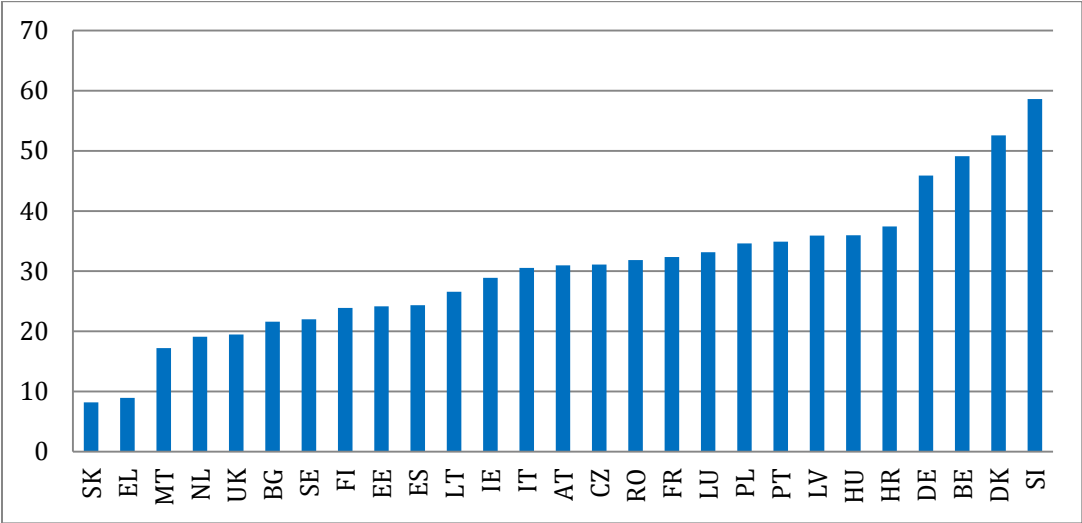
<sup>168</sup> European Commission and Social Protection Committee (2014) *Adequate social protection for long-term care needs in an ageing society*

<sup>169</sup> Projection is based on the Ageing Working Group (AWG) reference scenario as it is used in the multilateral budgetary surveillance at EU level. A peak in the provision of caring time is generally observed in the age group 45-64 and in 2060 one potential carer (i.e. a person aged 45-64) is expected for 5.1 persons of 80 years old or more.



Some Member States have tax-benefit systems - through joint taxation systems, transferable tax credits or deductions for single earner households - that create high marginal effective tax rates on the second earner in a household, the woman in the majority of couples<sup>170</sup>, thereby discouraging them from entering employment or increasing working hours<sup>171</sup>. Large fiscal disincentives exist for second earners to increase their work intensity in seven Member States<sup>172</sup>, while a much larger number of Member States appear to have some form of tax-benefit disincentive when factoring in allowances and childcare costs.<sup>173</sup>

Figure 7: Inactivity trap for second earners (2014)



Source : OECD, European Commission calculations

Note : Inactivity trap for second earner in two-earner couple with two children, principal earner with 100% of average wage, second earner with 67 %

The **gender pay gap**, by favouring that women rather men take unpaid family leave, also has a negative influence on women’s employment outcomes by disincentivising women to enter or remain in the labour market or increase working hours<sup>174</sup>. That being said, the pay gap is also to some degree a consequence of gender discrimination as well as women’s greater

<sup>170</sup> Data at the household level show that men’ salaries on average account for two thirds of the income in the couple. The man earns more than the woman or is the sole earner in the majority of couples in all Member States (and in more than 60% of the couples in 26 Member States). These calculations are based on Eurostat data (EU-SILC).

<sup>171</sup> Plantenga (2015) *Searching for welfare, work and gender equality*

<sup>172</sup> ES, SI, DE, LU, NL, MT, PT

<sup>173</sup> European Commission (2015) *Secondary earners and fiscal policies in Europe*

<sup>174</sup> International Monetary Fund (2016) *Individual Choice or Policies? Drivers of Female Employment in Europe*. Working Paper.

interruptions in their careers and lower career progression due to care. This is explained further in Section 3.3. below.

In addition to re-inforcing the unequal distribution of care responsibilities between women and men, economic disincentives tend to be more acute for those with care responsibilities, as such disincentives can interact with other 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 increase their working hours<sup>175</sup>. Moreover, as men earn more than women in the majority of couples, the financial incentives for the man to take leave when it is not well-remunerated, or to reduce their working hours with a proportional reduction of income is limited. It often makes more financial sense for the woman in a couple to make use of these arrangements because the reduction in household income will be less than if the man would do so. Such economic incentives reinforce a gendered division of work and care. Moreover, the provision of cash-for-care arrangements –whereby parents may stay at home and receive an allowance in order to care for their child directly, rather than use formal care services – can create economic disincentives for many women to re-enter employment after having children, especially when out-of-pocket childcare costs are high<sup>176</sup>.

### 3.3 Consequences

Women's lower participation in employment, higher concentration in part-time work and in jobs below their skill level, and greater gaps than men in their careers, largely due to an unequal sharing of caring responsibilities between women and men, have negative consequences at the individual, firm, and societal levels.

#### 3.3.1 Individual level

For women themselves, these problems **reduce their career opportunities** and their economic independence. When women return to the labour market after having children, their longer leaves of absence due to care relative to men can lead to wage penalties, reduced career progression opportunities<sup>177</sup> and women dropping out of the labour market altogether. In addition these problems lead to women self-selecting into occupations where they will be better able to balance work and family life, which are typically lower-paid occupations. **Women's greater career interruptions, concentration in lower-paid work and lower career progression also exacerbate the gender pay gap**<sup>178</sup> (which stands at 16.7% on average in the EU<sup>179</sup>). In turn, the gender pay gap reinforces the problem drivers, as it

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<sup>175</sup> European Commission (2015) *Secondary earners and fiscal policies in Europe*

<sup>176</sup> European Commission (2015) *Secondary earners and fiscal policies in Europe*

<sup>177</sup> Mandel and Shalev (2009) *How Welfare States Shape the Gender Pay Gap: A Theoretical and Comparative Analysis*

<sup>178</sup> Costa Dias, Elming and Joyce (2016) *The gender wage gap*, Joseph Rowntree Foundation. <http://www.ifs.org.uk/publications/8428>

<sup>179</sup> The unadjusted Gender Pay Gap (GPG) represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees.

constrains the individual choice to take parental leave: economically speaking, it often makes more sense for fathers to continue working, especially if parental leave is unpaid or is paid at much lower rates than previous earnings. If it is women who take parental leave, the impact on the household budget is often more moderate. This is compounded by the fact that the period around childbirth is often a time of considerable stress on household budgets.

Women's underrepresentation in the labour market also results in their **higher risk of poverty and social exclusion, especially in old age**. Their reduced earnings, higher concentration in part-time work and gaps in careers lead to lower social security contributions, translating into reduced or non-existent pension entitlements. On average, women's pensions are 40% less than those of men (**gender pension gap**<sup>180</sup>). Evidence in the UK shows that over a career of 52 years, female employees earn £298,064 less than male employees<sup>181</sup>. In average in the EU women without children earn 36% more than women with children<sup>182</sup>. Women in old age are consequently at a much higher risk of poverty and social exclusion (20.2% of women 65+) as compared to men (14.6%). Women's underrepresentation in the labour market also has negative consequences on their children. Children living in jobless and single-earner households are at a much higher risk of poverty (on average up to 5 times) than in dual-earner households<sup>183</sup>.

Beyond women's economic independence, there are also **negative consequences on women and their families**. Without adequate policies to help women to remain and progress in the labour market after having children, some women or families choose not to have children or have fewer children than desired<sup>184</sup>. A lack of arrangements to help women reconcile work and care commitments for children and other dependent relatives has also been shown to place substantial stress on women and their families<sup>185</sup> and can also have adverse impacts in terms of physical and psychological health<sup>186</sup>. The prevalence of mental health problems among carers is 20% higher than among non-carers<sup>187</sup>. Moreover, evidence shows that women's greater number of hours of unpaid care and household work contribute to women experiencing substantially greater stress than men. Of that work, the hours spent on caring for elderly relatives are among the most stressful<sup>188</sup>. Finally, the lack of affordable and accessible quality early education and care places have strong negative consequences on children's skills

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<sup>180</sup> European Commission and Social Protection Committee (2015) *Pension Adequacy report: current and future income adequacy in old-age in the EU*

<sup>181</sup> The Guardian, *Gender Pay Gap: women earn £300 000 less than men over working life*, 07.08.2016

<sup>182</sup> Commission calculations based on 2014 EU-SILC microdata. The figure is based on the difference in gross employee cash or near cash income for all women aged 25-49. It reflects differences in (1) employment rate; (2) work-intensity (part-time vs. full-time) and (3) hourly wages.

<sup>183</sup> Findings based on OECD Income Distribution Database (2016)

<sup>184</sup> See for instance, Del Boca D., Aaberge R., Colombino U., Ermisch J., Francesconi M., Pasqua S., Strøm S. (2005) *Labour Market Participation of Women and Fertility: the Effect of Social Policies*; Conde-Ruiz and Marra de Artíñano (2016) *Gender Gaps in the Spanish Labour Market*

<sup>185</sup> See for instance, Harper and Leicht (2007) *Exploring Social Change: America and the World*

<sup>186</sup> OECD (2007) *Babies and bosses: Reconciling work and family life*

<sup>187</sup> Colombo et al. (2011); Lilly et al. (2007), after: Social Protection Committee and the European Commission (2014) *Adequate social protection for long-term care needs in an ageing society*

<sup>188</sup> MacDonald, Phipps and Lethbridge (2005) *Taking Its Toll: The Influence of Paid and Unpaid Work on Women's Well-Being*

and competencies levels. International data<sup>189</sup> (PISA) shows that students who have not attended pre-primary education have 3 times higher chances of being low performers than those who have for more than 1 year.

**There are also negative consequences for men.** Many men wish to take on more caring responsibilities, particularly for their children. However the design of work-life balance policies in many Member States still discourages many men to take leave and instead encourages women. Men, in turn, tend to increase their working hours after having children. Overall men are more likely to work very long hours than women, even though this is not necessarily desirable for them<sup>190</sup>. In some cases men have been shown to report even higher levels of work-life balance conflicts than women<sup>191</sup>. Inadequate work-life balance solutions for men also affects their children. Evidence also shows that fathers taking parental leave establish stronger bonds with their children that have lasting effects throughout the childrens' lives, and also have positive effects on childrens' cognitive development<sup>192</sup>.

### 3.3.2 Business level

Women's under-representation in the labour market has negative consequences on business. Especially as women tend to be higher educated than men, having more skills, diplomas and qualifications<sup>193</sup>, their drop-out of the labour force reduces the available talent pool, which can make it difficult for employers to find the skills that they need<sup>194</sup>. This also exacerbates existing **skill shortages** for many occupations<sup>195</sup>. Failure to re-design work-life balance policies in an adequate way does not only make European companies less attractive for female and male talents, it also leads to women, especially higher-educated women, choosing to delay or forego motherhood, which will further reduce the skills base available to business in the long term.

It may also lead to a **difficulty retaining workers** who make a positive contribution to a company, leading to costly staff turnover<sup>196</sup> and reduced productivity, as the replacing employee might require training and building in experience before being as effective as the replaced one. Failure to retain knowledgeable and trained workers undermines firms' specific

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<sup>189</sup> OECD, (2016) Low-performing students: why they fall behind and how to help them succeed

<sup>190</sup> Overall, the percentage of male employees working very long hours (above 50 hours per week) across OECD countries is 17%, compared with 7% for women.

<sup>191</sup> See for instance U.S. Department of Labor (2015); The cost of doing nothing. The price we pay without paid leave policies to Support America's 21st Century Working Families; Eurofound 2016 Sixth European Working Conditions Survey : Men are more likely to say that their working hours do not fit with their private commitments than women: 20% of men declare this compared to 16% of women.

<sup>192</sup> OECD (2013) *Fathers' Leave, Fathers' involvement and Child Development: Are they Related? Evidence from four OECD Countries*

<sup>193</sup> See for instance European Commission (2016) *Education and Training Monitor*

<sup>194</sup> IMF (2013) *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity*

<sup>195</sup> Such as for doctors, nurses, midwives and teachers, see Cedefop (2016)

<sup>196</sup> Australian Workplace Gender Equality Agency (2013) *The business case for gender equality*

human capital and can be a serious burden as staff turnover typically has high costs for employers<sup>197</sup>.

**Productivity** can also be compromised due to increased workers' stress and/or lack of motivation due to lack of adequate solutions in place to balance work and care. This stress is mainly related to worries about child and back-up care arrangements and frequently occurs when workers are confronted to high demands combined with low control<sup>198</sup>. Greater satisfaction at work is also linked with fewer absence days from work. Both impacts have a positive effect on productivity and ultimately economic competitiveness. In 2010, an average of 6.2 working days were lost per worker due to sickness in the EU28. This figure was lowest in Greece (2), Ireland and Romania (3), and highest in Croatia, Finland, Poland and Slovenia (9).

Finally, **women's underrepresentation in the labour market leads to their underrepresentation in decision-making positions**. This in turn has costs for businesses, as it can lead to sub-optimal decision-making with negative economic consequences,<sup>199</sup> where decision-makers are not those with the highest potential to do the job and where the pool of available candidates has been reduced. Evidence suggests that companies with female managers/board members could benefit from a higher diversity in perspectives, and could also be better-positioned to serve female-dominated consumer markets<sup>200</sup>.

### 3.3.3 Societal level

Women's lower labour market participation also has **significant economic consequences for the society as a whole**. Women's underrepresentation in the workforce represents a sub-optimal allocation of skills and competences acquired by women, leading to an insufficient return on education, which is often publicly subsidised, and thus a waste of public resources.

It also translates into increased pressure on public finances due to lower available labour supply, reduced tax-revenue, and increased social transfers in order to address female and child poverty. Teignier and Cuberes (2014) have sought to estimate the effects of the gender employment gap in terms of aggregate productivity and income per capita, finding that in Europe, the average income loss represents around 10%<sup>201</sup>. Eurofound has calculated that the total cost of women's lower employment in terms of foregone earnings and tax revenue as well as spending on social transfers. **The costs of these inequalities between women and men in employment amounted to an estimated €370 billion euros in 2013, equivalent to 2.8% of EU-GDP**<sup>202</sup>. The lifetime cost of a woman's exclusion from employment is

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<sup>197</sup> There are significant business costs to employee turnover, Boushey and Glynn, November 2012.

<sup>198</sup> OECD (2007) *Babies and bosses: Reconciling work and family life*

<sup>199</sup> See Impact Assessment On Costs And Benefits Of Improving The Gender Balance In The Boards Of Companies Listed On Stock Exchanges, SWD(2012) 348 final, p. 44.

<sup>200</sup> IMF (2013) *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity*

<sup>201</sup> Cuberes and Teignier-Baqué (2014) *Aggregate Costs of Gender Gaps in the Labor Market: A Quantitative Estimate*, available at: [http://www.marcteignier.com/research\\_files/GGLMAP\\_CT.pdf](http://www.marcteignier.com/research_files/GGLMAP_CT.pdf)

<sup>202</sup> Eurofound (2016) *The Gender Employment Gap: Challenges and Solutions*

estimated between €1.2 million and €2 million depending on her educational level, with the cost being higher for women with higher educational attainment.

Reduced productivity at business-level also translates into reduced competitiveness, reduced productivity for the overall economy, as well as reduced growth. Moreover, lower fertility, **exacerbates the demographic challenge** of increased ageing and puts even further pressure on the sustainability of public finances<sup>203</sup>. Between 2013 and 2060, the share of the elderly to the working-age population is expected to increase substantially, from having four working-age people for every person aged over 65 years to only two working-age persons.<sup>204</sup> One of the main drivers behind lower fertility rates is the choice of women to delay or forsake having children altogether because of difficulties reconciling work and care<sup>205</sup>.

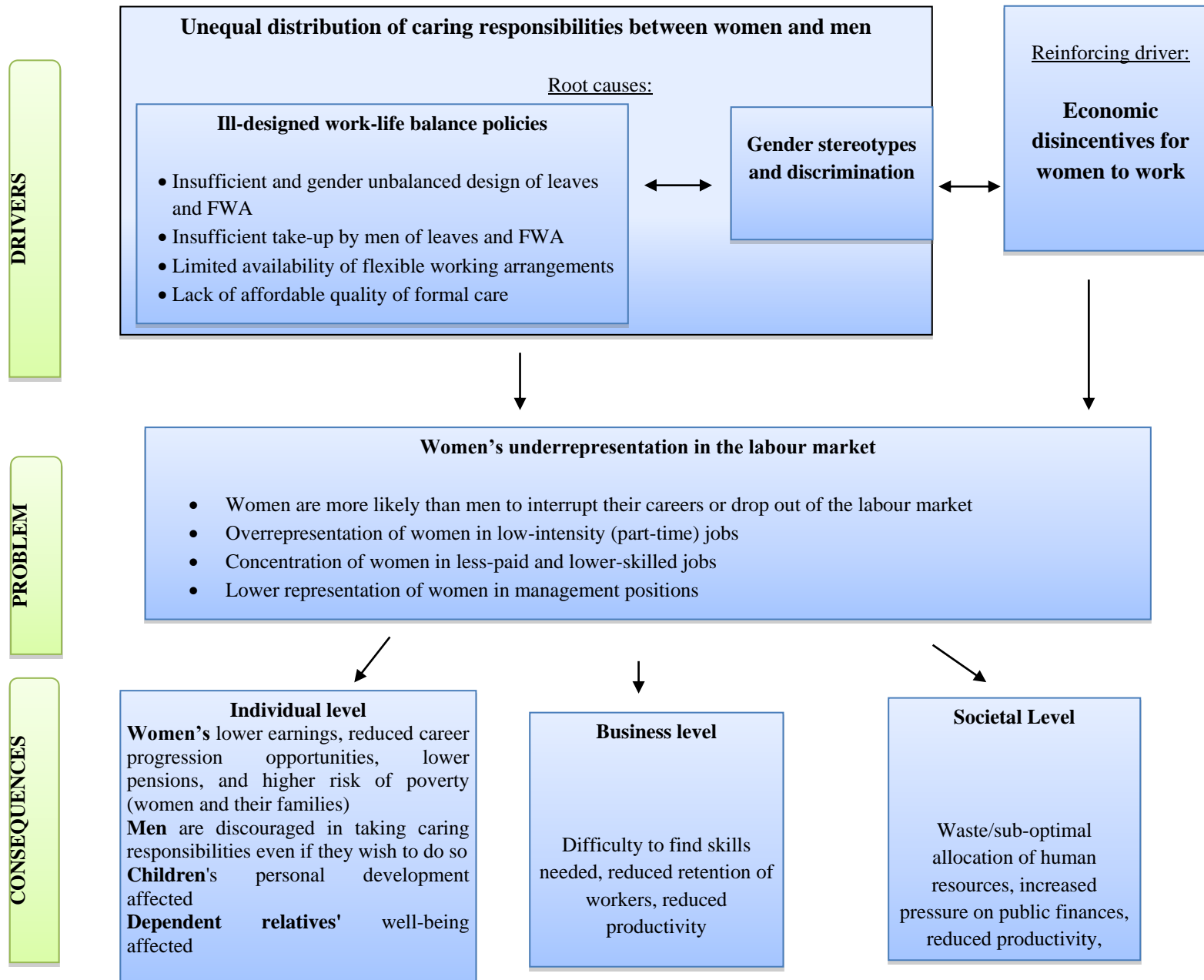
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<sup>203</sup> OECD (2013) *Closing the Gender Gap*

<sup>204</sup> European Commission (2015) *Ageing Report*

<sup>205</sup> See for instance, Del Boca D., Aaberge R., Colombino U., Ermisch J., Francesconi M., Pasqua S., Strøm S. (2005) 'Labour Market Participation of Women and Fertility: the Effect of Social Policies' ; Oláh and Fahlén (2013) *Childbearing, Women's Employment and Work-life Balance Policies in Contemporary Europe*

### 3.4 Summary Tree



## 4. BASELINE SCENARIO

**Member States have planned policy measures** which will affect the baseline situation in the coming years<sup>206</sup>.

Positive examples of recent reforms include the introduction of paid parental leave for fathers in the United Kingdom, a small increase in paternity leave for Italy, increased flexibility for taking parental leave in Germany and the extension of childcare services in Malta. An overview of the forthcoming provisions can be found in Annex 1 of the supporting study.

However, in the context of the **recent economic and financial crisis some structural reforms have even gone in the opposite direction**, making for instance households with children one of the groups the most affected by the crisis<sup>207</sup>. There is evidence of decreasing replacement rates/payment levels for leave in several countries. For instance, fiscal consolidation measures have affected paternity leave schemes in Estonia, Spain and the Czech Republic<sup>208</sup>. While public or publicly subsidised provision of childcare services has undergone less drastic cuts than monetary allowances, some Member States such as Estonia and the Netherlands still experienced social expenditure retrenchments. The crisis has also led to an increase of dismissals related to taking maternity/parental leave in a number of Member States. In Greece, the number of disputes on gender equality at work in which the Labour Inspectorate was called to intervene increased from 11 in 2007 to 79 in 2010. The primary reason for intervention is illegal dismissals of pregnant and breast-feeding women. In Italy, in 2008-2009, 8.7% of women aged 15 to 64 declared that they had been dismissed or forced into a position where they resigned because of pregnancy during their working life course<sup>209</sup>.

This section focusses on projections regarding trends in measurable indicators such as future female labour force participation, employment and GDP trends to assess how these would evolve in the absence of actions at EU level (but taking into account forthcoming developments in the baseline). It has not been possible to project some relevant indicators such as likely trends in the gender pay gap due to the absence of relevant data.

### **Projections on employment**

Projections for the analysed countries indicate a likely further decline in employment (following on from the job losses during the economic crisis) until 2055 with a further loss of 215,000 jobs on average in the EU (with losses in some Member States and gains in

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<sup>206</sup> ICF (2016) *Study on the costs and benefits of possible EU measures to facilitate work-life balance for parents and care givers*

<sup>207</sup> Frazer H., Marlier E., (2011), *Social Impact of the Crisis and Developments in the Light of Fiscal Consolidation*, EU Network of Independent Experts on Social Inclusion

<sup>208</sup> In Spain, the extension of paternity leave from 2 to 4 weeks was delayed to January 2017

<sup>209</sup> Bettio, Corsi, D'Ippoliti, Lyberaki, Lodovici and Verashchagina (2012) *The impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies*



others)<sup>210</sup>. The employment loss is projected to be more marked in Poland and Romania, with a loss of approximately 4 million and 2 million jobs respectively. Germany is also projected to lose over 9.5 million jobs, remaining however one of the countries with the highest number of employed, with over 32 million people in employment in 2055. On the other hand, France and the UK are expected to gain the greatest number of jobs.

### **Projections on gender gap in employment rates**

Available data and relevant projections from the supporting study show overall that, while some ongoing improvements in female labour market participation can be expected to continue even without further EU action, this will happen at a slow and uneven pace. While in 2055, the gender gap in activity rates is projected to narrow in the majority of European countries, significant differences in male and female activity and employment rates will remain in most countries. The remaining average gender gap in activity rates in the EU will be around 9 pp., with gaps at or above 10 pp. in 13 Member States.<sup>211</sup> In Greece, the gap is projected to grow and remain at over 15 pp., in Italy it will remain close to 20 pp. and in Malta it will exceed 25 pp. Fertility rates are also projected to remain insufficient to reach replacement rates, thus further increasing dependency ratios. Other key gender gaps, such as in the sharing of unpaid time are also likely to remain generally unchanged, impacting female labour market participation in future.

### **Projections on absence from work**

Absence rates are relevant as insufficient work-life balance measures have been shown to impact on (particularly women's) absence rates from work (see also section 3 above). There are two reasons for this. One is that inadequate work-life balance measures mean that carers (who, in current patterns of caring are mostly women) are forced to be absent from work when caring requirements arise and the second is linked to satisfaction at work – an indicator which is also linked to a sense of being able to achieve a good balance between work and family life. The estimated monetary value of absence from work has been calculated by multiplying the average daily labour cost in each country by the number of people employed and the number days absent from work. In total, in the absence of new policy measures, the cost of absence from work is estimated to be €267 billion in 2015, and €665 billion in 2055.

### **Projections for GDP growth**

GDP projections until 2055 were estimated using the E3ME model<sup>212</sup>. According to these projections, the average GDP growth rate over the years 2015-2055 in EU28 is 1.6%. As will be shown in section 8 below, such growth rates could be significantly enhanced

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<sup>210</sup> Employment projections until 2055 were estimated through the E3ME model which is based on Eurostat and Ageing Report data.

<sup>211</sup> AT, CY, CZ, EL, HU, IE, IT, MT, NL, PL, RO, SK and UK

<sup>212</sup> More information on the E3ME model can be found in Annex 4

through the implementation of work-life balance measures encouraging the higher labour market participation of women.

Overall, considering the developments of socio-economic indicators, the ‘no change in policy’ scenario for EU-level action is unlikely to be sufficient to address the problems identified above. Furthermore, taking into account the recent developments due to the economic crisis in a number of Member States, it seems that there is a risk that without EU level action divergence between the Member States will increase. Moreover, the persisting gender gap in employment is also expected to constrain economic growth. This has been recognized by many international organisations, such as the OECD, the International Monetary Fund, the ILO and the World Bank.<sup>213</sup> The OECD has shown that 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 economy<sup>214</sup>. They estimate that halving gender gap in labour market participation would lead to an additional gain in GDP of 6% by 2030, and a 12% gain if complete convergence is achieved<sup>215</sup>.

## 5. POLICY OBJECTIVES

### 5.1. General and specific objectives

As outlined in its Roadmap<sup>216</sup>, the general policy objective of this initiative is to address women's underrepresentation in the labour market and to promote equality between men and women with regard to labour market opportunities by modernising current EU legal and policy framework and adapting it to today’s labour market to allow for parents with children or workers with dependent relatives to better balance caring and professional responsibilities<sup>217</sup>.

While women’s underrepresentation in the labour market is a product of several drivers, as demonstrated in the problem definition above, this initiative will focus on addressing some of the key policy factors that can mitigate or reinforce gender divisions in work and care:

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<sup>213</sup> OECD (2014) *Promoting inclusive labour markets in G20 countries: potential returns and obstacles*, background report prepared by the OECD for the G20 Task Force on Employment, in collaboration with the ILO and the World Bank Group; IMF (2013) *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity*

<sup>214</sup> See OECD (2012) *Closing the Gender Gap*

<sup>215</sup> OECD (2012) *Effects of Reducing Gender Gaps in Education and Labour Force Participation on Economic Growth in the OECD*

<sup>216</sup> European Commission (2015), *Roadmap: A new start to address the challenges of work-life balance faced by working families*

<sup>217</sup> Article 153(1) (i) TFEU: " equality between men and women with regard to labour market opportunities and treatment at work.

leaves and flexible working arrangements. It should be noted that these policies also receive heightened focus over other relevant areas that influence women's employment (e.g., tax-benefit disincentives) given the existing EU legal framework in this field.<sup>218</sup>

It should also be noted that other policy areas present in the problem definition are not covered in this impact assessment. With regards to the provision of formal care services mentioned within root cause 2 'ill-designed work-life balance policies' and the supporting driver 'economic disincentives', this is due to the limited EU competence in these areas. Considering their significant impact on the addressed problem, the initiative could foresee measures to enhance current efforts in these areas, in particular in relation to the monitoring of Member States' policies in the EU Semester and to the use of EU funding in the case of formal care services. However, the limited EU competence does not allow the EU to go beyond strengthening existing non-legislative measures. In the absence of a substantial choice of options, extending the Impact Assessment coverage to those areas would have therefore been disproportionate. Finally, the options presented below are expected to indirectly mitigate some of the other drivers mentioned above such as gender stereotypes and the gender pay gap.

The specific objectives of this initiative are therefore defined as follows:

- to **improve access to work-life balance arrangements** – such as leaves and flexible working arrangements
- to **increase take-up of family-related leaves and flexible working arrangements by men**

Such objectives alone would complement and reinforce other activities taking place at EU-level to support women's labour market participation (see Coherence section below). The specific objectives seek to respond to the drivers set out in the problem definition in the following way:

The availability of leaves and flexible working arrangements have been shown to strongly mitigate the effect of caring responsibilities on women's employment outcomes. By providing parents and carers with tools for greater choice in how to organise work and caring responsibilities these measures avoid that they drop out of the labour market altogether.

Moreover, the use of work-life balance policies by men (i.e. leaves, flexible working arrangements) can help in rebalancing the distribution of care within the household, which usually falls principally on women<sup>219</sup>. However, opportunities and incentives for men to make use of work-life balance arrangements are generally scarce, and their take-up is

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<sup>218</sup> See the European Commission's 2015 Press Release: *Delivering for Parents; Commission withdraws stalled maternity leave proposal and paves the way for a fresh approach*

<sup>219</sup> OECD (2013) Closing the Gender Gap

accordingly low in most Member States. Improving the gender-balanced design of these arrangements can help address this.

Through its general and specific objectives, this initiative also seeks to remedy the negative consequences of women's underrepresentation in the labour market on individuals, businesses and on the wider society. It will seek to contribute to women's higher earnings and career progression, tackling the gender pay gap, pension gap and earnings gap, and enhance well-being for women, men and their children and dependants. It will equally seek to improve businesses' ability to attract and retain workers, reduce skill mismatches, and improve productivity. Finally, this initiative will seek to increase labour supply, ensure greater sustainability of public finances, improve competitiveness and foster overall economic growth.

Finally, it should be clarified that the scope of this initiative is limited to workers with children or dependent relatives, and thus the special situation of the self-employed in balancing work and family life is not considered. That being said, another initiative in the Commission's 2017 Work Programme seeks to address the imbalance in social protection rights between different categories of people in employment, which is to be delivered in the context of the Pillar of Social Rights<sup>220</sup>.

## **5.2. Coherence with other EU policies**

An initiative on to enhance work-life balance and female employment would contribute to the Treaty-based objectives in the area of equality, employment and social cohesion, and would be fully in line with the Charter of Fundamental Rights of the EU according to which equality between men and women must be ensured in all areas, including employment, work and pay.

Such an initiative is coherent with the Commission's political priorities. The first priority for the Juncker Commission, as stated by the President in his Political Guidelines at the beginning of the mandate, is to strengthen Europe's competitiveness and give a new boost to jobs, growth and investment. By addressing women's underrepresentation in the labour market, this initiative aims at promoting higher employment, productivity, competitiveness and overall economic growth. Evidence shows that higher participation of women in the labour market would increase GDP per capita. For instance, halving the gender gap in labour force participation in the OECD would lead to an additional gain of 6% of EU GDP by 2030<sup>221</sup>. It will also contribute to the President's commitment for greater social progress and for Europe to be dedicated to being triple-A on social issues, as much as it is to being triple-A in the financial and economic sense.

This initiative would also be fully consistent with other EU-level initiatives including the forthcoming European Pillar of Social Rights initiative of which it is part, which seeks to

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<sup>220</sup> See Annex 1 of the Commission's 2017 Work Programme, point 11 (COM(2016) 710 final)

<sup>221</sup> OECD (2013) Closing the Gender Gap

strengthen the social dimension of Union and enhance Member States' upward convergence in social performance. It would also help to deliver on the Europe 2020 strategy, notably the targets to increase employment and reduce poverty and social exclusion.

The European Semester process has already given prominence to the issue of work-life balance and female employment. Most recently, the 2017 Annual Growth Survey highlighted the importance of increasing female labour market participation, closing gender pay gaps and enhancing work-life balance. Similarly, the 2017 Joint Employment Report stressed that: *"The employment gap between women and men remains wide, in particular for mothers and women with caring responsibilities. This is compounded by financial disincentives faced by women when entering the labour market or wanting to work more. A significant pay gap is observed in several Member States. Combined with shorter careers, this often translates into lower pensions for women. This indicates that a comprehensive integration of work-life balance considerations into policy making is needed. Access to affordable and quality childcare and other care services, leave and flexible working time arrangements, and tax and benefit systems free of disincentives for second earners to work or to work more is of key importance in order to move towards a full equal treatment of women and support upward social mobility."* Finally, the guidelines for the employment policies of the Member States for 2015 (Council Decision 2015/1848), maintained for 2016, also stressed that *"female participation in the labour market should be increased and gender equality must be ensured, including through equal pay. The reconciliation between work and family life should be promoted (...)*.

Work-life balance policies' key role in the European Semester is also demonstrated by the increasing number of Country-Specific Recommendations (CSRs) on the topic. In 2016, CSRs were addressed to 10 Member States with regard to women's participation in the labour market<sup>222</sup> in particular to address availability of affordable childcare, to address full-time childcare, to improve the provision of long-term care services and to take action to narrow the gender pay and pensions gaps.

Work-life balance also features prominently in the EU's work on gender equality. The Strategic Engagement on gender equality 2016-2019<sup>223</sup> recalls that *"coordinated efforts will be required to facilitate women's labour-market participation. (...) This will involve making it easier to balance caring and professional responsibilities. It also requires a more equal sharing of time spent on care and household responsibilities. The Barcelona targets on childcare must be attained and reflection undertaken with Member States on ways of making them more ambitious and extending them to cover care of other dependants should be considered."*

Finally, work-life balance is also relevant to the Commission's work to address child poverty. The 2013 Commission Recommendation on Investing in Children emphasised the

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<sup>222</sup> AT, CZ, DE, EE, ES, IE, IT, RO, SK, and UK.

<sup>223</sup> [http://ec.europa.eu/justice/gender-equality/files/documents/160111\\_strategic\\_engagement\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/160111_strategic_engagement_en.pdf)

importance of supporting parents' access to employment, including through the promotion of 'a quality, inclusive employment and a working environment that enables parents to balance their work and parenting roles on an equal footing, including through parental leave, workplace support and flexible working arrangements' as well as measures to enhance access to affordable, quality, early childhood education and care services<sup>224</sup>.

## **6. EU COMPETENCE AND ADDED VALUE**

### **1.1. Legal right to act**

The Union's specific right to act in this field is set out in detail in Title X of the TFEU. Article 153 (2) (b) TFEU empowers the European Parliament and the Council to adopt minimum requirements, among others in the field of equality between men and women with regard to labour market opportunities and treatment at work (Article 153(1)(i) TFEU).

### **1.2. Compliance with the principles of subsidiarity**

The principle of subsidiarity requires that the Union shall act only and insofar as the objectives of the proposed actions cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reasons of scale or effects of the proposed action, to be better achieved at Union level (Article 5(3) TEU).

#### *6.2.1 Necessity of Union action*

There is already an EU legislative framework in place in relation to work-life balance policies, illustrating the common agreement that EU level action in this area is necessary and in general in line with the principle of subsidiarity. In addition, the non-legislative dimension of EU policy making is of great importance, in particular where there is no EU competence to legislate (e.g. with regard to childcare). However, both legislative and non-legislative measures proved inadequate and incomplete for dealing with the challenges of managing work and family life in today's economic and social environments. Furthermore, the existing framework is not adequate to address the challenges of tomorrow, which include demographic ageing and an increased number of people with long-term care needs,

Inefficiencies in the labour market continue to persist with many women, especially those with caring responsibilities, either not in paid work or working in jobs below their skill level due to difficulties in balancing work and family life. The burden of caring still falls generally on women. The substantial difference in women's employment rates between Member States shows that the current set of available measures may not be sufficient, not sufficiently implemented and/or enforced in a way that triggers a significant and sustainable change in the labour market patterns and individual behaviours as regards a better share of family responsibilities.

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<sup>224</sup> 2013/112/EU

The modernisation of the existing EU legal framework guaranteeing a level playing field for work-life balance policies can only be achieved by EU-level action, rather than by individual Member States alone. The data presented in in this report indicates wide differences between Member States regarding the policies in place to allow for a work-life balance for working parents and caregivers.

Employers, particularly small and medium-sized enterprises, may be hesitant to provide greater work-life balance measures on their own, given the short-term costs and administrative burdens that may result<sup>225</sup>. This is often reinforced by an under-valuation of the long-term benefits for the companies of work-life balance measures such as a wider pool of talents, a more attractive work-place and an increased productivity of workers. Such undervaluation or lack of knowledge can lead to a market failure<sup>226</sup>. Member States may however hesitate to correct such a failure through regulation in this area because they may perceive a risk of putting their own companies at a disadvantage with companies from other Member States if the work-life balance benefits offered to employees are more generous than in other Member States. Considering that a significant percentage of EU firms' trade is intra-EU, EU-level action could mitigate such concerns and establish a level-playing field while taking into account the need to avoid additional burdens on businesses, particularly SMEs, and ensuring that all Member States move in the same direction.

If no action is taken at EU level, women will continue to face limitations on their involvement in the labour market. This, in turn, may have a negative impact on some Member States' public finances. This is a matter of common concern in an internal market and an Economic and Monetary Union (EMU), particularly having regard to the economic and fiscal challenges of the ageing population and demographic change. Tackling the obstacles to women's employment in Member States could support greater economic and social convergence in Europe and positively contribute to the realisation of the single market and EMU.

EU action can therefore also help to avoid the risk of downward competition between Member States due to concerns about cost-competitiveness and to safeguard the Treaty's objectives of upward convergence of employment, living and working conditions<sup>227</sup>. In addition, a coherent, adequate and complete legal framework at Union level would facilitate the development and growth of cross-border businesses and the mobility of EU workers, thereby contributing to the growth and consolidation of the internal market.

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<sup>225</sup> OECD (2007) *Babies and Bosses*

<sup>226</sup> *Ibid.*

<sup>227</sup> Article 151 of TFEU sets out that the Union and Member States shall have as their objectives the 'promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained.'

### 6.2.2 EU added value

EU action has a strong added-value in addressing the challenges mentioned in the problem definition.

First, the current situation demonstrates that EU action has a strong influence on Member States' legal frameworks. In the policy area covered by this initiative, it is only when EU legislation is in place (i.e., maternity and parental leave) that there is legislation in place in every Member State. On the contrary, in relation to paternity leave, carers' leave and flexible working arrangements for parents and workers with caring responsibilities, there are many Member States where there are either no measures, or measures that are not sufficient to achieve the objectives. Thus, EU action would add value as a catalyst for change and encourage Member States to focus on the long-term bigger picture and the major socio-economic challenges that lie ahead.

Furthermore, when Member States do have legal entitlements, variations between Member States with regard to length and the generosity of the conditions could result in an unbalanced level of rights, an unequal protection for EU citizens across the EU and differences in the functioning of labour markets. Moreover, as EU action stems from a comparative analysis of Member States' experiences, by acting at EU level there is a possibility to build on Member States' recognised good practices and to create a momentum for Member States to advance together towards better outcomes.

Secondly, EU-level intervention could mitigate trends in some Member-States to reduce work-life balance provisions. Indeed, as a result of the recent crisis, policy priorities diverge between Member States, and other issues (particularly those expected to produce short-term benefits) are focussing national authorities' attention. As presented in the Baseline section, evidence shows that in some cases, work-life balance policies have been reduced, with a negative impact on female employment<sup>228</sup>. In such a context, EU action could safeguard a common long-term perspective.

## 7. POSSIBLE OPTIONS FOR EU-LEVEL ACTION

This section outlines non-legislative and legislative options assessed in this report. For each area, the key parameters are identified and a table summarises the baseline scenario as well as potential options of varying levels of ambition. A summary chart explaining the intervention logic for the different options identified is provided at the end of this section. An assessment of the costs and benefits of the various options is presented in Section 8.

### 1.1. Family-related leaves

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<sup>228</sup> European Commission (2013) *The impact of the economic crisis on the situation of women and men and on gender equality policies*



### 7.1.1 Maternity leave

Further EU-level action in the area of maternity leave is considered, since the provision of leave after birth has been shown to be important in allowing new mothers to reconcile their work and caring responsibilities for their new child, and help to ensure that they do not drop out rather than return to work too early.

A non-legislative Option could include measures to prevent against discrimination and unjustified dismissals for mothers returning from maternity leave could be considered. While legislation in this area is currently provided for under EU law, evidence shows that women continue to experience less favourable treatment and dismissal by employers on the ground of maternity. Such treatment can also serve as a general barrier for parents and carers to exercise their rights to work-life balance policies, as they may fear negative repercussions for using them. Such Option could include enhanced enforcement of current legislation and measures to promote awareness-raising among employers and employees, also with a stronger involvement of equality bodies and social partners, leading to a higher degree of enforcement and effectiveness of existing dismissal protection legislation. Sharing of good practices between Member States could be another element of non-legislative action. This non-legislative option was favoured by the employers during the social partner consultation.

This non-legislative Option could also provide EU-level policy guidance and promote better awareness-raising and the sharing of good practices on facilitating successful transitions between maternity leave and employment, for instance by encouraging employers to introduce "keep-in-touch" days and breastfeeding facilities at the workplace. This non-legislative option stems from the employers' responses<sup>229</sup> to the second-stage social partner consultation in which they presented their doubts on the need for further legislative action in this area.

Several options for additional legislative action have also been considered. Overall, the following parameters have been considered:

- arrangements to enable breastfeeding mothers to work;
- the level of payment or allowance for part of the leave
- *length (discarded)*
- *dismissal protection (discarded for legislative options)*

A first parameter consists in measures to facilitate successful transitions between maternity leave and employment. Such transitions can sometimes prove difficult, especially when a

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<sup>229</sup> See for instance Business Europe (2016) *Addressing the challenges of work-life balance faced by working parents and caregivers- BusinessEurope's response to second stage social partners' consultation*, UEAPME (2016), *UEAPME Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers* and CEEMET (2016) *CEEMET Response, Second Stage Social Partner Consultation on Possible action addressing the challenges of work-life balance faced by working parents and caregivers*

mother returns to work while still *breastfeeding*, which can hamper female participation in the labour market. Such measures were called for by trade unions<sup>230</sup>.

Increasing pay for at least the compulsory period of leave is also considered as a parameter as it could provide additional income protection for women for whom this leave is compulsory, thereby supporting new mothers. This parameter stems from the European Parliament's call<sup>231</sup> on the Commission and the Member States to strengthen women's social and economic independence and avoid them being financially penalised for having children.

A third parameter that is relevant but has been discarded from further analysis is the *length* of maternity leave. In its response to the second stage social partner consultation, ETUC has stated that it is in favour of an extension of the length of the leave from 14 to 18 weeks<sup>232</sup>. In this context, it is useful to recall the 2008 Commission proposal to extend the length of maternity leave from 14 to 18 weeks. As mentioned earlier in this document<sup>233</sup>, the consideration of length was one of the most contentious aspects in discussions among Member States in the Council. Several Member States, including Sweden<sup>234</sup>, as well as EU employers have stressed that extending leave entitlements only for women could risk further entrenching women's roles as primary carers. Providing greater opportunities for women and men to share leaves would have a more positive effect of reducing the imbalance in caring responsibilities between women and men, and could have a positive effect on mothers' employment. Therefore this document sets out new options that would allow for a better sharing of care responsibilities.

Another parameter that has been discarded from further analysis on EU-level legislative action is *dismissal protection*. As already mentioned in the EU context section, various Directives provide for protection against dismissals and unfavourable treatment on the ground of maternity leave and other family-related leaves. While many stakeholders show that discriminatory practices on the basis of taking maternity leave are still present in the EU<sup>235</sup>, the evaluation of the Maternity Leave Directive<sup>236</sup> shows that this is mainly a problem of compliance as not all employers respect the legal rules transposed by the Member States in this field rather than a problem with the legal provisions themselves.

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<sup>230</sup> ETUC (2016) *Proposal for an ETUC Position on the 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*

<sup>231</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI))

<sup>232</sup> ETUC (2016) *Proposal for an ETUC Position on the 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*

<sup>233</sup> See Section 2.2

<sup>234</sup> Letter from the Government of Sweden to Commissioner Ms Vera Jourovà, "Parental leave-Swedish perspective on the key principles for the way ahead", 08.06.2015

<sup>235</sup> See for instance ETUC (2016) *Proposal for an ETUC Position on the 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*

<sup>236</sup> See Annex 5

Furthermore, the case-law of the Court of Justice of the European Union has clarified that preparatory measures for dismissal and dismissals for reasons of pregnancy or maternity leave, even after the period of maternity leave, are prohibited<sup>237</sup>. While the extension of the level of protection related to maternity leave via legislative change is considered unnecessary as relevant provisions are already in place, non-legislative measures, including policy guidance and awareness-raising measures, to support the enforcement of the current legislation could be effective in addressing the problem mentioned above. Therefore only non-legislative measures are presented in the field of dismissal protection. This addresses the doubts and reservations raised by employers during the social partner consultation on whether further EU legislation is needed to enhance the protection of employees. Employers considered further legislative action unnecessary given that there is already existing legislation in this area and it could risk in creating additional administrative burden for companies.

**Options under assessment:**

<b>Baseline</b>	<b>Non-legislative option</b>	<b>Option 1</b>	<b>Option 2</b>
Directive 92/85:  - 14 weeks  - Paid at least at the level of sick pay  - Dismissal protection from the beginning of their pregnancy until the end of maternity leave  Directive 2006/54: Prohibition of discrimination of pregnant workers or mothers because they were pregnant or took maternity leave  Case-law of the	Baseline, plus:  Enhanced enforcement of current legislation on dismissal protection  Policy guidance and awareness-raising on dismissal protection of pregnant women  Policy guidance and sharing of good practices on facilitating successful transitions between maternity leave and employment (including on breastfeeding	Baseline, plus:  Entitlement for breastfeeding mothers to breaks of at least 1 hour per full working day  Requirement for employers to provide facilities for breastfeeding	Same as Option 1, plus:  First two weeks (compulsory period) to be fully paid

<sup>237</sup> See notably Case C-460/06 Paquay , 11 October 2007, ECLI:EU:C:2007:601.

Court of Justice: Prohibition of preparatory measures for dismissal and dismissal for reasons of pregnancy or maternity leave, even after the period of maternity leave	breaks and facilities)		
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### 7.1.2. Paternity leave

Further EU-level action in the area of paternity leave is considered, given that paternity leave has been shown to be a useful tool in helping fathers engage in caring responsibilities around the time of the arrival of a new baby. It can hence participate in reducing the unequal division of work and care between parents.

In terms of a non-legislative option, EU policy guidance could acknowledge the impact of paternity leave on gender equality in the labour market and set out key parameters for its successful implementation of leave at national level<sup>238</sup>. Policy guidance on paternity leave could be accompanied by enhanced coverage in the European Semester. Such a non-legislative option is considered in light of the employers' opposition to the introduction of an EU wide paternity leave entitlement<sup>239</sup> and their support of non-legislative initiatives encouraging a change in societal perceptions regarding caring responsibilities<sup>240</sup>. They consider that the absence of paternity leave in some Member States does not imply that fathers do not have the opportunity to make use of an appropriate leave entitlement (such as parental leave) to participate in family responsibilities and that an EU wide provision could lead to unnecessary additional costs for companies.

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<sup>238</sup> The parameters are described below in the section on potential legislative proposals.

<sup>239</sup> See for instance Business Europe (2016) *Addressing the challenges of work-life balance faced by working parents and caregivers- BusinessEurope's response to second stage social partners' consultation*, UEAPME (2016), *UEAPME Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers* and ECEG (2016) *ECEG's response to the 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*

<sup>240</sup> See for instance CEEMET (2016) *CEEMET Response, Second Stage Social Partner Consultation on Possible action addressing the challenges of work-life balance faced by working parents and caregivers*

Several legislative options have also been considered, all of which would introduce a legal entitlement to paternity leave. The following parameters have been considered for such options:

- length
- the level of payment or allowance

The *length* determines how much leave men can take to get involved in childcare at an early stage, also as this is important for how involved they will be in caring throughout the child's life. *Payment* is also considered as a parameter, as it provides income protection for fathers after having children and has also been shown to increase the likelihood of fathers making use of this leave. While the European Parliament calls on the Commission to propose a paternity leave directive with a minimum of a compulsory two-week fully paid leave<sup>241</sup>, trade unions consider it should be paid at the same rate as earnings-related maternity leave or earning-related income replacement for women on maternity leave, which is referred to below as “sick pay level”<sup>242</sup>.

**Options under assessment:**

<b>Baseline</b>	<b>Non-legislative Option</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
No right to paternity leave at EU level	Policy guidance on key parameters for the successful implementation of paternity leave  Enhanced European Semester coverage on paternity leave entitlements and take-up	Individual right to one week of paternity leave  Unpaid	Individual right to one week of paternity leave (5 working days)  Compensated at least at sick pay level	Individual right to two weeks of paternity leave (10 working days)  Compensated at least at sick pay level

<sup>241</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI))

<sup>242</sup> See for instance ETUC (2016) *Proposal for an ETUC Position on the 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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### 7.1.3 Parental leave

Further EU-level action could be considered in the area of parental leave, given that this type of leave has been shown to be very beneficial in allowing parents to reconcile work and family life. A balanced use of this leave between parents has been shown to have positive impacts on the distribution of care in the household and, in turn, supports female employment. However in several Member States, leave is unpaid or paid at a very low level, making it difficult for some parents to afford making use of their parental leave entitlements. Moreover, fathers are far less likely to use the leave than mothers when it does not provide a sufficient level of pay or when the leave is not reserved for them, which can lead to the majority of caring responsibilities to fall upon women, and in turn negatively impact their employment outcomes.

As a non-legislative option, EU policy guidance could acknowledge the impact of parental leave on gender equality in the labour market and determine key parameters for its successful implementation at national level<sup>243</sup>. Such policy guidance on parental leave could be accompanied by specific benchmarks, for instance on the take-up of family-related leaves by women and men or payment levels/replacement rates. Such benchmarks could be coupled with enhanced monitoring in the European Semester. This non-legislative option stems from the employers' statement that the current design and content of the Parental Leave Directive are flexible enough to be adapted at national level<sup>244</sup>.

Several options to improve the legislative provisions on parental leave at EU level could be considered<sup>245</sup>. Such options could be focussed on better enabling parents to make use of their rights to leave and introducing greater incentives for fathers to make use of their entitlements. The following parameters have thus been considered:

- the level of payment or allowance
- degree of transferability between parents
- possibility to take leave on a flexible basis
- maximum age of the child

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<sup>243</sup> The parameters are described below in the section on potential legislative proposals.

<sup>244</sup> See for instance Business Europe (2016) *Addressing the challenges of work-life balance faced by working parents and caregivers- BusinessEurope's response to second stage social partners' consultation*, UEAPME (2016), *UEAPME Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers* and ECEG (2016) *ECEG's response to the 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*

<sup>245</sup> The current level of existing rights currently available to working parents shall be maintained and future legislative action shall not reduce the general level of protection afforded to workers in the field covered by the Parental Leave Directive 2010/18/EU.

- *length (discarded)*

*Payment* enables parents to make use of their parental leave entitlements and, as shown in the German example of the introduction of paid parental leave in 2007 mentioned earlier<sup>246</sup>, it is a strong factor in fathers' take-up of parental leave. With this aim, trade unions have called for adequate pay or salary replacement for parental leave<sup>247</sup>. The European Parliament has also stressed the need for an adequate level of income replacement in order to incentivise men to take leave<sup>248</sup>.

As mentioned in the problem definition, when leave is *non-transferable* (i.e., earmarked for each parent), it can encourage a greater sharing of leave arrangements between parents and support women's faster return to the labour market after having children. As shown in the problem definition, Member States, such as Sweden, that have ear-marked leaves for fathers have the highest take-up rates of parental leave by men. In this context, trade unions have called on the Commission to increase the current non-transferable period of leave<sup>249</sup>. The European Parliament also reiterates that a significant part of the leave should be non-transferable.<sup>250</sup>

Giving the choice for parents to take leave on a part-time or piecemeal basis can also give parents greater *flexibility* in balancing work and care responsibilities, facilitate the maintenance of parents' connections to the labour market during leave, and promote greater take-up of these leaves by fathers. Trade unions and the European Parliament stress that parents should be given flexibility in the use of parental leave.

Allowing parents to take parental *leave up to when their children are 12 years old* gives more possibilities for parents to take part of their parental leave entitlement when their children grow up, for example to cover school holidays or other periods when children would need care. This would also increase the general flexibility for parents as to when and

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<sup>246</sup> See Section 3.2.2 Root cause 2: Ill-designed work-life balance policies

<sup>247</sup> See for instance ETUC (2016) *Proposal for an ETUC Position on the 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*, CEMR (2016) *CEMR Response to the 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* and CESI (2016) *Answer to second-phase social partner consultation, Challenges of work-life balance faced by working parents and caregivers*.

<sup>248</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI))

<sup>249</sup> See for instance ETUC (2016) *Proposal for an ETUC Position on the 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*, CEMR (2016) *CEMR Response to the 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* and CESI (2016) *Answer to second-phase social partner consultation, Challenges of work-life balance faced by working parents and caregivers*.

<sup>250</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI))

for how long to take parental leave; it could encourage more fathers to take parental leave, as the period during which they can take leave would be longer. It would also support parents who would prefer to take shorter periods of parental leave over time, rather than a longer period when their child is young. The age limit of 12 years was chosen because it allows parents to accompany their children in a crucial period of their life: when they gain greater autonomy and integrate into secondary school.

The *length* of leave was not considered as a relevant parameter given that there is no definitive evidence that a longer parental leave would help to further facilitate women’s labour market participation. The combined period of EU minimum standards for parental leave period (4 months) and maternity leave period (14 weeks) already exceed 6 months, and some evidence shows that the positive effects of leave on women’s labour market participation begin to diminish after such a period<sup>251</sup>.

**Options under assessment:**

<b>Baseline</b>	<b>Non-legislative Option</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<p>Individual right to four months’ parental leave per parent, per child</p> <p>For parents of children up to an age determined by the Member States up to eight years</p> <p>One month in principle non-transferable</p>	<p>Policy Guidance on key parameters for the successful implementation of parental Leave</p> <p>Benchmark on gender-balanced take-up of parental leave</p> <p>Enhanced European Semester coverage on parental leave entitlements and take-up by women and</p>	<p>Baseline, plus:</p> <p>Entitlement to flexible uptake (part-time, full-time, time-credit, one or more block)</p>	<p>Entitlement to flexible uptake: same as option 1</p> <p>Payment for one (non-transferable) month paid at least at sick pay level</p> <p>Rise of maximum age of the child from 8 to 12</p>	<p>Entitlement to flexible uptake: same as option 1</p> <p>Four months reserved for each parent</p> <p>Payment at least at sick pay level of the four months</p> <p>Rise of maximum age of the child from 8 to 12</p>

<sup>251</sup> Plantenga (2015) *Searching for welfare, work and gender equality*



	men			
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#### 7.1.4 Carers' leave

Carers' leave can be helpful in improving work-life balance for workers with an elderly, disabled or ill relative (children, parents and spouses), by allowing them to take a temporary leave of absence in order to provide support or care for them, or have time to arrange formal long-term care services. It reduces the risk of workers dropping out of the labour market altogether due to caring obligations, especially for women.

As a non-legislative option, EU policy guidance could acknowledge the impact of carers' leave on gender equality in the labour market and determine key parameters for its successful implementation at national level<sup>252</sup>. Policy guidance on carers' leave could be accompanied by enhanced coverage in the European Semester. The non-legislative option on carers' leave takes into account employers' views that new provisions on carers' leave might create new hurdles for employment and push more women out of the labour market as they would be the first users of such leaves<sup>253</sup>.

Several legislative options have also been considered, all of which would introduce a legal entitlement to carer's leave. This follows calls from the European Parliament and the European Advisory Committee for equal opportunities between women and men for an EU-level carers' leave entitlement in order to give workers more flexibility in order to better balance their professional and caring responsibilities<sup>254</sup>. Trade unions also support the project of introducing carers' leave at EU-level<sup>255</sup>. The following parameters have been considered for such options:

- length
- the level of payment or allowance

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<sup>252</sup> The parameters are described below in the section on potential legislative proposals.

<sup>253</sup> See for instance Business Europe (2016) *Addressing the challenges of work-life balance faced by working parents and caregivers- BusinessEurope's response to second stage social partners' consultation* and UEAPME (2016), *UEAPME Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers*

<sup>254</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI)) and see Annex 2 on stakeholders consultations

<sup>255</sup> See for instance ETUC (2016) *Proposal for an ETUC Position on the 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*, CEMR (2016) *CEMR Response to the 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* and CESI (2016) *Answer to second-phase social partner consultation, Challenges of work-life balance faced by working parents and caregivers*.

- possibility to take leave on a flexible basis.

The different *length* options presented below represent the variety of provisions in place in EU Member States<sup>256</sup>. Remuneration *of leave* could increase the likelihood of carers in general and men in particular to make use of the leaves. EU trade unions call for carers' leave to be designed as much as in a gender-neutral way as possible, which financial support could help to ensure. Unions have also stressed that such a type of leave should be as *flexible* as possible for the workers to truly be able to balance their professional and caring responsibilities<sup>257</sup>. This is why the possibility to take carers' leave on a flexible or part-time basis is also considered as a parameter in the options presented below.

In all options, this leave would be a conditional right subject to an appropriate justification, to be decided by Member States and/or social partners (e.g., medical certificate).

Furthermore, in line with other family-related leaves, a standard provision on the protection of the employment rights of workers taking such leave against any less favourable treatment on this ground would also apply. Considering the short length of the leave options provided below, the risk of less favourable treatment was estimated as low and this parameter was not included in the quantitative assessment. However, such a standard provision would ensure policy coherence between all the family-related leave measures at EU level.

#### Options under assessment:

Baseline	Non-legislative Option	Option 1	Option 2	Option 3
Entitlement to time off work on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable	Policy Guidance on key parameters for the successful implementation of carers' leave  Enhanced European Semester coverage on carers' leave entitlements and	Individual entitlement to 12 weeks' leave per worker throughout the career  Unpaid  Entitlement to flexible uptake (part-time, full-time, time	Individual entitlement to 4 weeks' leave per worker throughout the career  Paid at least at sick pay level  Entitlement	Individual entitlement to a short-term leave of 5 days, per year, per child or dependent relative  Paid at least at sick pay level

<sup>256</sup> See legal baseline in section 2.1.6 of the supporting study

<sup>257</sup> See for instance CESI (2016) *Answer to second-phase social partner consultation, Challenges of work-life balance faced by working parents and caregivers.*

	take-up by women and men	credit, one or more blocks)	to flexible uptake as in option 1	
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## 1.2. Flexible working arrangements for parents and carers

Flexible working arrangements, such as flexible working schedules, remote working arrangements and part-time work, have been shown to be useful in allowing parents and people with caring responsibilities to reconcile work and family responsibilities and in retaining many women with children or dependent relatives in employment.

A non-legislative option on flexible working arrangements is considered. This option could contain EU-level policy guidance to promote improvements in entitlements to flexible working arrangements and also promote a balanced take-up of these arrangements by women and men, to ensure that they do not reinforce gender-biased practices. Such policy guidance could, as Business Europe proposes<sup>258</sup>, build upon the EU social partners' agreement on telework<sup>259</sup> as a basis. Policy guidance could be accompanied by specific benchmarks, for instance on the take-up of flexible working arrangements by women and men and enhanced monitoring in the European Semester.

Several options to improve the EU legislative provisions for flexible working arrangements, currently provided for under the Parental Leave Directive and in the area of protection against discrimination under the Part-Time Work Directive, are also considered. The following parameters have been considered for such options:

- the scope of the concerned population (e.g., parents, people with dependent relatives)
- the type of flexibility (e.g., flexible working schedules, remote working, part-time work)
- *extension of the level of the right to request as an absolute right (discarded)*

It could be considered to extend *the scope* of the right to request flexible working arrangements currently provided for by the Parental Leave Directive and have the right

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<sup>258</sup> Business Europe (2016) *Addressing the challenges of work-life balance faced by working parents and caregivers- BusinessEurope's response to second stage social partners' consultation*

<sup>259</sup> ETUC, UNICE, UEAPME, CEEP, *European Framework Agreement on Telework*, 2002

duly considered, as currently this right only exists in EU legislation for parents returning from parental leave. Parents who are not on leave, or other types of workers with dependent relatives, could also strongly benefit from such increased flexibility in order to better balance work and care responsibilities.

*The type of flexibility* is also important to consider in the different options. Enhancing flexibility in working patterns and in the place of work (i.e., remote working) could be helpful in retaining some parents and carers, particularly women in full-time employment. Part-time work is also a popular form of flexible work among many parents and carers; however as part-time work is disproportionately used by women, and is accompanied by reduction in earnings, it is not foreseen for all of the different options.

An *extension of the level of the right to request flexible working as an absolute right* for employees was not considered as a parameter, as it would create serious restrictions for employers to determine how work is organised in a firm. This is in line with employers' responses to the social partner consultation on work-life balance<sup>260</sup>, as well as discussions held with SME representatives<sup>261</sup>. The options below therefore foresee the right to request such arrangements and to have the request duly considered by the employer, in order to preserve a balance between employees' and employer's needs.

Under all the options, workers requesting flexible working arrangements would be protected against discrimination on this ground.

**Options under assessment:**

<b>Baseline</b>	<b>Non-legislative Option</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Right for parents to request flexible working arrangements when returning from parental leave by requesting changes to their	Policy Guidance on key parameters for gender-balanced take-up of flexible working	Right for parents of children up to age 12 or carers <sup>262</sup> to request <u>flexibility in place of work</u> for a set period	Right for parents of children up to age 12 or carers <sup>263</sup> to request <u>flexibility in working schedule</u> for a set period of	Right for parents of children up to age 12 or carers <sup>264</sup> to request <u>flexibility in working hours, schedule or</u>

<sup>260</sup> See for instance UEAPME (2016), *UEAPME Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers*

<sup>261</sup> See Annex 2 on stakeholders consultation for more information.

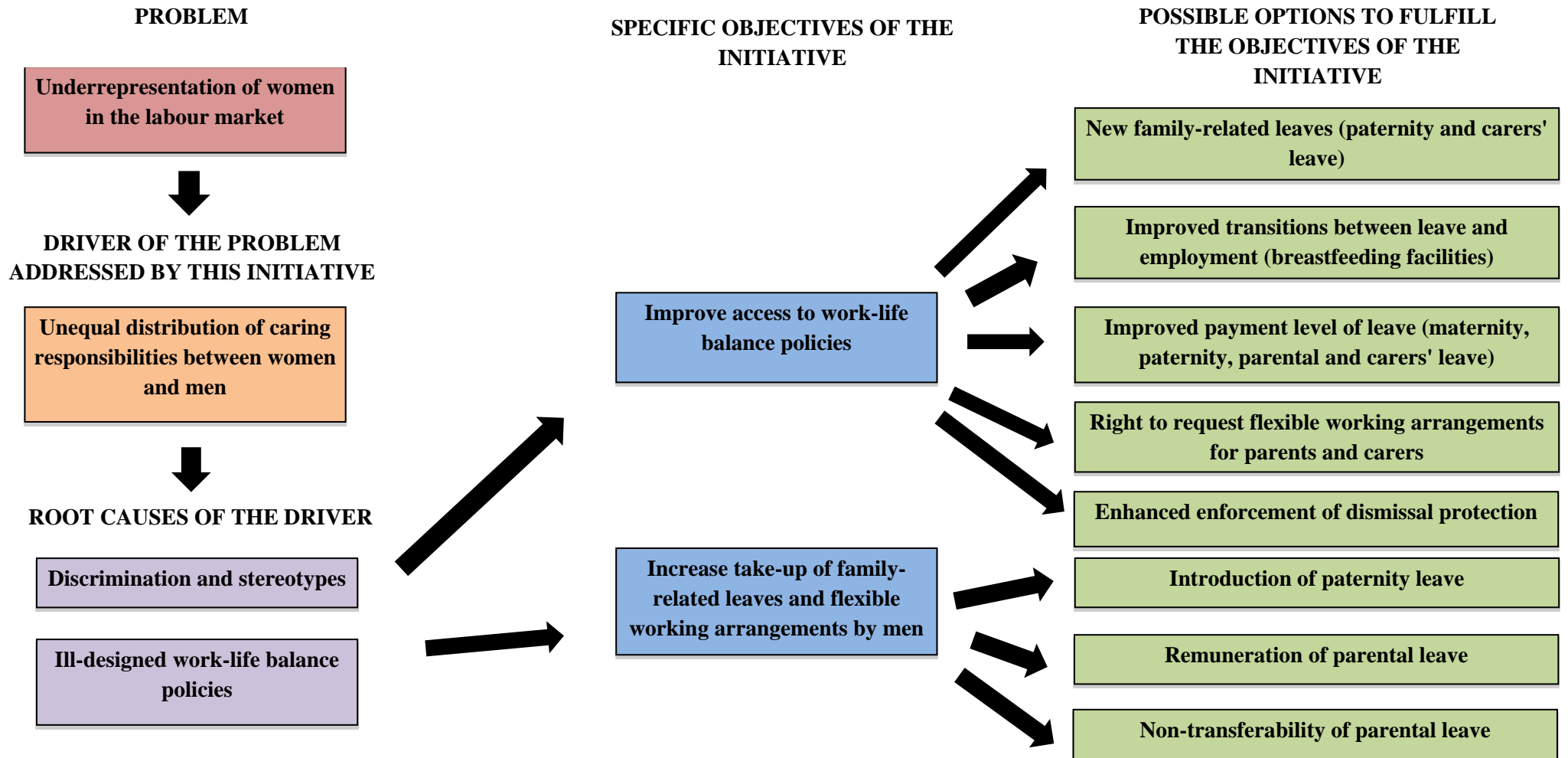
<sup>262</sup> Defined for purpose of evaluation as parents of children up to the age of 12 and carers in the situations that also give rise to carers' leave.

<sup>263</sup> Idem

<sup>264</sup> Idem

<p>working hours and/or</p> <p>Patterns for a set period of time and have such requests duly considered by the employer, taking into account both employers' and workers' needs</p>	<p>arrangements</p> <p>Enhanced European Semester monitoring on the take-up of flexible working arrangements by women and men</p> <p>Benchmark on gender-balanced take-up of flexible working arrangements</p>	<p>of time</p> <p>In line with current provisions, the employer has to consider the request and reply, no obligation to grant the requested change</p>	<p>time</p> <p>In line with current provisions, the employer has to consider the request and reply, no obligation to grant the requested change</p>	<p><u>place of work</u> for a set period of time</p> <p>Automatic right to return to the previous working hours</p> <p>In line with current provisions, the employer has to consider the request and reply, no obligation to grant the requested change</p>
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**7.3 Intervention logic of options** (The non-legislative measures in the areas of formal care services and economic disincentives were not assessed in this report, see section 5.1)



## **8. EXPECTED IMPACTS OF THE DIFFERENT POLICY OPTIONS AND HOW THEY COMPARE**

Expected impacts are quantified where possible and details on the methodology used are provided in Annex 4. Important efforts have been done to collect the necessary data, however data available in this area is scarce. Many Member States do not collect administrative data on the use of various types of leave by sex and number of days. Data on the employment status of informal carers is also scarce. Nevertheless, data and robust evidence are available for several countries which underpin the assessment of impacts and allow overcoming certain data limitations, either by extrapolating data or by using assumptions based on the relevant economic literature. The limitations of such assumptions, especially when behavioural (on increase in take-up of entitlement rates for example), should be duly noted<sup>265</sup>.

The impact on companies and Central governments are presented in Net Present Value over the 2015-2055 period in order to take into account the impact on long-term trends such as increases in take-up due to reinforced incentives to take leave (e.g. compensation). In general it should be noted that while the costs of work-life balance policies arise in the short to medium term (payment of benefits, lost production due to leave or reduced working hours, administrative costs, etc.) the benefits take more time to materialise (reduced absence from work, reduced cost of healthcare, reduced recruitment costs, increase in tax revenues and decrease in payment of unemployment benefits, etc.). Despite the fact that the below calculations show that the annual cost per business are expected to be moderated, they might impose a burden in the short-term for the smallest enterprises.

A qualitative assessment of impacts is also provided, to complement the quantitative analysis where necessary and give a more complete picture of the overall costs and benefits of the options outlined. This is because the immediate costs in a quantitative cost-benefit analysis are often better known than the benefits, such as increased production arising because of increased female labour market participation and thus employment, production and income. In addition, the benefits will typically take longer to materialise, e.g. the positive impact of increased female labour market participation in economic growth. Hence, there can be a tendency that more costs are quantified than benefits, or that costs can be more easily and precisely quantified than benefits, so there could be a bias towards a negative result.

Non-legislative options have been assessed only qualitatively as their impacts will depend on the degree in which Member States follow the corresponding EU guidance or recommendations.

The assessment is presented for the various stakeholders: individuals, companies and Member States. This assessment (including the calculations of the financial impact) results

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<sup>265</sup> A simulation taking into account an alternative take-up scenario in relation to parental leave can be found in section 8.3.3

from ICF's overview of existing provisions in each Member State and the legal gap analysis that was achieved in the supporting study of this report (See table at the end of section 8 summarising ICF's legal gap analysis and Annexes 1 and 2 of the supporting study). The introductory paragraphs to each sub-section reflect the Commission's understanding and best knowledge of the legal gap analysis for each assessed option. The following assessment also results from a series of evidence-based assumptions (see Annex 3 of the supporting study). This section presents the impact of the measures on the EU in general and on clusters of Member States defined according to the degree in which they reach the requirements of the options<sup>266</sup>. The impact of the measures on individual Member States can be found in Annex 8 of the supporting study.

In many Member States, particularly those with a strong tradition of cross-sectoral or sectoral collective bargaining, collective agreements can play a significant role in enhancing leave or flexible working arrangements provided in law. For example, in Denmark, many collective agreements provide for 100% payment of salary during paternity leave. However, it should be noted that this assessment is based on the existing legal provisions only and does not take into account the collective agreements that may exist in the Member States. Also, in some Member States entitlements vary between the public and the private sectors. In Portugal for example, while carers' leave is unpaid in the private sector, public sector employees receive 65% of their previous salary. In these cases this assessment is based on the rights of workers in the private sector. Therefore, the legal gap analysis for some Member States is stricter than the reality of a majority of workers' entitlements and in consequence the impacts of the measures are most likely over-estimated<sup>267</sup>. The assessment is first made by policy area and then for a combination of measures across different areas.

## 8.1 Maternity leave

The non-legislative option would not require Member States to change their maternity leave legislation. Option 1 would require some Member States<sup>268</sup> to introduce breastfeeding breaks and a majority of Member States<sup>269</sup> to introduce a requirement for employers to provide facilities for breastfeeding. In addition to the changes required in Option 1, Option 2 would require Member States to slightly increase their level of payment

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<sup>266</sup> The clusters of Member States are defined for each option in each area. Member States are distributed as follows: Countries which meet or exceed the requirements of the option; Countries which fall somewhat below the requirements of the option; Countries which have no current provisions or fall significantly below the requirements of the option. More information on the approach to clustering the Member States can be found in Annex 13 of the supporting study.

<sup>267</sup> A simulation taking into account collective agreements in NL in relation to parental leave can be found in section 8.3.3

<sup>268</sup> This could require changes in Member States such as DK, FI, MT, UK

<sup>269</sup> This could require changes in Member States such as CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IT, LT, LU, MT, PL, PT, SE



(all Member States have provisions in place providing for pay at least at the level of sick pay)<sup>270</sup>.

### *8.1.1 Impacts on individuals*

With the non-legislative option, more women would be expected to remain employed after maternity leave compared to the baseline, due to facilitated transitions between leave and employment. Encouraging Member States to put in place measures to support new mothers' return to employment, such as installing breastfeeding facilities in companies, could help limiting the period of time during which women are out of the labour market. This is because improved breastfeeding provisions would reduce work-life balance conflict and support a return to work at the end of maternity leave when it is desired, as women who wish to breastfeed for a longer period would not be compelled to take leave while breastfeeding<sup>271</sup>. This will hence positively influence their career progression and decrease their chances of dropping out. This would promote equality between women and men in the labour market, and also improve the income security of families and their well-being.

The non-legislative option would also be expected to support women's participation in the labour market due to a better enforcement of the EU legal framework on dismissal and discrimination protection of workers taking maternity leave.

With Option 1, more women would remain employed after maternity leave compared to the baseline and the non-legislative option, as its binding nature will lead to an increased implementation of two measures, which can facilitate transitions between and leave and employment: breastfeeding breaks and breastfeeding facilities. Introducing legal provisions would lead to a higher impact on promoting equality between women and men in the labour market, and improving the income security and well-being of the concerned families.

Option 2 would have slightly higher benefits on individuals compared to the other options due to the provision of full pay for the compulsory period of maternity leave (2 weeks). This would lead to an increase in income security, with real incomes increasing by 0.01% by 2050.

By helping women to return to employment after having children, all EU action options would have a positive impact on reducing poverty risks of women and their families<sup>272</sup>. While Option 2 provides for additional income replacement for the first two weeks (full pay instead of sick pay level), given the short period it is unlikely that it will lead to a substantial additional poverty risk reduction vis-à-vis the other options.

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<sup>270</sup> This could require changes in Member States such as BE, BG, CY, CZ, DK, EL, FI, HU, IE, IT, LV, RO, SE, SK, UK

<sup>271</sup> Vaganay Canónico, Courtin (2016) Challenges of work-life balance faced by working families: review of Costs and Benefits, Evidence Review, London School of Economics.

<sup>272</sup> European Commission (2016) Employment and Social Developments in Europe 2015

All EU action options could also have a positive impact on children's health and well-being as breastfeeding is facilitated.

### *8.1.2 Impact on companies*

Relative to the baseline, both the non-legislative option and Option 1 are expected to lead to higher productivity, as skilled workers would be more likely to return to employment after maternity leave, and to lower recruitment costs, as companies avoid the costs related to having to hire and train new workers. Companies would also benefit from mothers taking less absence from work due to the impact of breastfeeding provisions on health. For Option 1 there would be an adjustment cost to purchase equipment to facilitate breastfeeding (e.g., fridges) estimated at € 40 per business in the first year of legislation. However after this initial cost the benefits are estimated to outweigh the costs. There could be an additional cost of reserving space for a room for breastfeeding. If a room of 2.5 square meters was needed exclusively for breastfeeding, the cost to businesses would be €521 million per year (using 2015 prices). However, it has been assumed that the room with facilities for breastfeeding can be used for other purposes as well, and that therefore there is no additional real estate cost linked to the presented Options. This leads to an average net benefit of €8 per business in 2050 for Option 1 compared to the baseline. In total in the EU, Option 1 would result in a net benefit for companies of € 1 029 million over the 2015-2055 period.

As the additional maternity benefits payments will be borne by Member States/Social security partners, Option 2 would have similar impacts on companies as Option 1. In total in the EU, both Options would result as well in a net benefit for companies of € 1 029 million over the 2015-2055 period as well.

In both Options 1 and 2 overall benefits arise to business from these policy changes (€ 1029 million). Member States which do not have related provisions or fall significantly below the requirements of the options<sup>273</sup> make up 11% of this positive impact in Option 1, and 9% of this positive impact in Option 2.

An assessment of the **cost for micro-businesses** shows that the cost of both policy options represents a very small share of the companies' total turnover (equal or under 0.5% of turnover in all countries except for NL where it is 1.2%)<sup>274</sup>, and very close to the level of cost under the baseline. Therefore the policy options do not disproportionately affect the performance of SMEs.

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<sup>273</sup> In Option 1: DK, FI, MT in Option 2: CZ, DK, FI, HU

<sup>274</sup> The costs as a percentage of turnover for microbusinesses (with fewer than 10 employees) is presented in Annex 9 of the supporting study

Table 1: Estimated impact of maternity leave options on companies, relative to the baseline (EU)<sup>275</sup>

	<b>Option 1</b>	<b>Option 2</b>
Retention of workers	+ € 1667 million	+ € 1667 million
Less absence from work	+ € 133 million	+ € 133 million
Purchase of fridge	- € 771 million	- € 771 million
<b>Total impact on companies, NPV 2015-2055</b>	+ € 1029 million	+ € 1029 million
<b>Total impact/company in 2030/2050</b>	+ € 4/+ € 8	+ € 4/+ € 8

### 8.1.3 Impact on Member States

Option 1 would have a small positive **budgetary impact** on Central Governments compared to the baseline through reductions in unemployment benefit payments and increased taxes, which are driven by higher employment and earnings. In both options, breastfeeding provisions are assumed to support breastfeeding, which provides health benefits to mothers and children. Option 2 entails a rise in maternity leave benefit payments for two weeks in some Member States<sup>276</sup> and hence has a small negative budgetary impact on Central Governments.

There is no change in administrative burden for central governments or social security providers under any option, as there would be no change in maternity leave take-up.

The total impact on Central Government and social security providers is a net benefit of €5.8 billion in Option 1, as positive impacts on health care systems and improved tax revenues exceed any costs arising from increased unemployment benefit payments, and a net cost of €2.4 billion in Option 2 (mainly arising from additional benefit payments). In terms of the impact on the different clusters of Member States, in Option 1, the Member States which do not have no currently provisions<sup>277</sup> account for 7% of the benefit to Central Government budgets. The Member States which fall somewhat below the requirements<sup>278</sup> make up a further 67% of the benefit. In Option 2 the Member States which already meet the requirement<sup>279</sup> only have a (significant) positive impact on Central Governments budgets. The other Member States register costs to the State.

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<sup>275</sup> The increased retention of workers and the decrease in absence from work are due to the measures to facilitate work for breastfeeding measures

<sup>276</sup> BE, BG, CY, CZ, DK, EL, FI, HU, IE, IT, LV, RO, SE, SK, UK

<sup>277</sup> DK, FI, MT

<sup>278</sup> CY, CZ, DE, EE, EL, ES, HR, HU, IT, LT, LU, PL, PT, SE, UK

<sup>279</sup> AT, FR, NL, SI

Table 2: Estimated impact of maternity leave options on Member States, relative to the baseline (EU)<sup>280</sup>

	<b>Option 1</b>	<b>Option 2</b>
Healthcare	+ € 3.3 billion	+ € 3.3 billion
Changes in tax revenue	+ € 4 billion	+ € 5.5 billion
Payment of unemployment benefits	- € 1.5 billion	- € 1.8 billion
Payment of maternity benefits	€ 0	- € 9.5 billion
<b>Total impact on government/social security, NPV 2015-2055</b>	<b>+ € 5.8 billion</b>	<b>- € 2.4 billion</b>

In terms of **macroeconomic effects**, all options would result in an increase in labour market participation and in an increase in working hours, due to improved breastfeeding provisions for working mothers.

Compared to the baseline, in 2030, the provisions foreseen in Options 1 and 2 would result in a small increase in total employment ranging between 4 000 (Option 1) and 5 000 (Option 2). The increase in employment and increase in pay for women whilst on leave would lead to an overall increase in real incomes by between €0.2 billion (Option 1) and € 0.8 billion (Option 2) in 2030. Women’s full-time employment after maternity leave would also be expected to improve.

Employment increases due to provisions for breastfeeding that facilitate mothers return to employment after taking maternity leave. There is a further multiplier effect due to the increase in incomes and consumer expenditure which leads to an increase in output and GDP. Over the 2015-2055, the positive impact of the measures on GDP is estimated to range between € 8.3 billion in Option 1 and € 13.3 billion in Option 2. For Option 2, around 81% of the positive impact on GDP would be concentrated in Member States which fall somewhat below the requirements of this option and represent 71% of MS<sup>281</sup>. Around 9% of the GDP increase will be concentrated on the 4 countries where measures ranked as currently falling substantially below the requirements<sup>282</sup>.

Both options have a positive impact on **competitiveness**. In both options in 2030 increase in net exports is estimated at € 0.1 billion and domestic prices would decrease by 0.1%

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<sup>280</sup> The decrease in healthcare expenditure is due to the breastfeeding provisions which enable more mothers to continue breastfeeding while working, the increase in tax revenue is due to an expected decrease in women dropping out of the labour market after having a child thanks to the breastfeeding provisions and the increase in pay of the compulsory period of maternity leave and the increase in unemployment benefits is due to a higher increase in labour force than employment.

<sup>281</sup> BE, BG, CY, DE, EE, EL, ES, HR, IE, IT, LT, LU, PL, PT, SE, UK

<sup>282</sup> AT, FR, NL, SI (

Table 3: Estimated macro-economic impact of maternity leave options

	<b>Option 1</b>	<b>Option 2</b>
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	+ € 8.3 billion (+0.002%)	+ € 13.3 billion (+0.003%)
<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	8 000/10 000 (0.00%)	11 000/13 000 (0.00/0.01%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	4 000/6 000 (0.00%)	5 000/8 000 (0.00%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	+ € 0.2 billion /+ € 1.1 billion (0.00%)	+ € 0.6 billion /+ € 1.5 billion (0.00/0.01%)

In both options the rate of employment growth and growth in earnings would be slightly higher among women than men, thus a slight narrowing of the gender gap in employment would be expected. In 2050, it is foreseen that with Option 1 female employment would increase by 8000 (compared to -2000 for male employment) and in Option 2 by 11000 (compared to -2000 for male employment).

**Stakeholder views:** The European Parliament has called for effective protection for pregnant and breastfeeding women and single mothers. In the EU social partner consultation, EU trade unions have called for marked improvements in the areas of transition into work, protection against dismissal and in the area of pay. Employers are not in favour of EU-level action, as they consider that further legislative action could carry strongly negative financial implications on companies and creating obligations for companies to put in place measures to facilitate mothers' transitions back to work from leave would be very difficult for SMEs'.

#### 8.1.4 Comparing the Options

**Effectiveness:** The non-legislative option could carry some benefits to women's participation in the labour market by supporting their faster return to work after taking leave. Options 1 and 2, by introducing legal provisions, would have a higher a higher impact than the non-legislative option. While Option 2 would provide some additional support for women while on leave, the effectiveness of this measure in addressing the problem outlined compared to Option 1 is limited.

**Efficiency:** All options would have positive impacts on individuals and companies. Except for option 2, all options would have a positive impact on Member States as well. A non-legislative option would avoid some of the costs linked to the binding obligations (e.g. the full pay requirement). Moreover, in contrast to Option 1, the non-legislative option would grant Member States and businesses more flexibility regarding the introduction of practices

facilitating transition from maternity to work. The introduction of full pay for the compulsory period of maternity leave (two weeks) in Option 2 could entail substantial costs on Member States, while having a limited impact on women’s return to the labour force after taking leave.

Coherence: All options improve the situation of pregnant women. In particular, the options would facilitate the exercise of the rights recognised in Article 33 of the Charter of Fundamental Rights, which specifically refers to the reconciliation of family and professional life.

Options	Effectiveness	Efficiency	Coherence
<b>Baseline</b>	0	0	0
<b>Non-legislative Option</b>	+ Increased retention of women in the labour market	+++ Very limited costs and positive impacts on companies and Member States	+ Positive impact on fundamental rights of pregnant women.
<b>Option 1</b>	++ Strong increase in the retention of women in the labour market	++ Positive impacts on companies and Member States	++ High positive impact on fundamental rights of pregnant women.
<b>Option 2</b>	++ Strong increase in the retention of women in the labour market	+/- Positive impacts on companies and negative on Member States	++ Highest positive impact on fundamental rights of pregnant women.

The non-legislative Option has been identified as the preferred option for Maternity Leave. The non-legislative option would have a positive impact on individuals by facilitating mothers' return to employment after taking leave as well as a positive impact on companies and Central Governments. The non-legislative Option only entails limited costs on companies due to the potential provision of breastfeeding facilities and breaks. It also entails benefits due to an increase in workers' productivity and a reduction in recruitment costs. In terms of its impact on Central Governments, the non-legislative Option does not foresee any additional payment of maternity benefits but does foresee savings due to a reduction in payment of unemployment benefits and hence has a more positive impact on Central Governments than Option 2 in the medium-term. The non-legislative Option hence appears to be the most efficient maternity leave option to support female participation in the labour market.

## 8.2 Paternity leave

The non-legislative Option would not require Member States to change their national legislation to introduce paternity leave or change the existing provisions. Option 1 would

require Member States to introduce paternity leave or to extend the duration of paternity leave to one week<sup>283</sup>. Option 2 would have an additional impact on the Member States that currently do not provide for pay at sick pay level<sup>284</sup>. Option 3 would require Member States to introduce leave or extend the duration of leave to 2 weeks<sup>285</sup>.

### *8.2.1 Impacts on individuals*

Option 1 would reserve a period of leave to fathers, and therefore rebalance the leave provisions that are reserved respectively to women and men when they become parents. The impact on take-up by fathers in Member States where there is currently no entitlement would be limited because, as shown in the problem definition, when leave periods are not paid, fathers choose not to, or are unable, to use their entitlement. Therefore Option 1 is likely to have a limited impact in terms of facilitating a more equal distribution of work and caring responsibilities, and therefore on female employment<sup>286</sup>.

Option 2 would have more impact on take-up of leave than Option 1 because providing pay would enhance the real possibilities for fathers to make use of the leave.<sup>287</sup> This would give the opportunity for fathers to spend more time with their child and play a greater caring role. This would have a direct positive impact on the work-life balance of fathers. It would support their taking of a greater share of care responsibilities, and therefore have an indirect positive impact on female employment.

Some effects would materialise in the future: when fathers take paternity leave, there are changes to the assumption that women will always be the (only) parent absent from work after having a child. Furthermore, paternity leave is estimated to have a further leverage effect<sup>288</sup> on parental leave, which further alters the sharing of unpaid care work among parents and supports female employment. This effect is driven by the timing of paternity leave, around the birth of the child, which is when new caring responsibilities arise and can begin to be shared between parents.

Option 2 is also expected to have a positive impact on the quality of life of mothers, children, and fathers themselves. This can be significant at the individual level as research shows increased wellbeing and child health in families where the father is present in the early weeks following a child's birth. If fathers participate more in childcare and family

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<sup>283</sup> This could require changes in Member States such as AT, CY, CZ, EL, HR, IT, LU, MT, SK

<sup>284</sup> This could require changes in Member States such as CY, CZ, HR, NL, SK

<sup>285</sup> This could require changes in Member States such as AT, CY, CZ, EL, HR, HU, IT, LU, MT, NL, RO, SK

<sup>286</sup> For illustration purposes, 3 days is a usual period when employed can be on sick leave without producing a medical certificate.

<sup>287</sup> O'Brien (2009), Eurofound (2015).

<sup>288</sup> Duvander, A.Z., Jans, A.C. (2008) Consequences of fathers' parental leave use: evidence from Sweden. Paper presented to Workshop on Diversity and Leave Policies 2008, Amsterdam. Taskula, S (2007). Parental leave for fathers? Research Report no 166. Finland. National Research and Development Centre for Welfare and Health, COWI (2012) Study on the costs and benefits of possible EU measures on paternity leave, OECD (2016)

life, children enjoy higher cognitive and emotional outcomes and physical health<sup>289</sup> and it has been shown that fathers who care for children early tend to stay more involved as children grow up.<sup>290</sup> Fathers who engage more with their children tend to report greater life satisfaction and better physical and mental health than those who care for and interact less with their children<sup>291</sup>. Mothers also are better off, in particular they experience quicker recovery and they have a lower risk of post-partum depression when their partner takes paternity leave.<sup>292</sup>

Option 3 would have similar effects as Option 2, but as a longer period of leave is provided, the impacts would be stronger, in terms of supporting father's taking of a greater share of care responsibilities, and therefore female employment. The leverage effect on parental leave referred to above is more likely to occur with paternity leave of 2 weeks or more<sup>293</sup>. Option 3 would also have a stronger impact on bonding between father and child, by giving the opportunity for fathers to spend more time with their child.

By facilitating a more equal distribution of work and household responsibilities, and thus contributing to female employment, all options could indirectly contribute to the reduction of poverty among women and their families, given that dual-earner households are at a lower risk of poverty<sup>294</sup>.

The non-legislative Option would have similar positive impacts on individuals but the extent of these impacts would depend on the degree of implementation of the non-legislative instruments.

### 8.2.2 *Impacts on companies*

The benefits of the non-legislative option and the three legislative options derive from a stronger commitment to the organisation and the profession from new fathers, who can spend some time with their family around the time of the birth of a child; this can retain staff and also reducing absenteeism.<sup>295</sup> These benefits, however, cannot all be quantified.

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<sup>289</sup> OECD (2016) Brief on parental leave

<sup>290</sup> OECD (2016)

<sup>291</sup> OECD (2016)

<sup>292</sup> Conversely, the women whose partner took no paternity leave were significantly more likely to report depression than women whose partners took the standard two weeks leave (Redshaw and Henderson, 2013). Similarly, Sejourne et al. (2012) find a low level of paternal involvement in infant care (no paternity leave) is significantly associated with maternal postpartum depression. See also LSE literature review (2015) presenting consistent evidence in the literature.

<sup>293</sup> Taskula (2007) suggests that longer paternity leave can be related to a longer period of parental leave subsequently used, based on a survey that showed that fathers who took three weeks of paternity leave also took more parental leave.

<sup>294</sup> European Commission (2016) Employment and Social Developments in Europe

<sup>295</sup> Vaganay, Canónico, Courtin (2016) *Challenges of work-life balance faced by working families: review of Costs and Benefits*, Evidence Review, London School of Economics.



In contrast, the costs have been quantified in great detail and they consist of a small potential loss of production when more fathers take these short periods of paternity leave<sup>296</sup>, the payment of additional paternity benefits in Member States where they are required to, and administrative burden to process paternity leave applications. Due to the leverage effect of paternity leave, more fathers will take parental leave. This will lead to a cost in those cases where employers choose to replace these individuals while they are on parental leave.

Estimates suggest that while the average annual cost per company is higher than in the baseline situation in the three options, the difference is small, see table below. In 2050, the average cost would be € 3 higher than the baseline for option 1, €14 for option 2 and €43 for option 3.

The estimated **costs for microbusinesses** are equal or below 0.1% of turnover<sup>297</sup> and very close to the level of cost under the baseline. Therefore the policy options do not disproportionately affect the performance of SMEs. Some short-term negative effects cannot however be discarded as clarified above (e.g. the leverage effect on a greater take-up of parental leave)

Employers report<sup>298</sup> that they perceive paternity leave as an easy process, as it concerns a short period, it can be anticipated and it is generally considered to be similar to annual leave in organisational terms for the company, so it can be reasonably assumed that none of the options assessed would lead to significant implementation costs or disrupt the organisation of work. There is also anecdotal evidence that some companies already offer paid paternity leave to their employees<sup>299</sup>.

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<sup>296</sup> Employers typically do not replace fathers taking paternity leave (due to the short duration of the leave), which leads to an increase in the amount of lost production.

<sup>297</sup> The costs as a percentage of turnover for microbusinesses (with fewer than 10 employees) is presented in Annex 9 of the supporting study

<sup>298</sup> Vaganay, Canónico, Courtin (2016)

<sup>299</sup> For example, the Norwegian employers association was a key supporter of the introduction of paid paternity leave in Norway; in the Spanish subsidiary of Orange, a mobile network operator, employees can extend their paternity leave up to four weeks; in Italy, Nestle promoted paternity leave among their employees in 2012 through the extension of the legal three days to two weeks' paternity leave with 100% wage compensation.

### Sensitivity analysis on lost production

It also needs to be noted that the estimated of lost production included in the total costs figures assume that for the entire period a father is on paternity leave the employer will lose 100% of his productive value. However, in reality some of this production could be taken up by other staff already employed, through a redistribution of tasks or by the father when he comes back from leave. Therefore, the negative impact on businesses reported above and in Table 4 is most probably overestimated, as the lost production cost calculated corresponds to the maximum loss for a business when a father takes paternity leave. If 20% of the lost production is absorbed either by labour force adjustment or simply compensates for temporary under-utilisation, the value of lost production due to fathers taking paternity leave would be sensibly lower. Thus, the cost for the whole period 2015-2055 would be of €162 million over the entire period up until 2055 (compared to €359 million if 100% of the production is assumed to be lost) in Option 1, € 661 million instead of € 1707 million under Option 2 and € 2527 million instead of € 5756 million under Option 3.

Table 4: Estimated impact of paternity leave options on companies, relative to the baseline (EU)<sup>300</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Leave request processing	- € 2 million	- € 46 million	- € 59 million
Payment of paternity benefits	- € 93 million	- € 649 million	- € 1.8 bn
Lost production	- € 368 million	- € 1.9 bn	- € 5.9 bn
<b>Total impact on companies, NPV 2015-2055</b>	- € 464 million	- € 2.6 bn	- € 7.8 bn
<b>Total impact/company in 2030/2050</b>	- € 1/ - €3	- € 4/ - €14	- € 14/ - €43

*Note: These calculations include an estimation of the leverage effect of paternity leave on father's take-up of parental leave. Costs due to leave request processing and lost production take into account the costs due to a higher take-up of parental leave.*

### 8.2.3 Impacts on Member States

The **budgetary impacts** for all options on Central Governments are limited. There are small changes in employment, earnings and labour market participation in all options, as they affect leave options for a small subset of the working population (new fathers) over a period of 1-2 weeks, so changes in tax receipts and unemployment benefit payments are

<sup>300</sup> The cost of processing leave request is due to an increase in take-up of paternity leave and in administrative costs to process it and the costs of lost production are due to the fact that fathers will not work while on leave.

small too. Where there are employment impacts, the gender employment and pay gaps narrow slightly. It is also expected that the level of healthcare provision changes, as fathers who take paternity leave are more supportive to their partners, which reduces the healthcare requirements for new mothers.

The budgetary costs are relatively small under all options. The cost related to payment of paternity benefits and the administrative burden is marginal, as the level of payment for paternity leave (due to the relatively short duration) is low and the change in take-up in most countries is small. The majority of this increase in benefit payments is assumed<sup>301</sup> to fall on public budgets. The absolute changes in administrative burden are relatively small.

The impact on the state in different country clusters is as follows: in Option 1, Member States which fall significantly below the requirements<sup>302</sup> make up 1% of the cost to the State in this option, whereas those which fall only somewhat below the requirements<sup>303</sup> are responsible for 53% of the costs. Although the impact in terms of legislative change is large for countries not yet offering paternity leave, as the leave is unpaid, the impact is relatively small. In Option 2, Member States which fall significantly below the requirements<sup>304</sup> make up 12% of the cost to the State in this option. In Option 3, Member States which fall significantly below the requirements<sup>305</sup> make up 8% of the cost to the State.

Table 5: Estimated impact of paternity leave options on Member States, relative to the baseline (EU)<sup>306</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Payment of unemployment benefits	+ € 40 million	+ € 154 million	+ € 203 million
Change in hospital admissions	+ € 1 million	+ € 12 million	+ € 15 million
Payment of benefits	- € 154 million	- € 688 million	- € 2.2 billion
Change in tax revenues	- € 966 million	- € 357 million	- € 291 million
Leave request processing	- € 4 million	- € 72 million	- € 88 million
<b>Total impact on government/social security, NPV 2015-2055</b>	<b>- € 1.1 billion</b>	<b>- € 951 million</b>	<b>- € 2.4 billion</b>

*Note: These calculations include an estimation of the leverage effect of paternity leave on father's take-up of parental leave. Costs due to leave request processing and lost production take into account the costs due to a higher take-up of parental leave*

<sup>301</sup> Where there were no previous paternity benefit payments in a Member States, it is assumed that the Central Government would pay.

<sup>302</sup> CZ, HR, CY, SK

<sup>303</sup> EL, IT, LU, MT, AT

<sup>304</sup> CZ, HR, CY, SK

<sup>305</sup> CZ, HR, CY, SK

<sup>306</sup> The decrease in payment of unemployment benefits is due to the expected increase in employment, the rise in take-up of paternity leave leads to a decrease in hospital admissions because the father can support the mother and the child around the time of the birth, the change in tax revenues is due to the increase in employment and the cost of processing leave request is due to an increase in take-up of paternity leave and in administrative costs to process it

The **macroeconomic effects** of the paternity leave options are small. There is also a small longer term effect through paternity leave take up increasing the take-up of parental leave among fathers. The increase in employment and reduction in working hours have opposite effects which cancel each other: the small increase in employment of temporary workers (through the leverage effect of paternity leave on fathers taking parental leave) leads to an increase in income, consumption and GDP. Counteracting this effect is a small reduction in working hours for fathers with young children, which marginally reduces the productive capacity of the economy, leading to a small reduction in output and GDP. Estimates show no impact on **competitiveness** (in terms of net exports and domestic prices) for all three options.

In Option 1, the slightly negative GDP impact only marginally arises from changes in member States which have no current provisions or fall significantly below the requirements<sup>307</sup> (1%) with Member States which fall only somewhat below the requirements making up 68% of the impact<sup>308</sup>. In Option 2, the impact of the legislative change on Member States which fall significantly below the requirements<sup>309</sup> is positive whereas the overall impact remains slightly negative. In Option 3, both the cluster of Member States which fall somewhat below the requirements<sup>310</sup> and the cluster of Member States which fall significantly below the requirements<sup>311</sup> register GDP benefits, with the slightly negative/neutral GDP impact mainly resulting from a very slightly negative impact in Member States which already meet the requirements<sup>312</sup>.

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<sup>307</sup> CZ, HR, CY, SK

<sup>308</sup> EL, IT, LU, MT, AT

<sup>309</sup> CZ, HR, CY, SK

<sup>310</sup> EL, IT, LU, HU, MT, NL, AT, RO

<sup>311</sup> CZ, HR, CY, SK

<sup>312</sup> BE, BG, DK, DE, EE, IE, ES, FR, LV, LT, PL, PT, SI, FI, SE

Table 6: Estimated macro-economic impact of paternity leave options

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	- € 2.4 billion (-0.001%)	- € 0.4 billion (-0.0001%)	- € 0.2 billion (-0.00005%)
<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	0 to -1000 (0.00%)	0 to -1000 (0.00%)	0 to -1000 (0.00%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	0 to -1000 (0.00%)	0 to 1000 (0.00%)	1000 (0.00%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	- € 0.1 billion /- € 0.2 billion (0.00%)	€ 0.0 billion (0.00%)	€ 0.0 billion (0.00%)

**Stakeholder views:** The European Parliament has called for an EU directive providing a minimum of a two-week, fully paid, compulsory paternity leave. EU trade unions are also in favour of paid paternity leave at EU level. EU employer organisations are not in favour of EU action. The Advisory Committee on equal opportunities between women and men recommends including incentives for men to take leave in the form of non-transferable rights, pay and other financial incentives. In their reply to the public consultation, ES and EE mentioned they are in favour of a European paternity leave. NGOs<sup>313</sup> called for the Commission to introduce paternity leave, of at least two weeks fully paid.

#### 8.2.4 Comparing the Options

**Effectiveness:** A non-legislative option would most probably imply barely any improvement vis-à-vis the baseline scenario and, therefore, not be very effective. Option 1 would have limited effectiveness in improving work-life balance and women's participation in the labour market because men are unlikely to make use of the entitlement if it is not compensated. Option 2 would be more effective than Option 1 as the leave would be paid but to a lesser extent than Option 3. Option 3 would be the most effective in facilitating women's employment as the literature suggests that "leverage effects" on

<sup>313</sup> AGE Platform Europe, COFACE Families Europe, ENIL, European Women's Lobby, Eurocarers, Eurochild, Make Mothers Matter (2017), *Europe's Last Chance, Work-Life Balance: time to bring work and welfare policies in line with the 21<sup>st</sup> century*

future take-up of parental leave are more likely to occur with a longer paternity leave of 2 weeks or more, so the positive long-run impact on women in the labour market would be largest. It is also slightly more effective in terms of supporting a balanced use of leave between parents as fathers take up of leave would increase.

**Efficiency:** Although limited, Option 3 has the highest costs on companies and central governments. Option 2 would have fewer costs than Option 3 because of the shorter period of benefit payment. A non-legislative measure would have limited costs given the uncertain implementation by Member States.

**Coherence:** All options have positive impacts on parents and positive impacts for children as they enhance the rights of the child to be cared for by his/her two parents and are fully consistent with the Charter of Fundamental Rights, while enhancing some of the rights enshrined therein, in particular the respect for private and family life (Article 7).

Options	Effectiveness	Efficiency	Coherence
<b>Baseline</b>	0	0	0
<b>Non-legislative Option</b>	+ Limited effects	- Limited costs	+ Marginal positive impact on fundamental rights
<b>Option 1</b>	+ Marginally achieves the objective of the initiative in terms of work-life balance and fathers' take-up of leave	- Low costs on companies and Central Government	+ Some impact on parents and carers and positive impacts for children no negative impact on other FRs
<b>Option 2</b>	++ Achieves the objective by having direct positive impact on work-life balance and father's up-take of leave,	- Higher costs on companies and lower on Central Government than Option 1	++ Positive impact on parents and carers and positive impacts for children no negative impact on other FRs
<b>Option 3</b>	+++ Strongly achieves the objective by having direct positive impact on work-life balance and father's up-take of leave	-- Highest costs on companies and Central Government	+++ Highly positive impact on parents and carers and positive impacts for children no negative impact on other FRs

Option 3 (an individual entitlement to two weeks paternity leave paid at least at sick pay level) has been identified as the preferred option. As mentioned above, evidence of Member States' experiences suggests that where leave is remunerated, it has a strong positive impact on its take-up by men, as well as female employment outcomes<sup>314</sup>. Options

<sup>314</sup> OECD (2013) Closing the Gender Gap

2 and 3 would thus have a much higher individual positive impact than Option 1 and the non-legislative Option. Although Option 3 has the highest cost for companies, when disaggregated the cost represents only 14 € per company in 2030 and 43 € per company in 2050. Moreover, thanks to its longer duration, Option 3 is the option that best improves the possibilities for fathers to be involved in caring responsibilities directly following the birth of a child. Evidence also shows that the leverage effect on parental leave, which has highly positive impacts on GDP, labour force participation, employment and real incomes (see below), is more likely to occur with paternity leave of 2 weeks or more. Option 3 hence appears to rank higher in efficiency compared to the other paternity leave options assessed.

### 8.3 Parental leave

Based on the available information, the non-legislative Option would not require Member States to change their national legislation to change their existing provisions on Parental Leave. Option 1 would only require one Member State<sup>315</sup> to change its legal framework to allow for flexibility in taking parental leave. Option 2 would require the same adjustments as Option 1. It would additionally require that Member States guarantee payment at least at the level of sick pay for the one non-transferable month.<sup>316</sup> Option 3 would require the same adjustments as Option 1. In addition to Option 1, Member States<sup>317</sup> would have to guarantee payment at least at level of sick pay for the 4 months period of leave. Increasing the non-transferable period to 4 months would also be required<sup>318</sup>. In addition, it should be ensured that this non-transferable period is compensated at least at sick pay level<sup>319</sup>. An increase in the maximum age of the child up to which parents can take parental leave from 8 to 12 years old would also require some Member States to change their national legislation<sup>320</sup>.

#### 8.3.1 Impacts on individuals

Option 1 would facilitate the use of parental leave by both parents through the entitlement to flexibility, which would allow them to choose when and how to use the leave. For example, for parents who may be unwilling or unable to stop work completely, flexibility can help minimise the negative financial impact of taking leave.<sup>321</sup> Flexibility can allow workers to maintain the benefits of a connection to the workplace, minimise the interruption of work and maintain their skills. The decision of fathers to take parental leave depends to some extent on flexibility of leaves.

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<sup>315</sup> RO.

<sup>316</sup> This could require changes in Member States such as: BE, EL, ES, FR, IE, IT, LV, MT, NL, PT, SK, UK.

<sup>317</sup> This could require changes in Member States such as: BE, EL, ES, FR, IE, IT, LV, MT, NL, PT, SK, UK.

<sup>318</sup> This could require changes in Member States such as: AT, BG, CZ, EE, EL, FI, HR, IE, LT, PL, PT, RO, SE, SI.

<sup>319</sup> This could require changes in Member States such as: DE, DK

<sup>320</sup> These Member States could include: BG, CY, DK, HR, IE, LV, MT, NL, SE.

<sup>321</sup> The flexibility and simplicity of leave arrangements have been shown to influence take-up by fathers, see Eurofound (2015) *Promoting uptake of parental and paternity leave among fathers in the EU*, Van Belle (2016).

For Option 2, the introduction of the requirement for pay for part of the period would have an additional direct positive impact on the take-up of leave. In addition, introducing a pay requirement would enhance the effectiveness of parental leave in facilitating work-life balance for parents with low and middle incomes, who most likely cannot afford to take unpaid leave. Such a measure could therefore also reduce the risk of poverty in households with children. Option 2 also provides an incentive for fathers, as well as mothers, to increase their take-up of leave. This has a direct positive impact on their work-life balance and it also supports fathers' taking a greater share of care responsibilities, which can extend beyond the period of parental leave taken. As a consequence, it should increase the availability of women for increased labour market participation. Supply of female labour is stimulated as women are more available to remain in the job once they have children, and as demand for female labour is also stimulated because when more men use leave<sup>322</sup>, this mitigates the assumption that women are the parent taking leave. Option 2 would also result in more women returning earlier to employment, and having shorter career interruptions. The level of employment is expected to rise as are average earnings. This will lead to an increase in average household incomes and have a positive effect on the number of households in poverty. Option 2 is also estimated to have a beneficial effect on the health of women and children and would result in positive impacts for children's cognitive and social development, as referred to in the problem definition. Four weeks of parental leave by fathers are found to increase children's performance in school.<sup>323</sup> Therefore, additional positive impacts would materialise in the future.

Option 3 would have similar beneficial effects in terms of the health and well-being of women and children, but it would also have even greater benefits regarding fathers' take-up than Option 2. As all four months of the leave would be paid as well as reserved for the fathers, take-up and length of leave by fathers is likely to increase, given the evidence suggesting that fathers are more likely to make use of their entitlements when they are adequately paid and reserved for them<sup>324</sup>. There is a stronger incentive for fathers to take leave<sup>325</sup>, the stigma of doing so is reduced<sup>326</sup> and it legitimises the idea of fathers taking leave, thereby easing potential objections from employers<sup>327</sup>. Therefore, a more balanced

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<sup>322</sup> Research shows that countries where men take 1 to 3 months of paternity or parental leave experience more gender equality in the labour market, and lower discrimination against pregnant women and women in the child-rearing age (Tavistock Institute).

<sup>323</sup> Cools, S., Fiva, J. H. and L.J. Kirkebøen (2015), Causal Effects of Paternity Leave on Children and Parents. *The Scandinavian Journal of Economics*, volume 117, issue 3.

<sup>324</sup> OECD (2016) *Parental Leave: Where are the fathers?*

<sup>325</sup> The literature shows that fathers are more likely to use the leave available when it is reserved for them, in the form of an individual entitlement and paid, see O'Brien (2009), Fathers, parental leave policies and infant quality of life: international perspectives and policy impact; Eurofound (2013), Moss, P. (2015), 11<sup>th</sup> International review of leave policies and related research; Cabrita, J. and F. Wohlgemuth (2015), Promoting uptake of parental and paternity leave among fathers in the EU, Eurofound; Council of Europe (2005) *Parental Leave in Council of Europe Member States*; Van Belle (2016), Tavistock Institute (2011), *Additional paternity leave unlikely to have an impact*.

<sup>326</sup> Winkler, E.A. (2016) Women's labor force participation - Family-friendly policies increase women's labor force participation, benefiting them, their families, and society at large, IZA, <http://wol.iza.org/articles/womens-labor-force-participation/long>

<sup>327</sup>



share of caring responsibilities between women and men can be expected, with a positive impact on equality between women and men in the labour market. Increasing non-transferability for the full four-month period in Option 3 would lead to some adjustments in the arrangements between parents to decide who takes the leave on the basis of the personal or financial situation. It might also reduce the overall period of parental leave women take, given the evidence that men tend to transfer their share of leave on to women. However by limiting the possibility for fathers to transfer their leaves on to mothers, it would reduce the risk of women's extended absences in the labour market after having children relative to men, which would limit the negative scarring effects on their careers and enhance their professional prospects. Improving the likelihood of women's return to the labour market would also reduce the risk of poverty among women and their families, since dual-earner households tend to be at a lower risk of poverty. Moreover, by providing payment for the full four-months of leave, this option would provide increased income security for families and could substantially reduce the risk of poverty among households with children. As mentioned in Option 2, Option 3 is also expected to have positive impacts on women and children health as well as children's cognitive and personal development.

In addition to the parameters which compose the three options assessed above, increasing the maximum age of the child to 12 years old would also have a positive impact on individuals as it would increase the flexibility for parents to take parental leave and will likely increase the length of their take-up of the leave, with all the associated benefits on parents and children described above.

The non-legislative Option would have similar positive impacts on individuals similar to those described above but they are expected to be weaker giving the non-legal character of that option.

### *8.3.2 Impacts on companies*

The impacts of the considered options for companies include a temporary potential loss of production, the costs where employers choose to replace existing staff who take parental leave<sup>328</sup> (recruitment costs of possible replacement staff), and there can be an increase in administrative burden in processing increased numbers of parental leave applications. There will also be benefits to companies, as individuals taking parental leave are expected to take fewer days off work due to sickness (or sickness of the child), and are more likely to return to the same job after taking parental leave, which reduces recruitment and training costs and in turn increases productivity, as skilled staff are retained.

An indirect increase in the demand for female employees can be expected due to changes in the notion that the 'costs' of childrearing are strictly associated with mothers. Employers could start anticipating that men, and not only women, may take leave after having a child.

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<sup>328</sup> A worker taking parental leave on a part-time basis would still be present at work and this provides more possibilities for internal reorganisation. If the employee is on leave only part-time or in short blocks at a time, in many cases, they may not have to find and hire a replacement worker, as compared to a longer absence.

This could function as a ‘signalling’ tool for employers and employees and reduce disincentives to hire women of childbearing age<sup>329</sup>. The quantitative analysis, however, does not include such indirect impacts.

Overall, the costs related to increasing numbers of men taking short periods of leave or part-time leave for certain periods are inferior to the costs of women taking longer leaves, due to the reduced need to find replacement and the lesser skills depreciation. Moreover, flexible use of parental leave should not have any strong disruptive effect on companies. Employers would benefit from retaining qualified employees on the job instead of hiring and training new employees<sup>330</sup>, with benefits particularly high for employers in female-dominated sectors

The quantitative analysis suggests that impacts on companies are mixed in all options. For all of them, there is an increase in take up of parental leave. This leads to an increase in administrative burden for employers, largely due to the requirement to process more applications for leave. The total increase in administrative burden to employers in the EU is estimated to be of € 48 million in option 1, € 402 million in option 2 and €844 million in Option 3 for the period 2015-2055. The increase in the take up of parental leave is estimated to lead to a temporary loss of production for companies, which is discussed in the box below.

The increase in take up of parental leave leads to employers having to consider whether to recruit more workers to temporarily replace workers who have taken parental leave. The cost of this recruitment process is estimated to be highest in option 3, with the cost being an additional €833 million compared to the baseline scenario. Around 62% of this cost is borne by the employers in the three countries in the cluster considered to fall significantly below the requirements of option 3<sup>331</sup>. This needs to be seen together with the lower needs to recruit more workers in the future, as companies are retaining workers who take parental leave.

This staff retention benefit is estimated to be largest in option 3, with an estimated benefit of €426 million to businesses. This is driven by more workers feeling able to take leave and return to their job, rather than having to leave their job to care for children. All the costs and benefits are recurring (they are incurred annually) and there are no one-off costs for reasonable adjustment. Around 60% of this benefit will be found in the countries in the cluster most affected by policy option 3<sup>332</sup>.

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<sup>329</sup> In contract theory, signaling is the idea that one party credibly conveys some information about itself to another party. In this case, it is about facilitating the reading of (potential) employees signals about their ability level for the employer, by diminishing the incentives for employers to take into consideration (potential) caring responsibilities as a signal of low ability.

<sup>330</sup> European Parliament (2010) *Costs and benefits of maternity leave and paternity leave*

<sup>331</sup> EL, ES, UK

<sup>332</sup> EL, ES, UK

A higher parental leave uptake is also expected to reduce the number of days of absence workers take. The benefit businesses get from a reduction in absence from work is expected to reach up to € 566 million in Option 3 for the period 2015-2055. Around 72% of this benefit will be experienced in the countries of the cluster experiencing the largest legislative impact<sup>333</sup>.

As a result, the total cost on businesses for the period 2015-2055 of the introduction of legislation is of € 233 million in option 1, € 10.4 billion in option 2; and € 39.8 billion in option 3. The cost per company is slightly higher than in the baseline. It is estimated to be €110 in 2030 in the most generous option (Option 3). This is estimated to be below 0.4% of business' turnover in all countries in all policy options. Member States which fall significantly below the requirements<sup>334</sup> make up over 20% of the total cost in Option 3.

An assessment of the **cost for micro-businesses** shows that the cost of all policy options represents 1% or less than 1% of companies' total turnover in almost all Member States and very close to the level of cost under the baseline. Where the costs represent more than 1% (2% in Austria for example), the existing legislation incurs a similarly high cost to microbusinesses. Therefore the policy options do not disproportionately affect the performance of SMEs<sup>335</sup>. Some short-term negative effects cannot however be discarded as clarified above (e.g. those related to an increased take-up of parental leave).

#### Sensitivity analysis on lost production

It also needs to be noted that the estimated of lost production included in the total costs figures assume that for the entire period a parent is on parental leave the employer will lose 100% of his productive value. However, in reality some of this production could be taken up by other staff already employed, through a redistribution of tasks or by the parent when he/she comes back from leave. Therefore, the negative impact on businesses reported above and in Table 7 is most probably overestimated, as the lost production cost calculated corresponds to the maximum loss for a business when a parent takes parental leave. If 20% of the lost production is absorbed either by labour force adjustment or simply compensates for temporary under-utilisation, the value of lost production due to parents taking parental leave would be sensibly lower. Thus, the cost for the whole period 2015-2055 would be of €68 million over the entire period up until 2055 (compared to €189 million if 100% of the production is assumed to be lost) in Option 1, € 1.4 billion instead of € 3.5 billion under Option 2 and € 3.2 billion instead of € 13.3 billion under Option 3.

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<sup>333</sup> EL, ES, UK

<sup>334</sup> EL, ES, UK

<sup>335</sup> Ibid

Table 7: Estimated impact of parental leave options on companies, relative to the baseline (EU)<sup>336</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Retention of workers	+ € 53 million	+ € 168 million	+ € 426 million
Less absence from work	€ 0	+ € 153 million	+ € 566 million
Leave request processing	- € 48 million	- € 402 million	- € 844 million
Payment of parental benefits	- € 1 million	- € 6.3 billion	- € 25.9 billion
Recruitment	- € 48 million	- € 479 million	- € 833 million
Lost production	- € 189 million	- € 3.5 billion	- € 13.3 billion
<b>Total impact on companies, NPV 2015-2055</b>	- € 233 million	- € 10.4 billion	- € 39.8 billion
<b>Total impact/company in 2030/2050</b>	€ 0/ - € 1	- € 29/- € 40	- € 110/ - € 150

### 8.3.3 Impacts on Member States

The negative **budgetary impacts** are expected to be driven primarily by changes in payments made for parental leave benefits, and to a smaller degree, by increases in administrative burden under all options, driven by an increase in take up of parental leave.

In Options 2 and 3 changes in employment and pay will have budgetary impacts by altering benefit payments and taxes received. As employment, fertility rates and average earnings are estimated to increase, there is an expected positive impact on the tax received. All three Options increase the level of payment of benefits by the Central Governments (from € 1 million in Option 1 to € 13.1 billion in Option 3 over the 2015-2055 period) and Social Security Partners (from € 15 million in Option 1 to € 41.4 billion in Option 3 over the 2015-2055 period).

It is also expected that the level of healthcare provision will change under the options, as fathers who take parental leave are more supportive to their partners, which reduces the healthcare requirements for new mothers and children.

As a result, over the 2015-2055 period, the overall impact is expected to be positive in Option 2 (+ € 785million) and negative in Options 1 (- € 1.9 billion) and 3 (-€ 4.2 billion).

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<sup>336</sup> The benefit linked to the retention of workers is due to the fact that less women are expected to drop out of the labour market because leave entitlement would be more gender balanced and they would take shorter leaves than they do now, the benefit linked to less absence from work is due to a more motivated workforce which can better reconcile professional and caring responsibilities, the cost of processing leave request is due to an increase in take-up of parental leave and in administrative costs to process it, the recruitment costs are due to an expected increase in take-up and the need to replace the additional workers taking leave and the costs of lost production are due to the fact that parents will not work while on leave.

In Option 2, Member States which fall significantly below the requirements<sup>337</sup> make up 98% of this positive impact. In Option 3, the Member States which fall significantly below the requirements<sup>338</sup> are responsible for the overall negative impact.

Table 8: Estimated impact of parental leave options on Member States, relative to the baseline (EU)<sup>339</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Payment of unemployment benefits	- € 240 million	+ € 11.2 billion	+ € 10.2 billion
Healthcare	+ € 106 million	+ € 539 million	+ € 2.3 billion
Changes in tax revenue	- € 1.7 billion	+ € 7.1 billion	+ € 38.6 billion
Payment of parental benefits	- € 16 million	- € 17.7 billion	- € 54.5 billion
Leave request processing	- € 21 million	- € 316 million	- € 820 million
<b>Total impact on government/social security, NPV 2015-2055</b>	<b>- € 1.9 billion</b>	<b>+€ 785 million</b>	<b>- € 4.2 billion</b>

The **macroeconomic effects** of parental leave vary from one option to another. In the short term and the medium term, the improvements to parental leave provisions lead to an increase in the number of parents that participate in the labour force. The increase in the number of women in the active labour force is estimated to be larger than the increase in men for all options. In the longer term, there is, in addition, an increase in labour supply as a result of the higher fertility rate (as the additional children born approach working age). By 2050, the impact on the labour force ranges from 16 000 in Option 1 to 106 000 additional active individuals in Option 3. By 2050, the employment impact ranges from 5 000 to 134 000. The increases in employment are highest in Option 3.

The impact on GDP is estimated to be the highest in Option 3 (+ €112 billion over the 2015-2055 period). The positive impact on GDP is driven by an increase in real income due to pay (in Options 2 and 3) and an increase in employment, which lead to an increase in consumption. The positive impact on GDP is also due to an increase in the labour force, leading to an increase in the productive capacity of the Member State. The GDP impact of Option 2 is positive due to the high level of positive impact in Member States which fall somewhat below the requirements<sup>340</sup>. In Member States which meet the requirements<sup>341</sup> and those which fall significantly below<sup>342</sup> the impact is negative, with the latter cluster

<sup>337</sup> IE, EL, ES, MT, NL

<sup>338</sup> EL, ES, UK

<sup>339</sup> The decrease in payment of unemployment benefits is due to the expected increase in employment, the rise in take-up of parental leave leads to a decrease in hospital admissions because the parents and the children's healths both benefit from the measure, the change in tax revenues is due to the increase in employment and the cost of processing leave request is due to an increase in take-up of parental leave and in administrative costs to process it

<sup>340</sup> CZ, DE, EE, FR, LT, LU, HU, AT, PL, PT, RO, SI, SK, FI, UK

<sup>341</sup> BE, BG, DK, HR, IT, CY, LV, SE

<sup>342</sup> IE, EL, ES, MT, NL

making up 81% of this negative impact. In Option 3, on the other hand, the Member States which fall significantly below the requirements<sup>343</sup> contribute to the positive impact of this option (at 37%, mainly due to assumptions around increased labour market participation by women as transferability is reduced).

**Competitiveness** would be marginally affected by all three options. While net exports would slightly decrease in 2030 (up to - €0.5 billion in Option 3), domestic prices would decrease by 0.01% in Option 3 in 2030 and not be affected by the other options.

Table 9: Estimated macro-economic impact of parental leave options

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	- € 4.8 billion (-0.001%)	+ € 24.2 billion (+0.01%)	+ € 112 billion (+0.03%)
<b>Impact on labour Force in 2030/ 2050</b> (change compared to baseline)	8 000/16 000 (0.00%/+0.01%)	19 000/59 000 (0.01%/+0.03%)	46 000/106 000 (0.02%/+0.05%)
<b>Impact on employment in 2050/2050</b> (change compared to baseline)	2 000/5 000 (0.00%)	49 000/64 000 (0.02%/+0.03%)	55 000/134 000 (0.02%/+0.06%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	- € 0.4 billion /- € 0.4 billion (0.00%)	+ € 1.6 billion /+ € 2.6 billion (+0.01%)	+ € 4.8 billion /+ € 12.8 billion (+0.04%/+0.05%)

The parental leave options would accelerate the narrowing of the gender pay and employment gaps. The options will reduce the gender pay gap as female employment will increase at a higher rate than male employment, male working hours will decrease and women are more likely to retain the same job as they held before taking leave rather than potentially taking a new job requiring lower skills. The greatest impact on gender pay and employment gaps is estimated to be in option 3. In 2050, it is foreseen that with Option 1 female employment would increase by 7000 (compared to -2000 for male employment), in Option 2 by 46000 (compared to 18000 for male employment) and in Option 3 by 93000 (compared to 41000 for male employment).

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<sup>343</sup> EL, ES, UK

### **Taking into account collective agreements**

In many Member States, particularly those with a strong tradition of cross-sectoral or sectoral collective bargaining, collective agreements can play a significant role in enhancing leave measures provided in law. In countries where a significant part of the working population is covered by collective agreements, this can therefore mean that a significant share of workers can benefit from more generous provisions than those that are taken into account in the legal gap analysis performed in the supporting study, thus potentially overestimating any cost (or benefits) arising from a revision of legislative measures. While such collective agreements can obviously be re-negotiated altering such provisions (for the better or worse), it is important to consider the impact of taking into account such provisions in collective agreements. A sample calculation was therefore performed in relation to parental leave, using the example of just one country: the Netherlands. According to a report by the Leave Network<sup>344</sup>, 10% of collective agreements in the Netherlands provided for parental leave (which according to law is unpaid) to be partly paid – between 40% and 75% for 13 weeks. As a basic calculation, it was therefore assumed that 10% of the workforce receive a payment of 57% for 13 weeks of parental leave. This change in the Netherlands alone leads to the overall balance of costs and benefits to the State overall in the EU to reduce slightly from a benefit of €785 million in option 2 to a benefit of €770 million. At the same time, the overall balance of costs and benefits to employers will reduce from a cost of €10.4 billion in option 2 to a cost of €9.7 billion and from €39.8 billion to €37.1 billion in option 3.

### **Alternative take-up scenario**

Based on current assumptions, take-up of parental leave will rise, particularly in the Options where leave is better compensated and where non-transferability is increased. Take-up is expected to increase and reach a plateau in line with previous levels of take-up and the difference between the baseline provisions and the difference with the new options (i.e. greater increase in take-up is assumed in countries where the legal gap is greater). These assumptions about take-up rates influence the quantitative assessment. If the calculations assumed that take-up in all countries increased to a level similar to that already reached in a country with relatively high level provisions (in terms of pay and non-transferability in particular, e.g. Sweden), this would have increased positive impacts on female employment and labour force participation. In order to estimate the costs of such a scenario, an alternative scenario was calculated raising expected take up in all countries to increase towards the level already found in Sweden (based on the gap between current legislation and the proposed measures). Calculations show that in Option 3, which provides for the greatest non-transferability and the highest level of pay, the overall costs to the state/social security providers would reach €8.9 billion, while costs to employers would rise to €41 billion.

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<sup>344</sup> Den Dulk, L. (2016) "Netherlands country note" in: Koslowski A., Blum S., and Moss P. (eds.) *International Review of Policies and Research 2016*

**Stakeholder views:** The European Parliament has called for adequate income replacement and social protection, from four to at least six months; to increase the age of the child for which leave can be taken; and to give parents flexibility as to how to use the leave, with a significant part of the leave non-transferable. The Advisory Committee on equal opportunities between women and men recommend to include incentives for men to take leave in the form of non-transferable rights, pay and of other financial incentives. EU trade unions have stressed the importance of increasing pay, non-transferability, flexibility of uptake and the maximum age of the child up to which parents can take parental leave. EU employers' organisations are not favourable to further EU-level measures in the area of parental leave. In its reply to the public consultation, France, which replied in favour of improving the EU legislative framework, mentioned that there is a need to have more convergence as regards parental leave. NGOs called for the Commission to introduce minimum pay, flexibility as well as to increase the length of leave and the age of the child until which the leave can be taken<sup>345</sup>.

#### 8.3.4 Comparing the Options

**Effectiveness:** A non-legislative option is not expected to be very effective in improving work-life balance and women's participation in the labour market, given the uncertainty around to which extent the policy guidance will be followed. Option 1 would have limited effectiveness in improving work-life balance and women's participation in the labour market because the leave would still be designed in a way that favours take-up by second earners (mostly transferable and unpaid). Option 3 would be the most effective in facilitating women's employment as the introduction of pay and the extension of non-transferability for the four-month period would support a balanced use of leave between parents. Option 2 would somewhat support fathers' increased take-up of leave due to the payment of the non-transferable period, but would not have a strong impact on balancing the take-up of leave between women and men. Option 3 has the highest positive impact on employment and labour force participation.

**Efficiency:** Option 3 would entail the highest direct costs for employers and for central government budgets because of the payment of benefits and administrative burden. However, these costs would be largely counter-balanced for central governments by cost savings regarding unemployment benefits and healthcare, as well as increased tax revenue due to employment gains. Option 1 has the lowest costs for companies and Option 2 has a small positive impact on central governments. The cost of implementing the non-legislative Option would depend on the implementation by Member States and/or social partners.

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<sup>345</sup> AGE Platform Europe, COFACE Families Europe, ENIL, European Women's Lobby, Eurocarers, Eurochild, Make Mothers Matter (2017), *Europe's Last Chance, Work-Life Balance: time to bring work and welfare policies in line with the 21<sup>st</sup> century*



Coherence: All options, to a different extent, would facilitate the exercise of the rights recognised in Article 33 of the Charter of Fundamental Rights, which specifically refers to the reconciliation of family and professional life and states that everyone shall have the right to (...) parental leave. In addition, they would facilitate the exercise of the rights set out in the equality title of the Charter, particularly equality between women and men, which is to be ensured in all areas, including employment, work and pay (Article 23); the prohibition of discrimination based on sex (Article 21); and the rights of children to such protection and care as is necessary for their well-being (Article 24). They would also enhance the rights of children to be cared for by their two parents. There are no negative impacts on other Fundamental Rights.

<i>Options</i>	<i>Effectiveness</i>	<i>Efficiency</i>	<i>Coherence</i>
<i>Baseline</i>	0	0	0
<i>Non-legislative Option</i>	+	+ Limited costs	+ Marginal positive impact on fundamental rights
<i>Option 1</i>	- Low impact on take-up of leave and increasing female employment,	- Low costs for companies and costs for Central Government budgets	+ Some positive impact on parents and positive impacts for children, no negative impact on other FRs
<i>Option 2</i>	+ Slight impact on take-up of leave and increase in female employment	-/+ Costs for companies but benefits for Central Government budgets	++ Positive impact on parents and positive impacts for children no negative impact on other FRs
<i>Option 3</i>	+++ High impact on take-up of leave and increase in female employment	-- Higher costs for companies and Central Government budgets than in Options 1 and 2	+++ Very positive impact on parents and positive impacts for children no negative impact on other FRs

Option 3 is identified as the preferred option for parental leave. As Option 3 provides for an individual entitlement to remunerated leave for the full four-month period that is non-transferable between parents, it entails much higher take-up by men and hence will have the highest positive impact on female employment. Significantly increasing the length of the non-transferable period has considerable benefits in terms of increased household incomes and individual well-being (for fathers, mothers and children). Option 3 is more costly for companies and Central Governments than Options 1 and 2, but its higher costs remain modest in relative terms (110€ per company in 2030 and 150€ in 2050). In addition, it has much larger effects in terms of labour market participation as well as income security for workers taking leave. Furthermore, Option 3 also has much higher positive macro-economic effects. This Option hence appears to rank higher than the other parental leave options assessed.

## 8.4 Carers' leave

The non-legislative option would not require Member States to change their national legislation to introduce carers' leave or change the existing provisions. For Option 1, some Member States<sup>346</sup> would need to introduce or extend carers' leave to the 12-week minimum requirement. Some Member States would need to change their legal frameworks to provide carers' leave on a flexible basis<sup>347</sup>. For Option 2, some Member States<sup>348</sup> would need to introduce or extend carers' leave to the 4-week minimum requirement, and some Member States<sup>349</sup> would need to introduce or raise the allowance of carers' leave to sick-pay level. The same Member States would need to change their legal frameworks to provide carers' leave on a flexible basis as Option 1. For Option 3, a few Member States<sup>350</sup> would need to change their legal frameworks in order to provide a short term leave of 5 days/year to care for a sick child or dependent relative, and some Member States would need to adapt their legal frameworks to ensure that the leave is paid at sick-pay level<sup>351</sup>.

### 8.4.1 Impacts on individuals

Option 1 would improve the work-life balance situation of employees who are caring for elderly, disabled or ill family members (children, parents and spouses), and would help to reduce workers' stress and well-being. It would allow them to maintain an attachment to their jobs during periods of caring responsibilities. As women are more likely than men to provide informal care or to be the primary caregivers, Option 1 would allow in particular women to remain in employment, rather than dropping out of the labour market. The flexible design of leave in this option would encourage men to use (part of) the leave. However, as women are more likely than men to take unpaid leave, Option 1 can have negative gendered impacts: if women are the main users of carers' leave, this can weaken their position in the labour market in terms of employability, pay or career developments, as they would be more likely than men to take a career break due to care.

Option 2 would similarly support work-life balance for workers with dependent family members. It would also strengthen the attachment of workers' to their jobs, preventing them from dropping out of the labour market during periods of caring responsibilities. As it is paid Option 2 would incentivise more first earners (generally men) to make use of the entitlement. Similarly to Option 1, the flexibility present in Option 2 would give possibilities for workers to choose when and how much time off they need to care for a dependant or ill relative, for instance making arrangements for institutional care, or spending time with a terminally ill relative, while staying in employment.

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<sup>346</sup> This could require changes in Member States such as CY, CZ, EL, ES, HR, LU, MT, SI, SK

<sup>347</sup> This could require changes in Member States such as CY, CZ, EE, EL, HR, IE, LV, MT, SI, SK

<sup>348</sup> This could require changes in Member States such as CY, CZ, ES, LU, MT, SI, SK

<sup>349</sup> This could require changes in Member States such as CY, EL, FR, HU, LT, MT, UK

<sup>350</sup> This could require changes in Member States such as CY, LU, MT

<sup>351</sup> This could require changes in Member States such as CY, ES, LT, MT, UK

Option 3 would support reconciliation of private and professional life by providing workers with additional flexibility, allowing them to take a short period of time off in order to tend to children or ill/dependent relatives and/or accompany them to medical appointments. This option could therefore reduce workers' stress and improve well-being. The relatively short period of leave would avoid large breaks in the workers' career. That being said, the short period of leave might not be sufficient for workers with disabled or dependent relatives who are in need of more intensive attention, and therefore the provision of formal care services in addition to this leave would be crucial for work-life balance.

By facilitating women's employment, all options could indirectly contribute to the reduction of poverty among women and their families, given that dual-earner households are at a lower risk of poverty<sup>352</sup>. Options 2 and 3 additionally provide an income replacement during the period of leave, which could be beneficial in stabilising household income particularly for low income households. That being said, given that the period of leave is short for Option 3, the fact that the leave is paid is unlikely to have a strong impact on reducing poverty risk.

The non-legislative Option is expected to have some positive impacts on individuals similar to the above described. The significance of these impacts would depend on how close the implementation by Member States and/or social partners of the considered policy guidance would be to the bidding measures presented in options 1 to 3.

#### *8.4.2 Impacts on companies*

The non-legislative Option and Option 1, would entail costs for companies in terms of a temporary loss of production for individuals who take carers' leave, and existing carers' who take longer carers' leave (where employers choose to replace individuals taking carers' leave). The cost of recruiting staff to replace existing staff on carers' leave (where they are replaced) also needs to be considered, as well as the administrative burden to process carers' leave applications. That being said, companies would benefit from enhanced satisfaction and longer-term productivity at work of employees with caring responsibilities. Moreover, if employees can take a period of leave and then return to work, instead of dropping out of employment, there is increased retention of skilled staff and therefore lower staff turnover and re-hiring costs which can translate into savings for employers. Carers' leave can especially contribute to staff retention for employers who employ a large number of people in the age group 54-65 (especially women), as they are the most likely group of employees to need to look after an ill or disabled relative (an aged relative or a partner), which puts their employment at risk. These benefits substantially offset many of the costs for Option 1, however the total impact of this option on companies remains negative (- € 304 million for the period 2015-2055).

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<sup>352</sup> European Commission (2016) Employment and Social Developments in Europe

Option 2 would similarly entail costs for companies in terms of a temporary loss of production, although for a much shorter period. It would also require some increase in replacement costs, although less than Option 1 because of the substantially shorter period. As Option 2 requires the payment of the benefit at sick-pay level, this option would also entail some costs for companies in terms of benefit payments, though this would depend on the financing arrangements for this leave. Where businesses are responsible for paying for carers' leave (e.g., Spain and Italy), there is an increase in their burden in paying for carers' leave (€ 390 million in Option 2 for the whole EU for the period 2015-2055). Companies would however similarly benefit from enhanced satisfaction and productivity of work for employers with caring responsibilities, as well as increased retention of staff and reduced staff turnover and re-hiring costs.

Option 3 would entail some costs for employers due to payment of benefits (depending on how the leave is financed), as well as some costs due to a temporary loss production. There would be benefits in terms of enhanced productivity and retention of workers with caring responsibilities, lower staff turnover and reduced hiring costs.

Overall, the estimates suggest that Option 1 would have a negative impact (- € 304 million) and Options 2 and 3 a positive impact on businesses (respectively + € 295 million and + € 1078 million) as savings linked to staff retention are significantly higher for those two options. Member States which fall significantly under the requirements<sup>353</sup> make up 14% of the benefit to employers in Option 2 and 4% in Option 3. While, in 2050 Options 1 and 2 would lead to an additional cost per company of € 2 and € 1 relative to the baseline, Option 3 would leave to a net benefit of € 5. In all cases, the cost is estimated to be below 0.2% of the average business turnover in all countries.

The estimates of the costs as a percentage of turnover **for microbusinesses** (with fewer than 10 employees) suggest that the costs on microbusinesses are at a low level of the level of turnover in all countries (equal or below 0.8% of microbusiness turnover)<sup>354</sup> and very close to the level of cost under the baseline. Therefore the policy options do not disproportionately affect the performance of SMEs. Some short-term negative effects may occur, however, triggered by a temporary loss of production due to an increased take up of carers' leave.

### Sensitivity analysis lost production

It also needs to be noted that the estimated of lost production included in the total costs figures assume that for the entire period carer is on carers' leave the employer will lose 100% of his productive value. However, in reality some of this production could be taken

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<sup>353</sup> In Option 2: EL, CY, MT; in Option 3: EL, CY, LT, MT

<sup>354</sup> The costs as a percentage of turnover for microbusinesses (with fewer than 10 employees) is presented in Annex 9 of the supporting study

up by other staff already employed, through a redistribution of tasks or by the carer when he/she comes back from leave. Therefore, the negative impact on businesses reported above and in Table 10 is most probably overestimated, as the lost production cost calculated corresponds to the maximum loss for a business when a carer takes carers' leave. If 20% of the lost production is absorbed either by labour force adjustment or simply compensates for temporary under-utilisation, the value of lost production due to carers taking carers' leave would be sensibly lower. Thus, the cost for the whole period 2015-2055 would be of €277 million over the entire period up until 2055 (compared to €458 million if 100% of the production is assumed to be lost) in Option 1, € 707 million instead of € 1.6 billion under Option 2 and € 22 million instead of € 214 million under Option 3.

Table 10: Estimated impact of carers' leave options on companies, relative to the baseline (EU)<sup>355</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Retention of workers	+ € 383 million	+ € 2798 billion	+ € 1328 million
Less absence from work	+ € 83 million	+ € 746 million	+ € 252 million
Leave request processing	- € 95 million	- € 426 million	- € 288 million
Payment of carers' benefits	€ 0	- € 390 million	€ 0
Recruitment	- € 218 million	- € 853 million	€ 0
Lost production	- € 458 million	- € 1578 billion	- € 214 million
<b>Total impact on companies, NPV 2015-2055</b>	- € 304 million	+ € 295 million	+ € 1078 million
<b>Total impact/company in 2030/2050</b>	€ 0/- € 2	+ € 1/ - € 1	+ € 2 / + € 5

#### 8.4.3 Impacts on Member States

The **budgetary impact** on Central Governments is driven in part by changes in employment. In view of anticipated demographic ageing, all options would facilitate that

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<sup>355</sup> The benefit linked to the retention of workers is due to the fact that less carers are expected to drop out of the labour market because they would be able to better reconcile their professional and caring responsibilities, the benefit linked to less absence from work is due to a more motivated workforce, which can better reconcile professional and caring responsibilities, the cost of processing leave request is due to an increase in take-up of carers' leave and in administrative costs to process it, the recruitment costs are due to an expected increase in take-up and the need to replace the additional workers taking leave and the costs of lost production are due to the fact that carers will not work while on leave.

increasing numbers of workers are retained in employment once they enter the ages when they face caring responsibilities towards elderly relatives. This in turn would be expected to positively contribute to tax revenue. The budgetary impact is also driven by payments made for carers' leave benefits, in the cases of Options 2 and 3 (depending on how the leave is financed).

Option 2 is the most costly option in terms of benefit payments (€ 1 249 million for the central government and € 4073 million for the social security partners for the period 2015-2055), but it also has the greatest positive impact of the change in tax received (€ 27 174 million for the same period). The largest decrease in unemployment benefits is also estimated to be in Option 2 (€2.4 billion). Around 86% of this benefit is concentrated in the cluster of 13 countries which are considered to fall somewhat below the requirements of this option<sup>356</sup>. The introduction of paid carers' leave also creates additional administrative burden, linked to the processing of payments and an increase in the take up of carers' leave, as well as the need to track a 'bank' of leave throughout a worker's career. This administrative burden on the Central Government is highest in Options 2 and 3 (€ 404 million under both options for the period 2015-2055). Improved worker health, particularly reductions in stress-related illnesses, also has an impact as it reduces the costs for health insurance.

The total impact on Central Governments and social security providers is estimated to be a benefit of €23.8 billion under Option 2 (67% of this is accounted for in Member States which fall somewhat below the requirements<sup>357</sup> and 2% in Member States which fall significantly below the requirements<sup>358</sup>), nearly €21 billion in option 3 (with a similar impact of the different clusters of Member States), and a negative impact of - €991 million in option 1.

Table 11: Estimated impact of carers' leave options on Member States, relative to the baseline (EU)<sup>359</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Payment of unemployment benefits	+ € 709 million	+ € 2.4 billion	+ € 1.4 billion
Changes in tax revenue	+ € 527 million	+ € 27.2 billion	+ € 20.6 billion
Payment of carers' benefits	- € 2.2 billion	- € 5.3 billion	- € 857 million
Leave request processing	- € 15 million	- € 466 million	- € 414 million
<b>Total impact on government/social security, NPV 2015-2055</b>	<b>- € 991 million</b>	<b>+ € 23.8 billion</b>	<b>+ € 20.8 billion</b>

<sup>356</sup> CZ, EE, IE, ES, FR, HR, LV, LT, LU, HU, SI, SK, UK

<sup>357</sup> CZ, EE, IE, ES, FR, HR, LV, LT, LU, HU, SI, SK, UK

<sup>358</sup> EL, CY, MT

<sup>359</sup> The decrease in payment of unemployment benefits is due to the expected increase in employment, the change in tax revenues is due to the increase in employment and the cost of processing leave request is due to an increase in take-up of carers' leave and in administrative costs to process it

Carers' leave options have different **macro-economic impacts**. While Option 1 has a negative impact on GDP (- € 0.3 billion), Options 2 and 3 have a significantly positive one (+ € 56.6 billion and + € 45.6 billion respectively). The changes in GDP are driven by changes in employment and labour market participation, along with associated increases in productivity. In Option 2, 73% of this impact is driven by the Member States which fall somewhat below the requirements<sup>360</sup> and only 3% by Member States which fall significantly below the requirements<sup>361</sup>. The situation is similar in Option 3 with 68% for the former cluster<sup>362</sup> of Member States and 2% for the latter<sup>363</sup>. There is an overall increase in net exports, as higher production capacity encourages firms to reduce prices and increase production, with some of the additional production exported.

There is an increase in the size of the labour force as a direct result of all the options. The provision of a period of carers' leave prevents some individuals from falling out of the labour market to care for their family members, so they can remain in the same job rather than having to leave and possibly try to return at a later date.<sup>364</sup> This is through both the provision of leave in options 1 and through the paying of leave in Options 2 and 3, which encourage a higher number of individuals to remain in the labour market. This is particularly important for female workers, especially older female workers. In 2050 the improved carers' leave provisions lead to an increase in labour force participation that range from 1000 in Option 1 to 49 000 in Option 2.

In 2050 the estimated increase in employment ranges from 6000 in Option 1 to 76 000 in Option 2. The increase in employment will also lead to an increase in the amount of tax received. The options are also expected to increase real incomes. In all options, this is driven by the increase in employment; the introduction of paid carers' leave in options 2 and 3 also drive increases in real income.

**Competitiveness** would be marginally affected by all three carer's leave options. Net exports would decrease by a maximum of € 0.2 billion in Option 3 in 2050. While in 2030 none of the three options would impact domestic prices, Option 2 leads to the highest decrease in domestic prices in 2050 (-0.3%).

Table 12: Estimated macro-economic impact of carers' leave options

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	- € 0.3 billion (-0.0001%)	+ € 56.6 billion (+0.01%)	+ € 45.6 billion (+0.01%)

<sup>360</sup> CZ, EE, IE, ES, FR, HR, LV, LT, HU, SI, SK, UK

<sup>361</sup> EL, CY, MT

<sup>362</sup> LU, UK

<sup>363</sup> EL, CY, LT, MT

<sup>364</sup> Flows from inactivity to employment, especially at similar skills levels, are likely to be difficult in the age cohorts above 55 years of age, who are the most likely to face care responsibilities.

<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	2 000/1 000 (+0.00%/0.00%)	39 000/49 000 (+0.02%/0.02%)	21 000/30 000 (+0.01%/0.01%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	6 000/6 000 (+0.00%/0.00%)	45 000/76 000 (+0.02%/0.03%)	34 000/52 000 (+0.01%/0.02%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	+ € 0.1 billion /+ € 0.1 billion (0.00%)	+ € 1.8 billion /+ € 7.9 billion (+0.01%/0.03%)	+ € 1.7 billion /+ € 5.9 billion (+0.01%/0.03%)

Although the carers' leave options provide benefits to both men and women in the labour market, they would affect women to a greater degree. Female labour market participation, employment and earnings estimates all improve by a larger proportion than for men, so they support a narrowing of the gender employment gap and of the gender pay gap (as female earnings increase faster than male earnings). In 2050, it is foreseen that with Option 1 female employment would increase by 4000 (compared to 2000 for male employment), in Option 2 by 47000 (compared to 29000 for male employment) and in Option 3 by 30000 (compared to 22000 for male employment).

**Stakeholder views:** The European Parliament has called for an EU directive on carers' leave with an adequate remuneration and social protection for carers. EU trade unions are largely favourable to an EU directive on Carers leave but have cautioned that it needs to be framed in a way not to reinforce gender roles in caring. EU employers' organisations are not favourable to introducing a carers' leave at EU-level, suggesting instead that further measures be taken at EU-level to support the development of formal long-term care services. NGOs called for the Commission to introduce a carers' leave with adequate standards for financial compensation<sup>365</sup>.

#### 8.4.4 Comparing the Options

Effectiveness: Option 1 has a low impact on labour force participation and employment. Option 2 has the highest impact on labour force participation and overall employment, closely followed by Option 3. The non-legislative option's effectiveness in improving work-life balance and women's participation in the labour market would depend on its implementation but as a non-binding option, it is expected to be less effective.

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<sup>365</sup> AGE Platform Europe, COFACE Families Europe, ENIL, European Women's Lobby, Eurocarers, Eurochild, Make Mothers Matter (2017), *Europe's Last Chance, Work-Life Balance: time to bring work and welfare policies in line with the 21<sup>st</sup> century*



Efficiency: Option 1 is the only option to have a negative impact on companies. This is largely due to lost production during the period of leave and higher replacement costs. This Option is also the only option to have a negative impact on central governments. Options 2 and 3 have comparable positive impacts on companies and central governments and are therefore similarly cost-effective.

Coherence: All options would facilitate the exercise of the rights recognised in Article 33 of the Charter of Fundamental Rights, which specifically refers to the reconciliation of family and professional life. Options 2 and Options 3 would have the highest impact given that income replacement during the leave period would allow them the financial support to effectively exercise the right in practice.

<b>Options</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Coherence</b>
<b>Baseline</b>	0	0	0
<b>Non-legislative option</b>	+ Limited impact on improving carers' work-life balance	- Limited costs	+ Marginal positive impact on fathers' fundamental rights
<b>Option 1</b>	+ Slight positive impact on improving carers' work-life balance	-- Highest costs for companies and Central Governments	+ Positive impact on fathers' fundamental rights
<b>Option 2</b>	++ High positive impact on improving carers' work-life balance and highest positive impact employment and labour force	++ Positive impact on companies and high benefit for Central Governments	++ High positive impact on fathers' fundamental rights
<b>Option 3</b>	++ High positive impact on improving carers' work-life balance and higher positive impact on employment and labour force	+++ Positive impact on companies and high benefit for Central Governments, less administrative burden on companies and Central Governments than Option 2 which entails a bank of leave	++ High positive impact on fathers' fundamental rights

Both Options 2 and 3 are expected to have high positive impacts on individuals, enabling them to take a short period of leave to care for their dependent relatives with a limited earnings loss. The quantitative assessment for both options reveals a neutral impact when estimated per company in 2050 and a high positive impact on Central Governments. Option 2 has slightly more positive macro-economic impacts than Option 3. Option 2 may however entail a higher administrative burden for companies/central governments than Option 3, given the need to track a 'bank' of leave throughout a worker's career. Option 3

therefore appears to rank slightly higher in efficiency than the other carers' leave options assessed and is therefore identified as the preferred option.

In order to further increase the efficiency of Option 3, it would be considered to limit the scope of the entitlement to 5 days per year per worker (and not per dependent relative). This would limit the disruption and complexity due to introducing such a measure for companies, as well as possibly reduce its costs.

### **1.1. Flexible working arrangements**

The non-legislative option would not require Member States to change their national legislation to change the existing provisions. Option 1 would require a majority of Member States<sup>366</sup> to introduce a right for parents of children up to 12 and carers to request flexibility in place of work. Option 2 would require a majority of Member States<sup>367</sup> to introduce a right for parents and almost all Member States<sup>368</sup> for carers to request flexibility in schedule. Option 3 would in addition to the changes required by Option 1 and 2, also require many Member States<sup>369</sup> to introduce a right for parents many Member States<sup>370</sup> for carers to request reduced working hours.

#### *8.5.1 Impacts on individuals*

Compared to the baseline, all three options would encourage employees to make a request, as even if the employer is under no obligation to grant the requested change, he/she will nevertheless need to give it due consideration. Therefore, it would allow, where it is mutually convenient for the employee and the employer, to agree on changes to the place of work (in Option 1), working schedules (in Option 2) or a reduction in working hours (in Option 3) for a set period of time.<sup>371</sup> Greater use of flexible work arrangements would have a positive impact in better balancing work and family life. Individuals are expected to benefit as their quality of life improves. Additionally, when men use flexible working arrangements, this leads to better sharing of unpaid work between men and women (although the percentage of employed men who reduce their working hours to take care for the child is generally very small<sup>372</sup>).

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<sup>366</sup> This could require changes in Member States such as BE, BG, CZ, DK, DE, EE, IE, EL, ES, FR, HR, CY, LV, LT, LU, MT, AT, RO, SI, SK, FI, SE

<sup>367</sup> This could require changes in Member States such as, BG, DE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, AT, PL, PT, RO, SI, SK, FI, SE

<sup>368</sup> This could require changes in Member States such as BE, BG, CZ, DK, DE, EE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, AT, PL, PT, RO, SI, SK, FI, SE

<sup>369</sup> This could require changes in Member States such as BG, IE, EL, ES, HR, IT, CY, LV, LU, HU, MT, AT, PL, PT, RO, SI, SK, FI, SE

<sup>370</sup> This could require changes in Member States such as BE, BG, CZ, DK, EE, IE, EL, ES, HR, IT, CY, LV, LT, LU, HU, MT, AT, PL, PT, RO, SI, SK, FI, SE

<sup>371</sup> Evidence from UK shows that a right to request and have it duly considered has an impact, as employees are more likely to request and employers to grant than in absence of such a right.

<sup>372</sup> It is below 5% in all Member States except Sweden (8.6%); in 14 Member States it is below 1%.

In Option 1 and 2 flexibility in working schedule and place of work, when granted by the employer, would not lead to a loss in hours worked. In Option 3, the additional right to request reduced working hours, in contrast, would entail reduced pay and pension contributions associated to the reduction in hours worked for workers making such a request, so their income would be reduced accordingly. However, the availability of rights to request reduced working hours could potentially increase women's pay per hour among women part-timers, if women who wish to work reduced hours would be able to do so in a wider range of occupations, also including higher-paid occupations. While there are concerns that such arrangements would continue to be used disproportionately by women, if men were to make use of such rights, then more women would be able to continue in full-time work.

Compared to the baseline, Options 1 and 2 would lead to improved employees' efficiency, derived from reduced interruptions at work and better concentration when carrying out certain tasks, as well as reduced commuting time, if flexibility in working schedule and place of work is enhanced. As a result, employees with caring responsibilities who would have otherwise dropped out of employment, or reduced their hours of work, can remain in employment.<sup>373</sup>

Option 3 would also facilitate a reduction in working hours for a set period of time, thus giving more time for family responsibilities. The direct impacts are a negative financial impact for workers who choose to reduce their hours (reduced pay and pension contributions) and a positive impact in so far as it would facilitate remaining in the same job instead of changing to a different job with shorter hours (as part-time jobs are often lower paid). The indirect impact is a more limited access to training during the spell of part-time and lesser possibilities for career progression<sup>374</sup>.

The impact of all three options as well as the non-legislative Option on the gender gap in hours and earnings will depend on whether men would start requesting, and being granted, reductions in hours worked for reasons of care. Currently, women are much more likely than men to work part-time for care reasons, which contributes to women maintaining the bulk of caring responsibilities, as well as women's lower income.<sup>375</sup>

The take up of flexible working arrangements by men would lead to an increase in the amount of unpaid work men carry out each week, which in turn reduces the amount of time women spend on unpaid work and increases their availability for labour market participation.

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<sup>373</sup> OECD (2016), Backgrounder: Be flexible!: How workplace flexibility can help European Employees to balance work and family. In particular, workplace flexibility in terms of schedules or place of work is found to allow high female employment and lower part-time rates among women.

<sup>374</sup> OECD (2010, 2012).

<sup>375</sup> Evidence suggests that even short spells of part-time work can have a negative impact on career progression, while the incidence of part-time employment among working women is negatively associated with the share of women in senior corporate positions.

The impacts of flexible working arrangements on poverty are mixed. By facilitating women's employment, all options could contribute to the reduction of poverty among some women and their families, given that dual-earner households are at a lower risk of poverty<sup>376</sup>. That being said, as women would more likely make use of part-time work solutions, there is a risk that the above options could also result in women's reduced earnings as well as lower build-up of pension contributions, leading to lower pensions and increased poverty risk in old age. Thus, the promotion of a more balanced take-up between women and men as parents and caregivers remains important. Moreover, measures to facilitate the transition to full-time work, as well as ensuring adequate minimum pensions, can help to mitigate associated poverty risks.

### 8.5.2 Impacts on companies

The impacts of the flexible working arrangements options on companies are mixed. There will be benefits to companies, as employees using flexible working arrangements are more likely to remain in the same job, which reduces recruitment costs, and are expected to be less absent from work due to sickness. The costs for companies will result from an administrative burden to process applications in all options, and in addition under Option 3 to , a potential loss of production for employees reducing their working hours as well as an adjustment cost when having to adjust the workload or to assign workers to different jobs.

In Option 1 there is also a potential adjustment cost for companies when employees are allowed to work from home or another remote location as organisational changes are involved. Where individuals take up arrangements to work at a different geographic location, employers potentially have adjustment costs to ensure that workers can carry out their work elsewhere<sup>377</sup>. However, many employers who are able to offer homeworking will already provide this equipment for employees (for example many workers in offices already use laptop computers as standard) or workers will just use their own equipment. It has been estimated that this will be the case for 50% of employers; however it could be more in practice. Moreover, employers would not be obliged to grant the request for remote working, so there would be no risk to disproportionately burdening businesses.

In Option 2 there is also a potential adjustment cost for companies when employees request to change their working schedule, as organisational changes are also involved. However, they can be more easily accommodated, in particular, when the workflow is not immediately dependent on consumer demand.<sup>378</sup>

The benefit to employers through increased retention are assumed to reach € 33.1 billion in Option 1, € 59.4 billion in Option 2 and € 98.2 billion in Option 3 for the same period. For

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<sup>376</sup> European Commission (2016) Employment and Social Developments in Europe

<sup>377</sup> This was estimated as the purchase of a computer and a suitable office chair, which is likely to overestimate the costs for businesses.

<sup>378</sup> OECD (2016), Backgrounder: Be flexible!: How workplace flexibility can help European Employees to balance work and family

Option 3, which entails the right to request reduced working hours, the costs due to lost production are estimated to €129.8 billion for the period 2015-2055. This assumes a very high level of demand for and accommodation of flexible working arrangements, since employers can, of course, refuse requests for flexible working, particularly where it would cause a cost to the company, so the actual costs would likely be significantly lower.

The total impact on businesses of the introduction of legislation is estimated to be a benefit of € 3.1 billion in Option 1, € 11.7 billion in Option 2 and a cost of € 126.4 billion in Option 3 due to the impact of the lost production linked to the right to request reduced working hours. In Option 3, Member States which fall significantly below the requirements<sup>379</sup> account for 25% of this cost.

The impact on businesses is similar for SMEs as it is for large employers, as the costs and benefits relate to the number of individuals taking flexible working arrangements and SMEs will be able to refuse if flexible working is not workable for them. The estimates of the costs as a percentage of turnover for **microbusinesses** (with fewer than 10 employees) show that the costs of the policy options on microbusinesses is a low level of the level of turnover (equal or less than 1% except in NL where it is 1.6% ) and very close to the level of cost under the baseline. Therefore the policy options do not disproportionately affect the performance of SMEs<sup>380</sup>. In addition, OECD evidence shows that employees in small firms (with 10 workers or less) have relatively more access to certain flexible working arrangements. The closer interpersonal links that employees in small firms often develop and the associated level of trust seem to facilitate greater workplace responsiveness to worker needs, with benefits for the SMEs.<sup>381</sup>

#### **Sensitivity analysis lost production**

It also needs to be noted that the estimated of lost production included in the total costs figures assume that for the entire period workers do not work because their reduced working hours the employer will lose 100% of his productive value. However, in reality some of this production could be taken up by other staff already employed, through a redistribution of tasks. Therefore, the negative impact on businesses reported above and in Table 13 is most probably overestimated, as the lost production cost calculated corresponds to the maximum loss for a business when a worker reduces his/her working hours. If 20% of the lost production is absorbed either by labour force adjustment or simply compensates for temporary under-utilisation, the value of lost production due to the workers' reduced working hours would be sensibly lower. Thus, the cost for the whole period 2015-2055 would be of € 68.7 billion over the entire period up until 2055 (compared to €129.8 billion if 100% of the production is assumed to be lost) in Option 3.

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<sup>379</sup> IE, ES, LV, LT, LU, MT, RO

<sup>380</sup> The costs as a percentage of turnover for microbusinesses (with fewer than 10 employees) is presented in Annex 9 of the supporting study

<sup>381</sup> OECD (2016), Backgrounder: Be flexible!: How workplace flexibility can help European Employees to balance work and family.

Table 13: Estimated impact of flexible work arrangements options on companies, relative to the baseline (EU)<sup>382</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Retention of workers	+ € 33.1 billion	+ € 74.6 billion	+ € 98.2 billion
Less absence from work	+ € 5.6 billion	+ € 15.2 billion	+ € 21.7 billion
Adjustment cost for telework	- € 3 billion	€ 0	- € 3 billion
FWA request processing	- € 32.5 billion	- € 62.9 billion	- € 107.5 billion
Recruitment	€ 0	€ 0	- € 6 billion
Lost production	€ 0	€ 0	- € 129.8 billion
<b>Total impact on companies, NPV 2015-2055</b>	<b>+ € 3.1 billion</b>	<b>+ € 11.7 billion</b>	<b>- € 126.4 billion</b>

### 8.5.3 Impacts on Member States

The non-legislative option and the three legislative options have a positive **budgetary impact on central governments**, which ranges up to + € 309.1 billion in Option 3. Member States which fall significantly below the requirements<sup>383</sup> make up 23% of this positive impact. The budgetary impact is driven by changes in employment and pay, which will alter benefit payments and taxes received. A benefit is estimated for all options, which is largely driven by changes in tax receipts. More flexible working arrangements are expected to lead to: an increase in labour market participation, a reduction in hours worked and an increase in productivity. It is also expected that individuals who use flexible working arrangements are less likely to require the same volume of health care.

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<sup>382</sup> The benefit linked to the retention of workers is due to the fact that less parents and carers are expected to drop out of the labour market because they would be able to better reconcile their professional and caring responsibilities, the benefit linked to less absence from work is due to a more motivated workforce, which can better reconcile its professional and caring responsibilities, the adjustment cost is due to the need for employers to buy the necessary IT equipment to make telework possible if not already available in the company, the cost of processing flexible working arrangement requests is due to an increase in take-up and to the administrative costs to process it, the recruitment costs are due to an expected increase in take-up and the need to replace workers when they work reduced hours and the costs of lost production are due to the fact that some parents and carers while chose to work reduced hours.

<sup>383</sup> IE, ES, LV, LT, LU, MT, RO

Table 14: Estimated impact of flexible work arrangements options on Member States, relative to the baseline (EU)<sup>384</sup>

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Payment of unemployment benefits	- € 47.8 billion	- € 55.3 billion	+ € 93 million
Healthcare	+ € 215 million	€0	+ € 215 million
Changes in tax revenue	+ € 128.9 billion	+ € 124.8 billion	+ € 308.8 billion
<b>Total impact on government/social security, NPV 2015-2055</b>	<b>+ € 81.3 billion</b>	<b>+ € 69.6 billion</b>	<b>+ € 309.1 billion</b>

The **macro-economic impacts** for flexible working arrangements options are high. The positive GDP effects are much larger in magnitude than the other options in relation to leave that were modelled. This is because the flexible work arrangements apply to a larger number of individuals and take up is higher than under the other options. The quantitative assessment shows that all types of flexible working arrangements (homeworking, flexible schedules and reduced working hours) would have significant positive impacts on GDP. The impact on GDP is estimated to be between € 273.2 billion (Option 2) and € 653.1 billion (Option 3) over the 2015-2055 period. In Option 3, the Member States which fall significantly below the requirements<sup>385</sup> make up 23% of the positive GDP impact.

All three options lead to a boost in **competitiveness**, as increases in labour force participation puts downwards pressure on wages and prices and increases the potential productive capacity of the economy, leading to an increase in net exports (€ 9.9 billion in Option 3 in 2050) and a decrease in domestic prices (-0.63% in Option 3 in 2050).

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<sup>384</sup> The impacts on the payment of unemployment benefits and tax revenues are due to the changes in employment rates and the cost of processing leave request is due to an increase in take-up of flexible working arrangements and to the administrative costs to process it, the rise in take-up of flexible working arrangements leads to a decrease in hospital admissions because the parents and the children's health both benefit from the measure

<sup>385</sup> IE, ES, LV, LT, LU, MT, RO

Table 15: Estimated macro-economic impact of flexible working arrangements options

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	€ 285.4 billion (0.07%)	€ 273.2 billion (0.07%)	€ 653.1 billion (0.2%)
<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	232 000/ 481 000 (0.1%/0.21%)	272 000/558 000 (0.11%/1.1%)	704 000/1 337 000 (0.29%/0.58%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	15 000/208 000 (0.01%/0.09%)	14 000/232 000 (0.01%/0.5%)	1 000 000/1 392 000 (0.42%/0.62%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	- € 3.1 billion /+ € 48 billion (-0.02%/+0.21%)	- € 3.4 billion /+ € 48.2 billion (-0.03%/+0.21%)	+ € 5.7 billion /+ € 102 billion (+0.04%/0.44%)

Although the flexible working arrangement options provide benefits to both men and women in the labour market, they would affect women to a greater degree. Female labour market participation, employment and earnings estimates all improve by a larger proportion than for men, so they support a narrowing of the gender employment gap and of the gender pay gap (as female earnings increase faster than male earnings). In 2050, it is foreseen that with Option 3 female employment would increase by 942000 (compared to 450000 for male employment).

**Stakeholder views:** The European Parliament is of the view that employees should be given the possibility to make use of flexible working arrangements. EU Trade Unions are cautious about a right for parents to request flexible work arrangement, highlighting the potential usefulness but stressing that workers should have a right to return to full-time work afterwards as not to reinforce gender inequalities in the labour market. For employers while flexible working arrangements are essential for managing work-life balance, there is no universal approach and they should be defined at company-level. The Advisory committee is of the view that flexible working arrangements should be designed in a way to appeal to fathers and mothers to the same extent and should be used by them to the same extent in order not to perpetuate the status quo of unequal distribution of tasks in work and family lives.

#### 8.5.4 Comparing the Options

Effectiveness: a non-legislative option should improve work-life balance and women's participation in the labour market but, giving its non-binding character, it is expected to be



less effective than Options 1 to 3. Options 1 and 2 would be less effective in improving work-life balance and women's participation in the labour market than Option 3 because they only entail one type of flexible working arrangement. They would also have a smaller impact on employment than Option 3.

**Efficiency:** Options 1 and 2 have a positive impact on companies due to the retention of employees and the avoided costs due to absence from work. However, these two Options do not entail a right to request reduced working hours, which has been shown above to have a strong impact on parents and carers' work-life balance. While Option 3 would bring the highest costs for companies, it will also bring the highest benefits for the States thanks to a high rise in employment and tax revenues.

Finally, while environmental impacts appear to be of marginal relevance overall, an impact on the environment can be reasonably expected from Options 1 and 3 which entail measures leading to more employees changing their place of work who, as result, would not commute or would commute shorter distances on given days. The impact would be positive, albeit marginal. The other possible measures under consideration are not expected to raise positive or negative impacts on the environment.

**Coherence:** Due to more flexibility in how to organize the working hours or the place of work, all the options would facilitate the exercise of the rights recognised in Article 33 of the Charter of Fundamental Rights, which specifically refers to the reconciliation of family and professional life.

	<i>Effectiveness</i>	<i>Efficiency</i>	<i>Coherence</i>
<b>Baseline</b>	0	0	0
<b>Non-legislative option</b>	+	- Limited costs	+ Marginal positive impact on fundamental rights
<b>Option 1</b>	++ High positive impact on employment and labour force.	++ Positive impact on companies and Central Governments	++ Positive impact on parents and carers' fundamental rights
<b>Option 2</b>	++ High positive impact on employment and labour force.	++ Positive impact on companies and Central Governments	++ Positive impact on parents and carers' fundamental rights
<b>Option 3</b>	+++ Highest positive impact on employment and labour force.	+++ Highest benefit for Central Governments due to increased tax revenues	+++ Higher positive impact on parents and carers' fundamental rights

On the basis of the analysis above, Option 3 has been identified as the preferred option. While the quantitative analysis showed high positive impacts on female employment and central governments for all legislative options, they are the highest in Option 3. This is especially the case for the increase in employment which is foreseen to be comparable in Options 1 and 2 (14 000 and 15 000 in 2030) and much higher in Option 3 (1 000 000 in 2030) thanks to the right to request reduced working hours it entails. In consequence

Option 3 is expected to lead to a large increase in tax revenues for Member States. Although Option 3 has the highest cost for companies, when disaggregated the cost represents only 118 € per company in 2030 and 597 € per company in 2050. There can be mixed impacts on individuals, particularly in the use of part-time work, which is why it would be important to accompany these measures with awareness-raising and monitoring to facilitate improved gender balance in the take-up of such arrangements.

## 1.2. Impact of the Combination of preferred options

The preferred combination of options is presented in the following table. It gathers all options considered the most effective, efficient and coherent for each policy area assessed above. The following table presents a summary of the legal gap analysis for the preferred options in the areas of paternity leave, parental leave, carers' leave and flexible working arrangements. A more detailed legal gap analysis can be found in Annex 2 of the supporting study.

<b>Policy Area</b>	<b>Preferred Option</b>
<b>Maternity Leave</b>	<b>Non-legislative Option:</b> Policy guidance and sharing of good practices on facilitating successful transitions between maternity leave and employment (including on breastfeeding breaks and facilities)
<b>Paternity Leave</b>	<b>Option 3:</b> Individual right to two weeks of paternity leave compensated at least at sick pay level
<b>Parental Leave</b>	<b>Option 3:</b> Entitlement to flexible uptake, four months reserved for each parent, payment at least at sick pay level for the four months, rise in age of the child from 8 to 12
<b>Carers Leave</b>	<b>Option 3:</b> Individual entitlement to a short-term leave of 5 days, per year, per child or dependent relative, paid at least at sick pay level <sup>386</sup>
<b>Flexible Working Arrangements</b>	<b>Option 3:</b> Right for parents (of children up to 12) or carers to request flexibility in working hours, schedule or place of work for a set period of time, automatic right to return to previous working hours, the

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<sup>386</sup> It is to be noted that despite the fact in section 8 it is determined the preferred option would only consider 5 days of carers' leave per worker (and not per dependent relative), the Option that has been used to calculate the quantitative impact of the combination is Option 3 as described in section 7.

	employer has to consider the request but has no obligation to grant the requested change
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### Legal Gap analysis of Combination of preferred options<sup>387</sup>

No current provisions ↓ Falls significantly short of requirements ↘ Falls somewhat short of requirements → Meets requirements ↗ Exceeds requirements ↑

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>Paternity Leave</b>																														
	2 weeks leave (10 wd)	↘	↗	↑	↓	↓	↗	↗	↗	↘	↑	↑	↗	↓	→	↗	↘	↑	↘	↗	↘	→	↑	↑	→	↗	↑	↓	↗	
	Paid at sick pay level	↑	↑	↗	↓	↓	↗	↗	↑	↑	↑	↗	↑	↓	↑	↗	↑	↑	↑	↑	↑	↘	↑	↑	↑	↑	↑	↓	↑	
<b>Parental Leave</b>																														
	Length 4 month up to child age 12	↘	↑	→	→	↘	↘	↑	↘	↘	↘	↘	↘	→	↘	→	↗	↘	↘	→	→	→	↘	↘	↘	→	↘	↘	↑	
	Right to request flexible use	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↘	↗	↗	↗	
	100% non transferable	↗	↗	→	↑	↘	↗	↘	↘	↘	→	→	→	→	→	→	↗	↘	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	
	Entire period paid at sick pay level	↗	↗	↗	↑	↗	↑	↗	↑	↓	↓	↗	→	↑	↑	↓	↗	↑	↗	↗	↘	↘	↗	↗	↑	↑	↑	→	↘	
<b>Carers' Leave</b>																														
	Right to a short-term leave of 5 days per year	↑	↑	↑	↓	↑	↑	↑	↗	↗	↑	↗	↑	↑	↑	↑	↑	↑	↘	↑	↓	↑	↑	↑	↑	↑	↑	↑	↗	
	Paid at sick pay level	↗	↑	↑	↓	↗	↗	↑	↑	↓	↗	↗	↗	↑	↗	↗	↑	↓	↑	↑	↓	↗	↗	↑	↗	↑	↑	↗	↓	
<b>Flexible Working Arrangements</b>																														
	Right to request flexible schedule	↗	↗	→	→	↗	↓	↗	↗	↘	↓	↓	↓	↓	↓	↓	→	↓	↓	↓	↓	↘	↑	→	→	↓	↓	↓	→	↗
	Parents with children up to 12	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗
	Carers	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗	↓	↗	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗
	Right to request telework	↓	↓	→	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗	↓	↗	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	→	↓	↗
	Parents with children up to 12	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗	↓	↗	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗
	Carers	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗	↓	↗	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↗
	Right to request reduced working hours	↗	↗	→	→	↗	↑	↗	↗	→	→	→	→	→	→	→	→	↓	↗	→	→	↘	↑	→	→	↓	→	↓	→	↗
	Parents with children up to 12	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗
	Carers	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗
	Automatic right to return to working hours	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗
	Employer obligation to consider the request and reply	↑	↗	↗	↑	↑	↑	↗	↗	↗	↑	↑	↗	↑	↑	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗

<sup>387</sup> This table shows the legal gap analysis used to calculate the quantitative impact of the above measures by ICF. The Commission assessment is provided in Section 8. This table does not include Maternity Leave because the preferred option is the non-legislative option.

The qualitative analysis of the impact of the preferred options is described in the previous sections. A quantitative assessment of the cost and benefits of the combination of preferred options is presented in the table below.

Table 16: Expected impact of the combination of preferred options

<b>Total impact on companies, NPV 2015-2055</b>	- € 172.7 billion
<b>Total impact on government/social security, NPV 2015-2055</b>	+ € 343.6 billion
<b>Impact on GDP, NPV 2015-2055</b> (change compared to baseline)	€ 839.7 billion (0.21%)
<b>Impact on labour force in 2030/2050</b> (change compared to baseline)	768 000/ 1 441 000 (0.32%/0.62%)
<b>Impact on employment in 2030/2050</b> (change compared to baseline)	1 094 000/1 597 000(0.46%/0.71%)
<b>Impact on real incomes in 2030/2050</b> (change compared to baseline)	+ € 11.6 billion /+ € 120 billion (+0.09%/+0.52%)

The quantitative analysis shows that the combination of preferred options has a positive impact on GDP (+ € 840 billion, NPV 2015-2055), This positive impact is spread among a large group of evenly geographically distributed Member States with 11 Member States representing each in absolute terms from 1 to 10% of the overall EU impact. The combination also has an positive impact on employment (+ 1.6 million in 2050) and the labour force (+ 1.4 million in 2050). Real incomes are expected to increase by 0.52% in 2050.

The combination represents a cost for companies (€172.7 billion in NPV 2015-2055 for the EU). The impact is also widespread among the Member States with 15 Member States representing each in absolute terms from 1 to 10% of the overall EU impact. However, the majority of this cost is driven by the flexible working arrangements option which assumes a very high level of demand for and accommodation of flexible working arrangements although employers can refuse requests for flexible working, particularly where it would cause a cost to the company. The total cost for companies of the combination could hence be significantly lower.

It should also be taken into account that the preferred options of the combination have strong synergies and that the costs of the combination of preferred options could be lower than the sum of the individual costs for each option. For example some costs linked to the provision of an IT system to monitor leaves and flexible working arrangements could be combined for several preferred options and this would lead to a decrease in the burden for companies and Central governments. Conversely, in the long-term this initiative is expected to have wider positive impacts than those assessed in this report. Indeed, the measures presented above will facilitate reaching a gender-balanced sharing of care responsibilities between women and men, thereby giving women and men equal opportunities in the labour market.

As mentioned in the problem definition, this would have a series of positive impact that were not quantified in this report. These include increasing the pool of talents, increasing the motivation of workers, increasing the number of women in management positions, etc. The long-term effect of the positive impact on children's personal and cognitive development was also not quantified.

The legislative measures presented above for the paternity, parental, carers' leave and flexible working arrangement options will be accompanied by accompanying measures to enhance current efforts in these areas (including in the EU Semester and EU funding). The quantitative impact of these measures was not assessed because of the uncertainty surrounding their implementation. However, the non-legislative measures foreseen in the preferred option for maternity leave as well as complementary non-legislative measures to the other options are expected to have a positive impact on individuals, companies and Member States.

Moreover, as mentioned in section 5 on the policy objectives, this impact assessment does not cover all the drivers of the problem that will be addressed by this initiative. While formal care services and economic disincentives are two very relevant areas when tackling the problem of the underrepresentation of women in the labour market, measures in these areas were not assessed in this report. This is due to the limited EU competence in these areas. However, as mentioned in the Roadmap, the 'New Start' for work-life balance initiative is foreseen to be a comprehensive package of a wide range of legislative and policy measures. Considering the significant impact of formal care services and economic disincentives on the addressed problem, the initiative could build on the existing EU framework outlined in section 2.4 and foresee measures to enhance current efforts in these areas.

## **9. PROPORTIONALITY CHECK OF THE PREFERRED OPTIONS AND COMBINATION**

The combination of preferred options allows reaching the policy objective in a proportionate manner, focusing on promoting gender equality and increasing female labour market participation. It respects well-established national arrangements and the margin for Member States and social partners to determine the details of modalities of applying for leaves and flexible working arrangements.

As a consequence Member States would have to transpose the minimum standards into national law. This would entail financial and administrative costs for some Member States as well as businesses but would also bring substantial benefits, as explained above. In addition, these costs are minimised and commensurate with the objective to be achieved by the initiative.

In addition, the proposal does not set specific levels to be directly translated into national legislation but lays down only minimum standards. Member States who have more favourable rules for parents and caregivers already in place do not have to change their legislation and Member States may decide to introduce rules that go beyond the minimum standards set at EU level.

Moreover, many of the new provisions provided in this initiative are building upon existing provisions. For instance, according to Directive 2010/18/EU parental leave "should, in principle, be provided on a non-transferable basis"<sup>388</sup>. Similarly, carers' leave is based on the existing right to "time off from work (...) on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable"<sup>389</sup>.

Therefore the planned Union action leaves as much scope for national decision as possible while achieving still satisfactorily the objectives of increasing female labour market participation. The principles of subsidiarity and proportionality are observed considering the size and nature of the identified problems.

## 10. MONITORING AND EVALUATION

To assess the effectiveness in achieving the general and specific objectives of the initiative as well as to address the lack of comprehensive data monitoring in the area, which, as mentioned above, hampers the efficiency of the current EU framework<sup>390</sup>, the following core progress indicators have been identified to monitor successful implementation. The core indicators chosen below are mainly derived from comparative data sources (Eurostat, OECD) but where indicators do not exist, information can be taken from national data. These indicators will be regularly monitored by the Commission and serve as the basis for the evaluation of the initiative. On the basis of the indicators listed below, the Commission could regularly report progress to other key EU institutions, including the European Parliament, Council, and European Economic and Social Committee.

Operational objectives	Core indicators	Current EU situation
Reduce the gender employment gap	Employment rate of 20-64 years old by sex (Eurostat_lfsi_emp_a)	The gender employment gap is of 11.6 % points (2015).
Reduce the gender gap in part-time employment	Part-time employment rate of 20-64 years old by sex (Eurostat_lfsq_eppga)	The gender part-time employment gap is of 23.6 % points (Q1 2016).

<sup>388</sup> 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 96/4/EC

<sup>389</sup> 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 96/4/EC

<sup>390</sup> See section 2.3.1 on the Evaluation of existing legislation (Maternity Leave Directive (92/85/EEC) and Parental Leave Directive (2010/18/EU))

Reduce the impact of parenthood on women's employment rate	Employment impact of parenthood on women and men for one child under 6 (Eurostat_lfst_hheredch)	- 8.8% points between mothers of one child under 6 and women without children (2015)
Reduce the % of inactive women due to caring responsibilities	Women inactivity due to caring responsibilities (Eurostat_lfsa_igar + NEEDCARE)	18.7% of inactive women are inactive due to caring responsibilities
Reduce the gender gap in working part-time due to caring responsibilities between women and men	Women and men part-time employment due to caring responsibilities (Eurostat_lfsa_epgar + NEEDCARE)	26.2 % of women and 3.8% of men work part-time due to caring responsibilities (2015)
Reduce women's risk of poverty and social exclusion	People at risk of poverty or social exclusion (18-64 years old) by sex (Eurostat_ilc_peps01)	26,2% of women aged 18-64 are at risk of poverty (2014)
Ensure a gender-balanced use of leave arrangements	Take-up (use and duration) of parental and carers' leave by women and men and paternity leave by men (National administrative data + possible development of Eurostat data)	<i>No EU average due to lack of comparative data</i>

The table above presents the current level of the identified indicators. It is difficult to foresee how Member States' situation will evolve in relation to all those indicators. However, available data and relevant projections show that in the absence of EU level action, while some ongoing improvements in female labour market participation can be expected (following existing trends), the situation remains sub-optimal with a remaining average gender gap in male and female activity rates in the EU of around 9%, with gaps at or above 10% in 13 Member States (AT, CY, CZ, EL, HU, IE, IT, MT, NL, PL, RO, SK, UK). In Greece, the gap is projected to grow and remain at over 15%, in Italy it will remain close to 20% and in Malta it will exceed 25%. No projections have been modelled regarding the other indicators, however, on the basis of the ICF analysis, not significant changes are expected.

As already mentioned in section 5, the objectives of this initiative are fully in line with broader EU-level initiatives such as the forthcoming European Pillar of Social Rights and the Europe 2020 Strategy. In this context, this initiative will be monitored in light of the



targets determined under these initiatives, notably the objective of achieving the 75% of the 20-64 years old to be employed. This initiative will also propose non-legislative measures, including the announcement of the development of benchmarks on the take-up of the measures outlined above by women and men. These benchmarks could be used in the evaluation of the implementation of the initiative, in which the relevant operational arrangements to assess this implementation will be established.

## 11. GLOSSARY

### Definitions:

Maternity Leave: Leave from work for mothers to be on the occasion of the birth of a child.

Paternity Leave: Leave from work for fathers to be taken on the occasion of the birth of a child.

Parental Leave: Leave from work on the grounds of the birth or adoption of a child to take care of that child;

Carers' Leave: Leave from work for workers providing personal care or support in case of a serious illness or dependency of a relative;

Flexible Working Arrangements: The possibility for workers to adjust their working patterns, including through remote working arrangements, flexible working schedules and reduction in working hours.

### Country Codes:

European Union (EU)

Belgium	(BE)	Greece	(EL)	Lithuania	(LT)	Portugal	(PT)
Bulgaria	(BG)	Spain	(ES)	Luxembourg	(LU)	Romania	(RO)
Czech Republic	(CZ)	France	(FR)	Hungary	(HU)	Slovenia	(SI)
Denmark	(DK)	Croatia	(HR)	Malta	(MT)	Slovakia	(SK)
Germany	(DE)	Italy	(IT)	Netherlands	(NL)	Finland	(FI)
Estonia	(EE)	Cyprus	(CY)	Austria	(AT)	Sweden	(SE)
Ireland	(IE)	Latvia	(LV)	Poland	(PL)	United Kingdom	(UK)

## ANNEXES

### Annex 1. Procedural information

#### *Organisation and timing*

Following the withdrawal of the Commission's proposal to amend the Maternity Leave Directive in July 2015, the Commission announced its intention to prepare a new initiative that would address the issue in a broader context. The Commission published a Roadmap<sup>391</sup> for a 'New Start Initiative for Working Parents and Carers' in August 2015.

A Commission inter-service steering group (ISG), jointly chaired by the Secretariat-General was subsequently established in September 2015 for preparing this initiative. The following DGs and services were invited to the inter-service group included: Legal Service (SJ), Economic and Financial Affairs (ECFIN), Industry, Entrepreneurship and SMEs (GROW), Education and Culture (EAC), Regional and Urban Policy (REGIO), Health and Food Safety (SANTE) and Migration and Home affairs (HOME). The ISG met 4 times in the period from September 2015 to December 2016 and an additional written consultation before the re-submission to the RSB was held in February 2017.

During this period, the Commission undertook a two-stage consultation with the EU-social partners between November 2015-January 2016 and July 2016-September 2016. A broad public consultation also took place between November 2015 and February 2016. The Advisory Committee of Equal Opportunities between Women and Men was also invited to provide an opinion on the initiative, and the Committee presented their views in a Committee meeting on 8 December 2016 (see Annex 2 on stakeholder views).

The Commission has announced that it will present the initiative in its 2017 Work Programme as a related initiative within the framework of the Social Pillar.

#### *Consultation of the Regulatory Scrutiny Board*

The Regulatory Scrutiny Board first delivered a negative opinion in January 2017 and then a positive opinion with reservation in March 2017. The tables below shows how this report takes into account the RSB comments.

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<sup>391</sup> European Commission (2015), *Roadmap: A new start to address the challenges of work-life balance faced by working families* [http://ec.europa.eu/smart-regulation/roadmaps/docs/2015\\_just\\_xxx\\_maternity\\_leave.en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_xxx_maternity_leave.en.pdf)

1 <sup>st</sup> RSB Opinion	How and where comments have been addressed
<p><b>1. The context</b></p> <p>The report should provide a broader perspective of the issues at stake and how they fit into the legal and political context. The report should explain better why the earlier proposal on maternity leave was withdrawn, and describe current stakeholder support for the initiative.</p> <p>The report should review how national structural reforms and austerity measures have affected related work life balance provisions through altered employment law (in particular atypical employment and dismissal protection), social security systems and public investment in child care and long-term care.</p>	<p>The background to the withdrawal of the Maternity Leave proposal is explained in the new section 2.2. The current stakeholder support for the initiative is more clearly presented and their views are now described in detail in sections 7, for each set of options, and in section 8, when describing the impacts of the options.</p> <p>The impact of structural reforms and austerity is discussed in section 4 (on the baseline).</p>
<p><b>2. The scope</b></p> <p>The report should clarify the scope and ensure consistency throughout the text. In particular, it should make clear whether the main objective is to reduce women's underrepresentation in the labour market or to promote gender balance in caring responsibilities. The report should explain possible synergies with relevant labour law and employment legislation. It should clarify whether the initiative targets all workers including self-employed, management and executive levels, in the public and private sectors (in line with European Court of Justice case law).</p>	<p>The scope of the initiative is better defined, including in the revised Introduction chapter. The hierarchy of the objectives is also clarified, as the objective to balance caring responsibilities is more clearly presented as an intermediary (specific) objective to reach the overall objective of improving women's labour market participation. This reflects the new organisation of the problem definition in which it is made clear that the unequal sharing of caring responsibilities is the main driver of women's underrepresentation this initiative aims to address.</p> <p>The interlink with relevant labour law and employment legislation is explained in more detail in section 2.3 (e.g. Working Time Directive) and other initiatives (e.g. Telework agreement) are now referred to (section 2.5). The target of this initiative (i.e. workers with children or dependent relatives) is clarified in section 5.1 on the policy objectives.</p>
<p><b>3. The definition of the problem and EU added value</b></p> <p>The report should identify any key provisions that are thought to lead to a</p>	<p>The problem definition (section 2) has been re-structured. The unequal sharing of caring responsibilities between women and men</p>

<p>fairer share of caring responsibilities within a household (e.g. length of leave, mandatory versus non-mandatory leave, compensated or not compensated leave, transferable versus non-transferable). Member States' experience with legal protections and leave systems might be relevant in that respect. This would clarify the potential for improvement of EU legislation and better justify the need to act at EU level. The subsidiarity analysis should be further elaborated using relevant information from the second stage consultation of social partners.</p> <p>The report should specify to what extent the problem is due to poor design or enforcement of the existing legal framework, for example regarding dismissal protection during pregnancy or discriminatory behaviours when taking leaves. In the area of paternity leave and carer's leave where currently little or no legislation exists, the report should analyse in more depth the problem and its causes.</p> <p>In the absence of a full-fledged evaluation, an annex might consolidate and assess available information and pull together data and study results.</p>	<p>is now the main driver for the problem that is addressed by this initiative. It is now clearly explained what the root causes are behind this driver: "stereotypes and discrimination" and "ill-designed work-life balance" policies. Economic disincentives are presented as a reinforcing driver to the unequal sharing of caring responsibilities. Within the description of the root cause "ill-designed work-life balance", the key provisions that can have an impact on a more equal sharing of caring responsibilities and hence women participation in the labour market are described. Member States' experiences are used to a greater extent to illustrate the argumentation. The subsidiarity analysis has been further elaborated in section 6.2. A discussion of the impact of discrimination on the problem was added to the problem definition (section 3.2.1) and Annex 5 on the evaluation of the existing legal framework was added to the report. The problem definition stresses the importance of making leave arrangements available for fathers. In this context it highlights the fact that although paternity leave provisions exist in many Member States, it is often very short. A separate paragraph concerning the relevance of carers' leave in addressing the problem has been added in section 3.2.2.</p>
<p><b>4. Options</b></p> <p>The report should substantiate the choices of the options for each area and in combination, for instance by presenting what is known about what has worked and what has not, at EU and at Member State level. The report should clearly explain the reasons for discarding certain measures, such as provisions on the length of maternity leave, despite the fact that research outcomes throughout the report mention the relevance of combining length, compensation level and dismissal protection.</p> <p>The report should justify more convincingly the selection of the main provisions laid down in the options. In addition, it should present Member</p>	<p>In section 7, efforts have been made to better substantiate the choice of the option in the light of Member States experiences, evidence and stakeholders views. It is now more clearly explained why certain options were discarded (especially concerning the length of maternity leave in section 7.1.1). Member States views are reported in Section 8 in the "stakeholders' views" boxes. The retained combination, which includes all the previously determined preferred options, is now better justified in section 8.6.</p>

<p>States' views on the options. The choice of the preferred combination should be more convincingly justified, given that it does not seem to be the most cost-effective solution. The report could identify the legal and non-legal instrument(s) envisaged to carry out the initiative.</p>	
<p><b>5. Impacts</b></p> <p>The report should better substantiate the likely costs and benefits, in particular for companies, including SMEs, and (groups of) Member States, qualifying the estimates and explaining the methodology in more detail. Given the uncertainty of the estimates and the number of assumptions, efforts should be made to conduct a sensitivity analysis of the likely costs and benefits, which should be presented within ranges instead of exact numbers. The methodology focusses on the long term effects and tends to ignore short-term costs. The report should better rely on the outcomes of studies mentioned as references in the document as well as on the study carried out in the frame of this initiative to support its statements. The results of studies should be presented in a neutral tone to better differentiate between evidence and political judgment. Some of the assumptions regarding the estimation of benefits seem to be on the optimistic side. Therefore, the report should provide additional arguments to make these estimates more credible.</p>	<p>Quantified estimates are now explained in greater detail and supported by qualitative arguments whenever possible. The revised text also more clearly discusses how sensitive the results are to certain assumptions (e.g. in relation to lost production). The potential impact of collective agreements is also discussed now.</p> <p>The the total impact on companies, Central Governments and GDP are disaggregated by clusters of Member States (those which meet the requirements, those which have provisions which fall somewhat below the requirements and those with provisions which fall significantly below the requirements).</p> <p>A more detailed presentation of the assumptions on which the calculations are based and a discussion of their limits was included in the methodological Annex, and when relevant, in section 8.</p>
<p><b>6. Monitoring and evaluation</b></p> <p>Regarding the monitoring and evaluation indicators, the report should explain against which benchmarks success would be measured.</p>	<p>Section 10 now includes more detail on how the initiative will be monitored.</p>

<b>RSB 2<sup>nd</sup> Opinion</b>	<b>How and where comments have been addressed</b>
The report should clarify the difference between the comprehensive and wide scope of the 'New Start' initiative – in line with calls from the European Parliament, many Member States and stakeholders – and the more limited scope in the present initiative.	The limits of the scope of the impact assessment compared to the scope of the 'New Start' initiative and the reasons for these limits are now better identified in the Policy objectives section (section 5.1)
The report should substantiate the need for action in the area of dismissal protection and its possible link with the structural reforms and austerity measures. It should further provide reasons for withdrawing child care and long-term care, given their link with women's under representation in employment.	The relevance of action in the area of dismissal protection is substantiated in the problem definition (section 3.2.1). As explained above in section 5.1, formal care services are not withdrawn but due to limited EU competence in the area, there will not be legislative action in this field and measures to enhance current efforts in this area have not been discussed in the impact assessment beyond the problem definition.
The report should justify the exclusion of self-employed from the scope, given that the maternity leave directive covers them. It should also clarify whether the initiative applies to all workers, independently of their contracts of employment or employment relationships, in the private and public sectors.	The reason why the self-employed are not covered by this initiative is better substantiated in the introduction. Furthermore, it is clarified that the initiative applies to all workers who have an employment contract or employment relationship (Introduction).
Given that no legislation exists in the areas of paternity leave and carer's leave, the report should further assess the specific problems at stake and their drivers, and the diversity of situations in the Member States.	The rationale behind introducing paternity and carers' leave was strengthened in the problem definition (section 3.2.2), including through a more specific assessment of the situation in the Member States.
The report should substantiate the reasons for discarding more stringent legal provisions concerning dismissal protection, other than the response of employers' associations. It should explain why non legislative provisions would be (more) effective in providing a better protection for workers. The report should explain whether other alternatives have been considered and why they were discarded.	The reasons for discarding more stringent legal provisions concerning dismissal protections were further developed and better substantiated in section 7.1.1. Furthermore, it is specified why non-legislative measures are considered the better solution as opposed to legislative measures in the area of dismissal protection.
However, the report should improve the presentation of the likely costs and benefits: for instance, the tables presenting the estimated	The tables presenting the impacts in section 8 were revised in order to better inform on the costs and benefits leading to the overall

<p>impacts should be more informative, calculations of the figures summarized and the likely impacts on competitiveness further developed.</p>	<p>impact on companies and Central governments.</p>
<p>The impact per company results in very small average numbers (usually a couple of euros).  However, the focus on the effects over a very long time period on the average company probably hides wide divergences between types of companies and over time. The report should, therefore, be more transparent on the impacts:  - It could highlight that additional leave being taken by an employee in a micro enterprise can probably be more substantial in the concerned year and could then possibly have significant effects on the performance of the company.  - It should justify the long time horizon chosen for the cost-benefit analysis and explain the asymmetry between costs and benefits over time. The costs of work life balance policies hit immediately while benefits in terms of higher productivity of the labour force stem from long term behavioural changes on the labour market.</p>	<p>The introduction of section 8 now clarifies that the impacts are presented in Net Present Value over the 2015-2055 period in order to take into account the impact of the measures on long-term trends but that some costs will occur in the short term while benefits will take more time to materialise. It is also mentioned that this might impose a burden on small companies.</p>
<p>The report should better assess the impacts on (groups of) Member States, for example in the form of a table, that could mention for each Member State the legal changes at stake and indicate the expected impacts.  The preferred package of options should more clearly identify the legislative and nonlegislative actions and their content. The analysis of its impacts should be further developed and include a break-down by (group of) Member States.</p>	<p>A table summarising the legal gap analysis by Member State for the all the legislative preferred options was introduced in section 8.6.</p>
<p>Due to the length of the report, an abstract summarises the key elements of the IA. In order to better inform policy makers, the abstract should present more clearly the preferred combination of options and the related estimated costs and benefits.</p>	<p>Tables summarising the preferred combination of options and the related estimated impacts were added to the abstract.</p>



### *Evidence and external expertise used*

The Commission awarded a contract to ICF international for the analysis of the costs and benefits of possible EU measures to facilitate work-life balance for parents and caregivers.

The Commission additionally drew on its existing contracts to gather evidence that was used to support this impact assessment. This included:

A thematic report prepared by the European Social Policy Network on work-life balance measures for people with dependent relatives. A synthesis report, summarising the key findings, has been published along with in-depth country reports on the topic.

A review of the available literature on the costs and benefits of work-life balance measures was undertaken by researchers at the London School of Economics. The review has been published.

In addition, the European Network of Equality Bodies prepared a survey of their members on reported incidents of workplace discrimination and dismissals related to parenthood.

## Annex 2. Stakeholder consultation

Several steps have been taken to collect stakeholders views, they are summarised below :

WHO	HOW	ON WHAT	WHEN
<i>Consultations</i>			
Social partners	Dedicated consultation	On the possible direction of EU action	Nov 2015- Jan 2016
		On the content of the envisaged Commission proposal and on whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.	July- Sept 2016
Public	Online public consultation	On the problem to be tackled  On the solutions to address the problem (focus on non-legislative measures)	Nov 2015- Feb2016
<i>Opinions</i>			
Advisory Committee on Equal Opportunities for women and men	Ad-hoc opinion	The solutions to address the problem (particular focus on non-legislative measures)	Dec 2016
European Parliament	Own-initiative report	On the problem to be tackled  On the solutions to address the problem	Sept-16
<i>Events</i>			
MS Representatives	SPC thematic review	Identification of challenges  Sharing of best practices	Sept-16
MS Representatives,	Slovak Presidency	Identification of challenges	Sept-16

NGO, academics	conference	Sharing of best practices	
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*Summary of the responses of the EU social partners*

In line with the treaty, the Commission consulted the EU social partners in a two-phase consultation process. A first-phase consultation with the social partners was held between November 2015 and January 2016, and concerned the possible direction of EU level legislative action in the area of work-life balance and female employment. A second-stage social partner consultation took place between July and September 2016, which requested their views on a range of envisaged EU-level measures in the areas of leaves, flexible working arrangements, formal care services, and measures to reduce tax-benefit disincentives.

At cross-industry level, the trade unions that replied to the consultations were the European Trade Union Confederation (ETUC), Eurocadres and the European Confederation of Executives and Managerial Staff (CEC) as well as the European Confederation of Independent Trade Unions (CESI). It should be noted that ETUC's reply also took into account the view of 10 ETUC sectorial trade union organisations.

On the side of the employers, replies to the consultations were sent by *Businesseurope*, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and the European Centre of Employers and Enterprises providing Public Services (CEEP) as well as the Community of European Railway and Infrastructure Companies (CER), the Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), the Council of European Municipalities and Regions (CEMR), the European Chemical Employers Group (ECEG), the Hotels, Restaurants and Cafés in Europe (HOTREC), the Performing Arts Employers' Associations League Europe (PEARLE), the Retail, Wholesale and International Trade Representation to the EU (EuroCommerce).

The social partners agreed, largely, with the Commission's objective of improving women's labour market participation and the Commission's 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 and to enter into direct negotiations. While the trade unions were favourable to new measures, the employers argued against further action.

*Possible improvements to the EU legal framework*

The trade unions believed 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 an 18 weeks maternity leave guaranteed at full-pay level, coverage extended to all workers in atypical forms of employment and measures to facilitate breastfeeding. They would also like to introduce payment and flexibility in uptake for parental leave and increase its non-transferable period and the maximum age of the child,

as well as introduce EU legislation for paternity leave. CEC, Eurocadres and CESI were also in favour of improving the Parental leave directive and CEC and Eurocadreas supported the introduction of EU legislation for paternity leave. ETUC, CEC and Eurocadres appeared favourable towards 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 CEC, Eurocadres and CECI were 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 pointed out to the primarily responsibility of the Member States and social partners in this area. Businesseurope, UEAPME, CEMR, HOTREC, CER, EuroCommerce and ECEG also warned that new EU-level legislation in this field could create high costs for employers, which could adversely affect competitiveness and worsen unemployment. Two organisations specifically referred to the disproportionate burdens that SMEs could face (HOTREC, ECEG).

#### *Possible Non-legislative measures*

Although the second-stage consultation was mainly focused on legislative measures, it also presented a series of possible avenues for EU non-legislative action. Most social partners, both trade unions and employers, were favourable to EU-level support in the area of childcare and long-term care services. CEEP, UEAPME, and CEEMET further insisted on the need for policy guidance to reduce tax-benefit disincentives for women to work and to change mindsets and tackle gender stereotypes related to care.

The social partners mentioned a wide range of non-legislative instruments they would like to see the EU put forward. These include strengthened EU policy guidance (including through the European Semester), EU-level financial support, clearer guidance to national/regional/local authorities on how existing EU funds can be used, further awareness-raising activities, promoting mutual learning and the exchange of good practices.

#### *Summary of the results of the public consultation*

The public consultation on possible action addressing the challenges of work-life balance faced by working parents and caregivers launched by DG Justice and Consumers together with DG Employment and Social Affairs run from 18 November 2015 to 17 February 2016. It received 785 contributions from across the EU including 229 from organisations and 557 from individuals. The table below shows the proportions of responses received from organisations by type of organisation. Non-Governmental organisations account for 28% of organisations having expressed their views, employers' organisations for 17.5%, public authorities for 10.5% (including 10s Ministries at Member State level) and worker organisations for 9.7%. Responses were received from each EU Member State – the

largest number of responses came from Belgium, followed by Germany, Italy, France and Portugal.

**Table 1: Number of responses, by type of organisation**

<b>Responses by type of organisation</b>	<b>Number</b>	<b>Percentage</b>
Non-Governmental Organisation (NGO)	64	28.07%
Employer organisation	40	17.54%
Public authority (Central govt., local, regional, equality body, etc.)	36	10.53%
Worker organisation / trade union	22	9.65%
European network	13	5.7%
International Organisation	11	4.82%
Large organisation / company	6	2.63%
Think-tank / Consultancy	3	1.32%
Small or Medium-sized Enterprise	1	0.44%
Researcher / academic	1	0.44%
Other	32	14.04%

An overwhelming percentage of organisations (97.8%) and individuals (93.3%) agree or partially agree with the description of the challenges laid out in the background document<sup>392</sup>, while 85% of organisations and 89% of individuals agree that the list of policy areas to focus on (childcare, long-term care services, family-related leave arrangements for both women and men, flexible working arrangements for both women

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<sup>392</sup> The challenges listed by the background document included the under-representation of women in the labour market (women more likely to work part-time, and in low-productivity, low-skilled and low-paid sectors, on fixed-term contracts, and in jobs below their skills level), the gender pay gap, the greater risk of poverty & social exclusion for women, the lack of work-life-balance solutions, of available, accessible and quality childcare and long-term care services and the unavailability of flexible working and/or paid leave arrangements for fathers, all compounded by work disincentives (eg tax-benefit systems that encourage lower earners in a couple not to work).

and men, tax-benefit systems that make work pay for both partners) is accurate and wholly or partially complete.

When asked about the possible policy measures to improve work-life balance and female labour market participation in their country, organisations responded that the highest priority is the availability of childcare, followed by improving the possibilities and/or incentives for men to take up caring responsibilities and work-life balance measures and improving the possibilities and/or incentives for parents and others with dependent family members to take up caring responsibilities and work-life balance measures. Individuals responded that the highest priority is improving the possibilities and/or incentives for parents and others with dependent family members to take up caring responsibilities and work-life balance measures, and improving the availability and affordability of childcare.

77% of respondents replied that there is a need for further EU-level action to address work-life balance challenges. While 61% of respondents support legislative options, 71% support policy guidance, 72% support the development of EU-level benchmarks, 73% support increased monitoring by the EU and an overwhelming 94% support the idea of more sharing of good practices.

As concerns the expected effectiveness of new EU-level measures in addressing the challenges of WLB, in each case there was large support for the measures, with them being labelled potentially effective or very effective.

Finally, when asked if the current EU-level funds and regulations are effective in supporting work-life balance, the majority of participants answered that they don't know (55%), followed by no (29.5%). The vast majority of participants (73%) of participants then responded that it would be useful for the EU to provide clearer guidance to national/regional/local authorities on how EU-funds could be used to financially support work-life balance.

Ten Central governments / ministries replied to the public consultation. Below are indications of their views on the need for further EU level action, as formulated in their responses to the public consultation:

- o In the view of MT, DE, NL and DK there is no need for further EU-level action nor to improve the EU-level legislative framework in order to address the challenges of work-life balance while CZ thinks there is a need for further EU level action but not to improve the EU level legislative framework.

- o RO, LV, FR, ES and EE are in favour of improving the EU legislative framework. For FR there is a need to have more convergence as regards parental leave and its condition of access/ type of beneficiary and length. ES and EE are in favour of a European paternity leave while RO thinks the EU legislative framework should be improved to increase the women's employment and better share responsibilities between women and men.

## *Other stakeholders views*

### **a. European Parliament resolution on creating labour market conditions favourable for work-life balance<sup>393</sup>**

As a reaction to the roadmap and the public consultation on the New Start Initiative, as well as to prompt the Commission to step up its work in this field, the European Parliament adopted on 13 September 2016 a resolution on creating labour market conditions favourable for work-life balance. In general, the resolution welcomes the Commission's approach to work-life balance policies.

The resolution calls on Member States to put in place proactive policies designed to support women entering, returning to and staying in the labour market with stable and quality employment. It also calls for measures to facilitate a greater sharing of care responsibilities between women and men. The resolution further urges the Member States to ensure the availability of and universal access to affordable and high-quality early childhood education and care, as well as elderly and dependent care. It suggests increasing public expenditure on care services and incentivising employer contributions to care costs.

The resolution calls on the Commission to put forward a proposal in the context of the European Pillar of Social Rights, should an agreement between the social partners not be reached.

In terms of changes to EU-level legislation, the resolution calls for:

- a proposal for a revised Pregnant Workers (Maternity Leave Directive) aiming to prolong paid maternity leave with a diverse formula of payment to allow for accommodation of specific needs and traditions in different Member States;
- a Paternity Leave Directive with a minimum of a two-week fully paid leave.
- a Carers' Leave Directive as a supplement to the provision of affordable professional care and to enable workers to care for dependents.
- an implementation report for the Parental Leave Directive, as well as using the review clause to extend the minimum duration from four to six months, and to have the leave paid.

In terms of non-legislative measures, the resolution notably calls on the Commission to develop:

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<sup>393</sup> Motion for a European Parliament Resolution on creating labour market conditions favourable for work-life balance, (2016/2017(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0253+0+DOC+XML+V0//EN>

- initiatives with the Member States, such as a Child Guarantee, so that every child could have access to childcare (and free healthcare, free education, decent housing and adequate nutrition);
- specific targets on long-term care, with monitoring tools within the European Semester.
- quality standards for all care services.
- implementation of the Barcelona targets by 2020 and endorsement of the 2014 quality framework on early childhood education and care.
- making better use of the funds, calling also for a revision of the MFF for investments in social infrastructure.

#### **b. Opinion of the Advisory committee on equal opportunities for women and men**

The Advisory committee on equal opportunities for women and men was invited in December 2015 to provide an ad-hoc opinion on the new initiative to address the challenges of work-life balance faced by working parents and caregivers. The opinion was adopted in January 2017.

In its opinion, the Advisory committee highlighted a need for strong policies and legislation to create optimal conditions, incentives towards an equal contribution of women and men in care work and in paid economy. The committee highlighted the existence of discriminatory treatment of women and men in relation to parenthood, care provision and use of work-life balance measures.

The committee emphasised the need to take a comprehensive approach to address the growing needs in terms of elderly and dependent care, including quality public and private care services, improving working conditions and quality of formal home-based care services, providing a right to carers leave and allowing flexible working arrangements.

The committee noted that most young people – both women and men – wish to equally share their employment and family responsibilities based on equal partnership. It recalled the wishes of many fathers, i.e. to spend more time with their children, requires suitable governmental and company-based framework conditions. It set out best policies to ensure that women and men share care responsibilities include incentives for men to take leave to care for their children in the form of non-transferable rights and pay.

The committee acknowledged that gender stereotypes need to be challenged in order to encourage men to make use of work-life balance measures. Awareness raising campaigns at both EU and national level could help addressing unconscious gender bias.

The committee acknowledged that so far the sharing of care responsibilities and domestic tasks between women and men is not part of the corporate culture in many companies. For this to change, a multi-dimensional approach is required addressing gender stereotypes on who takes care of family and domestic tasks, addressing career opportunities and leadership positions for women, reducing the culture of presentism and avoiding blurring of work and private life with permanent availability. Knowledge should be developed on the costs and benefits of equal sharing of care responsibilities between women and men for companies, economies and societies.



In its Opinion, the committee sets out that Member States should go further than the Barcelona targets to increase childcare provision, by committing to provide childcare by 2020 to:

at least 50 per cent of children below 3 years of age, as well as possibly 33 per cent of children attending formal quality childcare arrangements for a duration of at least 30 hours per week;

at least 90 per cent of children between 3 and the compulsory school age. As well as possibly 90 per cent of children attending formal quality childcare arrangements for a duration of at least 30 hours per week; and

Focus could be put on out-of-school care services with the development of possible targets for children between 3 and the compulsory school age and school age children: a percentage of children attending before/after school formal arrangements<sup>271</sup> (possibly 50% for the first age category and 90% for the second one); a percentage of children attending formal care arrangements during school holidays (possibly 50% for the first age category and 70% for the second one); a percentage of children accessing school meal services (possibly 90% for both age categories).

The committee also stressed that an EU benchmark on the quality of childcare provisions could operate alongside the Barcelona targets and could be in line with what is proposed in the EU-Quality Framework for Early Childhood Education and Care (2014) : "at least 90% of ECEC provision is of good quality or better as measured by the national or regional criteria"

### **Annex 3: Who is affected by the initiative and how?**

As presented in Section 7, the impact of the initiative on a series of stakeholders was assessed. This annex provides an overview of how Member States and companies will be affected by the preferred combination of options, as identified in Section 8.

#### **Member States**

In order to implement the preferred combination of measures presented in Section 8, Member States will have to update their legislative framework. Considering on the basis of Directives 92/85/EEC on maternity leave and 2010/18/EC on parental leave that all Member States already have a system to manage family-related leaves, the change in parameters (such as non-transferability and pay) should not create the need to create a new system but only an increase in work-flow (assuming an increase in take-up) and hence the increase in administrative burden should be limited.

#### **Companies**

Companies will be required to make organisational changes, as more of their employees can be expected to make requests to use available measures. However, a number of the requirements already exist, and the proposal would provide stronger possibilities and incentives for employees to use them. As for new requirements, the organisational changes are of a broadly similar nature than existing ones and hence existing procedures (including IT systems to manage the request for leaves and flexible working arrangements) could be adapted.

## **Annex 4. Methodology for quantitative impact analysis**

This impact assessment is based on ICF's and Cambridge Econometrics' "Study on the costs and benefits of possible EU measures to facilitate work-life balance for parents and care givers" This annex provides a brief description of the methodology used to estimate the quantitative impacts of the each policy option, as presented in Section 7. The used methodology is two-fold: a cost benefit analysis to assess the impact of the policy options on different stakeholders and macro-economic analysis based on the E3ME model.

### **1. Summary of Assumptions**

The calculations of the macro-economic and socio-economic impacts of the introduction of potential measures to promote work life balance are underpinned by series of assumptions and calculations presented in this section of the annex. A brief description of some of the key assumptions and methodological steps is provided here.

The calculations include an assessment of the legal gap between the existing legislation in a Member State and the proposed legislation. The larger the gap between the existing legislation and the proposed legislation the larger the impact. This legal gap multiplier takes a value between zero and one, where one indicates that there is no provision available in Member State.

The calculations for most socio-economic impacts are based on the estimated take up and duration of leave options / flexible working arrangements under each option. In the baseline scenario, the take-up, average duration and value of benefit payments for leave options has been collected from desk research for each Member State, and not from administrative data (which does not exist in some Member States). Therefore, the number of people taking leave and the value of benefit payments may differ from administrative data. It is assumed that the rate of take-up of leave and flexible working arrangements remains constant in the baseline (in the absence of any change in Member State legislation). In the policy options, where there is assumed to be a change in take-up or duration, this is assumed to increase in a linear trend for a ten to twenty year period (depending on the measure), at which point the take up and duration is assumed to reach its new sustainable level.

The macro-economic impacts have been estimated using the E3ME model. The inputs into the model are assumed changes to labour market participation, employment, productivity, hours worked, earnings and population. These inputs have been estimated using findings from the existing literature, an assessment of the legal gap between the existing legislation and the proposed legislation and the take up rate and duration of different leave options. The results from the E3ME model show the level of employment, the level of unemployment (which subsequently provide estimates for the value of unemployment benefit payments), tax receipts, GDP, real incomes and the level of competitiveness within the EU. It should be noted that even when the legislation does not change in a Member State, the macro-economic results for that Member State can change. This is due to changes in the employment, income and competitiveness of other Member States in the EU.

The estimates of the value of benefit payments (unemployment benefit payments and payments for parents/carers whilst they are on leave) are not taken from administrative data. The estimated value of these payments per individual have been estimated from desk research conducted for each Member State which has gathered data on the level of benefit paid (usually as a share of previous earnings), the value of average earnings in each year in each Member State and the estimated number of people receiving these benefits and duration they are paid for. These benefit payments are calculated in the same way in the baseline scenario and all subsequent policy options. Therefore the value of these benefit payments may differ from Member State administrative data.

In addition to assumptions around take-up some of the assumptions used, which most impact the macro-economic and socio-economic impact data are as follows:

- *Replacement of workers on leave* – replacements rates are conditioned by the length of leave taken and it is generally assumed that workers taking short leave (less than 3 weeks) are not replaced. This has led to assumptions around replacement rates which stand at 33% for women and 11% men, as women tend to take longer leaves. In the parental leave options, where the length of male take-up is assumed to increase, these rates have been modified to reflect the detail of the policy option and its likely impact on the length of take-up of leave by men.
- *Assumptions and sensitivity analysis around productivity impact and loss of production* – a range of assumptions was applied to loss of production to take account of the fact that – depending on the sector and the stage in the economy cycle, evidence shows that productive capacity is not always fully utilised. Assumptions of 100%, 80% and 50% of loss of production have therefore been calculated. Assumptions have also been made around increased productivity of more satisfied workers and the productivity of replacement workers –the former is higher with increased levels of satisfaction whereas replacement workers are assumed to be less productive than the worker on leave they are replacing.
- *Impact of stricter regulation on recruitment decisions* – Literature, including from the OECD, has provided some evidence of the impact of stricter employment protection legislation on employment and labour market dynamism. An assumption has therefore been made to reduce the likely positive impact of measures on labour market participation to take account of these potential disincentive effects.
- *Assumptions on length of leave taken by women if men increase their take-up of leave (and length of leave taken)* – assumptions around the length of leave taken by women have been shaped around the policy option being assessed. For example, in options which increase the non-transferability of parental leave, the length of take-up of women is assumed to reduce proportionate to the increase in the length of take-up by men. In other policy options, lower ratios are assumed.
- *Impact of offering paternity leave on the take-up of parental leave* – based on literature from countries offering relatively generous paternity leave, it is assumed that there will be some leverage effect from the take-up of paternity leave to the take-up of parental leave (and its associated impacts).

Further detail on the assumptions underpinning the modelling (and the literature which has informed these) is presented in this Annex.

It is important to be clear that the purpose of macro-economic and socio-economic modelling is not to provide precise figures on likely costs and benefits arising of a policy option, but to provide an indication of magnitude of impact, where relevant informed and modulated by a suitable sensitivity analysis.

The model has been able to estimate the macro-economic impacts of the policy options, and some socio-economic impacts and costs to businesses. However, it has not been able to comprehensively model all the potential impacts of the policy options. Where it has not been possible to quantify these impacts, a qualitative discussion has been provided. The impacts which have not been quantified are:

- Business profitability and turnover. Some of the costs and benefits to businesses have been captured. However, some of the policy options have an impact on the number of people employed, earnings and therefore spending. This will affect business profitability and turnover. It has not been possible to capture these impacts.
- Clear impacts on male and female labour market participation could also not be calculated, but it is indicated that many of the employment and associated benefits arise for women.
- Some of the policy options will promote a more equal sharing of unpaid work (such as housework, childcare and caring for the elderly). However, due to a lack of reliable evidence and data, it has not been possible to model or monetise this impact.
- The introduction of measures to promote work-life balance also aims to improve the well-being of European citizens. However, due to a lack of reliable evidence or measures of well-being and the monetary value of improvement in well-being, it has not been possible to estimate the value of this impact.

## **2. Cost Benefit Analysis**

The methodology adopted to assess the direct and indirect costs and benefits of the different legislative (and non-legislative) policy options is Cost-Benefit Analysis (CBA).

The inherent difficulty of CBA is its more limited ability to value non-monetary impacts, such as the impact on gender equality or the potential impacts on family cohesion if both men and women are able to take care of children and ill, disabled or impaired family members. In this analysis, it has been tried to overcome this problem by evaluating the magnitude of these impacts where monetary values are not available.

In order to assess the impact of the different policy options, an extensive literature review was carried out to collect evidence of the impact of the policy options on a variety of indicators. The literature review sought to define and quantify relationships between key

variables to help quantify differences in impacts between the options. Where no evidence was available in the literature, benchmark countries were selected and impacts were calculated using these baseline measures.

The evidence collected from the literature was used to form assumptions and calculations to estimate the impacts of the policy options. The assumptions used in the calculations are based on the evidence collected from the literature, but are not always the exact multipliers presented in the literature. This is because the literature does not provide evidence on each individual policy option; it instead provides evidence of the impact of having any leave, or flexible working arrangements compared to having none, or the effect of duration or pay. Therefore the direction of travel has been taken from the literature for some impacts, and the multipliers adjusted for each policy option. Detailed information on the assumptions used is presented in the annexes of the supporting study.

Additionally, as each Member State has different legislation currently in place, the nature and scale of the impact for each Member State is different. Therefore, effect of the policy option will be different in each Member State, depending on the legal gap assessment for each leave option in each Member State (see section 5 of the supporting study). The level of the impact has also been varied through time. It is likely that the impacts will increase over time as more people get used to the new legislation and begin to use it.

The impact on SMEs has been analysed by comparing the cost of the policy options to businesses with SME turnover in each sector. The demographic profile of the workforce in each sector has also been analysed, to show if there are sectors where workers are more likely to take advantage of the policy options, and if SMEs in these sectors are disproportionately affected by the policy options.

The Cost Benefit Analysis evaluated the impacts of the different policy options on the basis of the following parameters and calculating formulas:

### **Number of individuals taking leave**

The number of individuals taking each type of leave has been estimated in a similar way for each type of leave. The assumptions consider that only employed individuals are eligible for each of the leave or flexible working arrangement options. This is summarised in the equation below.

$$TU_{c,g,t} = Birth_{c,t} * \left( \frac{Empl_{c,g,t}}{Pop_{c,g,t}} \right) * Eligible_{c,t} * TUR_{c,g,t}$$

For the carers and flexible working arrangement leave options, the equation is slightly different, as the equation applies to all individuals in the workforce, not just parents. The equation below summarises this:

$$TU_{c,g,t} = \left( \frac{Empl_{c,g,t}}{Pop_{c,g,t}} \right) * Eligible_{c,t} * TUR_{c,g,t}$$

Where:

$TU_{c,g,t}$  : the number of individuals taking each type of leave or flexible working arrangement option in each country and time period, disaggregated by gender;

$Birth_{c,t}$  : the number of live births in each country in each year;

$Empl_{c,g,t}$  : the number of people employed in each country in each time period, disaggregated by gender (taken from the E3ME modelling);

$Pop_{i,g,t}$  : the population aged 15 to 64 in each country in each time period, disaggregated by gender (taken from the E3ME modelling);

$Eligible_{c,t}$  : the percentage of the workforce who are eligible for each type of leave or flexible working arrangement; and

$TUR_{c,g,t}$  : The take up rate for each type of leave and flexible working arrangement in each country, disaggregated by gender.

The take up rate in each country varies between different policy options, and is the main driver behind the differences in take up rate between the different policy options. The take up rate for each policy option is calculated using the following formula:

$$TUR_{c,g,t} = TUR_{c,g,t,b} + (\Delta TUR_{g,po} * LGA_{c,g,t})$$

Where:

$TUR_{c,g,t}$  : The take up rate for each type of leave and flexible working arrangement in each country, disaggregated by gender;

$TUR_{c,g,b,t}$  : The take up rate for each type of leave and flexible working arrangement in each country in the baseline scenario, disaggregated by gender;

$\Delta TUR_{g,po}$  : the change in take up rate assumed for each policy option, disaggregated by gender; and

$LGA_{c,g,t}$  : A legal gap analysis multiplier for each country in each time period, disaggregated by gender. This multiplier takes a value between 0 and 1 based on the legal gap analysis, where 0 represents a country where the legislation already meets or exceeds the requirements of the policy option, and 1 represents a country where no measures are currently in place.

## **Leave duration**

The average duration of leave arrangements (where appropriate) has been calculated in a similar way to the take up rate described above. It is based on the baseline duration of

leave, the assumed change in leave duration and the legal gap analysis. This is summarised by the following equation:

$$LD_{c,g,t} = LD_{c,g,t,b} + (\Delta LD_{g,po} * LGA_{c,g,t})$$

$LD_{c,g,t}$  : The average duration of leave for each type of leave in each country, disaggregated by gender;

$LD_{c,g,b,t}$  : The average duration of leave in each country in the baseline scenario, disaggregated by gender;

$\Delta LD_{g,po}$  : The change in duration assumed for each policy option, disaggregated by gender;

$LGA_{c,g,t}$  : A legal gap analysis multiplier for each country in each time period, disaggregated by gender. This multiplier takes a value between 0 and 1 based on the legal gap analysis, where 0 represents a country where the legislation already meets or exceeds the requirements of the policy option, and 1 represents a country where no measures are currently in place.

### **Administrative burden**

The average cost of the administrative burden is calculated using the number of individuals taking leave or a flexible working arrangement under each policy option and an estimated administrative burden unit cost per person. The administrative burden falls on three separate groups: Central Government; Social Security partner organisations and employers.

In order to calculate the administrative burden cost, the following assumptions have been used:

- For the assessment of administrative burden, the average hourly labour cost has been used to estimate the cost.
- Where benefits are paid by the national government, an administration cost is attributed to the national government – if the government does not make a payment for a benefit no administration cost is attributed to the government. The same is true for social security providers. An administration cost is attributed to employers whenever an individual takes leave or flexible working arrangements. For governments the administration cost is assumed to be six hours (of average labour cost); for social security providers two hours (at average labour cost); and for



employers it is assumed to be four hours (at average labour cost). These average costs in terms of hours are averages extrapolated from other studies<sup>394</sup>.

The following formula summarises the approach used to calculate the administrative burden for each group:

$$AB_{c,t,i} = Admin_i * Lab_{c,t} * \sum_{g=1}^2 TU_{c,g,t}$$

Where:

- $AB_{c,t,i}$ : for total monetary value of administrative burden for each type of actor;
- $i$ : the different types of actors that can bear the administrative cost (government, social security and employers);
- $Admin_i$ : for number of hours spent on administrative tasks per person taking a leave option for different actors;
- $Lab_{c,t}$ : the average labour cost per hour in each country in each year; and
- $TU_{c,g,t}$ : The number of people taking each leave or flexible working arrangement option in each country each year (the total administrative burden uses the sum of male and female take up).

## Benefit payments

The cost of the benefit payments made for each type of leave option was calculated using information on the take up of the different options, the average duration of leave and the average benefit payment made to individuals who take one of the leave options. As with the administrative burden, the benefit payments can fall on three separate groups: Central Government; Social Security partner organisations and employers.

$$BP_{c,t,i} = AC_{c,t,i} * LD_{c,po,t} * \sum_{g=1}^2 TU_{c,g,t}$$

Where:

- $BP_{c,t,i}$ : the total value of benefit payments for each type of actor in each country in each year;

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<sup>394</sup> ICF (2015); *Study measuring economic impacts of various possible changes to EU working time rules in the context of the review of Directive 2003/88/EC*, Annex 3 Methodological assessment of administrative burden studies (study carried out in behalf of the European Commission; unpublished).

- $i$  : the different types of actors that can bear the benefit cost (government, social security and employers);
- $AC_{c,t,l}$  : the average daily cost of monetary benefits paid by actor in each country in each time period;
- $LD_{c,t}$  : the average duration of leave in days for each country in each policy option per year;
- $Birth$  for number of live births;
- $Eligible$  for percentage of mothers eligible for maternity leave (assumed as 100%); and

$TU_{c,g,t}$  : The number of people taking each leave or flexible working arrangement option in each country each year (the total administrative burden uses the sum of male and female take up).

### Lost production

The costs of lost production for each of the policy options is assumed to fall on employers. The assumptions for the estimation of the value of lost production are:

- Employees who are on leave are not contributing the output of the business, therefore they are not contributing to the businesses output. The duration of time an individual takes as leave multiplied by the level of output generated per worker in that period is estimated to be the level of lost production;
- Some employees are replaced by employers to cover for the worker who is taking leave. The replacement rate is assumed to be 33% for women and 11% for men for all types of leave where individuals are replaced (maternity, parental and carers' leave<sup>395</sup>). The replacement rate for women is assumed to be higher as on average women take longer periods of leave, and are therefore more likely to be replaced temporarily;
- Where a worker is replaced, the level of lost production is assumed to be zero;
- Employers are assumed to make a saving for not paying the wages of individuals on leave that they do not replace. The saving is assumed to be wages. This has to be balanced against any commensurate loss in production.

The value of the lost production is calculated in three stages: the cost of the lost production is estimated, then the savings associated with not paying salaries is estimated. The cost of the lost production is estimated by subtracting the savings from not paying salaries from the cost of lost production. This is summarised in the equations below:

a) To calculate the costs to employers of absence from work:

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<sup>395</sup> Due to the relatively short duration of paternity leave, it is assumed and workers will not be replaced.

$$TLP_{c,t} = \sum_{g=1}^2 (1 - RepR_g) * LD_{c,g,t} * Lab_{c,t} * TU_{c,g,t}$$

b) To calculate savings associated with not paying salary:

$$SW_{c,t} = \sum_{g=1}^2 (1 - RepR_g) * LD_{c,g,t} * Earn_{c,t} * TU_{c,g,t}$$

c) To calculate the estimated net cost to businesses:

$$LP_{c,t} = TLP_{c,t} - SW_{c,t}$$

Where:

$TLP_{c,t}$  : the total lost production through individuals taking leave in each country in each time period;

$RepR_g$  : the level of replacement for individuals on leave, differentiated by gender;

$LD_{c,g,t}$  : the average leave duration for each country, in each time period, disaggregated by gender;

$Lab_{c,t}$  : the average labour cost per hour in each country in each year;

$TU_{c,g,t}$  : The number of people taking each leave option in each country each year, disaggregated by gender;

$SW_{c,t}$  : The total savings through not having to pay salaries to workers on leave;

$Earn_{c,t}$  : The average earnings in each country in each time period; and

$LP_{c,t}$  : the net value of lost production to employers in each country in each time period.

### **Cost of recruiting replacement workers**

Where employers replace staff who have taken leave, there is a cost to the recruitment process. The cost per person recruited to temporarily replace an individual on leave is estimated to be the equivalent of five days of output (35 hours). This is based on the time required to advertise, process applications and interview replacement workers. The costs are estimated to fall on businesses. The formula below summarises how the cost was estimated:

$$RRW_{c,t} = \sum_{g=1}^2 (1 - RepR_g) * TU_{c,g,t} * Lab_{c,t} * 35$$

Where:

$RRW_{c,t}$  : the total cost for the recruitment of temporary replacement workers where employees are on leave in each country in each time period;

$RepR_g$  : the level of replacement for individuals on leave, differentiated by gender;

$Lab_{c,t}$  : the average labour cost per hour in each country in each year; and

$TU_{c,g,t}$  : The number of people taking each leave option in each country each year, disaggregated by gender.

### **Retention of workers**

The policy options encourage workers to remain in the same position when they complete their leave period. This is done either through legal protection or because employees feel that they can take leave therefore they are less likely to leave their job. This provides a monetary benefit to employers, as workers who remain with a business are estimated to be more productive than new recruits. The value of this benefit has been estimated using the formula below:

$$Ret_{c,t} = \sum_{g=1}^2 TU_{c,g,t} * \Delta Ret_{po} * 0.2 * Earn_{c,t}$$

Where:

$Ret_{c,t}$  : the monetary value to businesses of individuals remaining in their role in each country and each time period;

$TU_{c,g,t}$  : The number of individuals taking each type of leave or flexible working arrangements in each country in each time period, disaggregated by gender;

$\Delta Ret_{po}$  : the change in the proportion of individuals who remain in their role as a result of each policy option; and

$Earn_{c,t}$  : the average earnings in each country and time period.

### **Absence from work**

The policy options are predicted to have an impact on the number of days absent from work taken by workers who have access to leave options or flexible working arrangements. The cost of absence from work is assumed to be the value of the labour cost for the period a worker is absent (workers are assumed to work for seven hours per day). Therefore, the benefit of reducing absence from work is the additional time a worker spends at work due to having access to the leave options. The value of the change in absence from work is summarised in the formula below:

$$AFW_{c,t} = \sum_{g=1}^2 * TU_{c,g,t} * \Delta AFW_{po} * Lab_{c,t} * 7$$

Where:

$AFW_{c,t}$  : the total benefit from the reduction in absence from work by country and time period;

$\Delta AFW_{po}$  : the change in the number of days absent for individuals taking leave or flexible working arrangements for each policy options;

$Lab_{c,t}$  : the average labour cost per hour in each country in each year; and

$TU_{c,g,t}$  : The number of people taking each leave option or flexible working arrangement in each country each year, disaggregated by gender.

### **Reasonable adjustment**

Some reasonable adjustment costs have been calculated. These are where businesses are required to spend money to adjust their premises or purchase equipment for their employees in line with the new policy options. The reasonable adjustment costs are only for the maternity leave and flexible working arrangements (working from home) policy options.

For the maternity leave option, there were two ways in which a reasonable adjustment cost was calculated. The first was associated with the rental cost of space for a separate breastfeeding room, and the second was for the purchase of a fridge for the breastfeeding room. It has been assumed that 50% of businesses would already comply with the legislation in the policy options. The estimate of these two costs is summarised in the formulas below:

a) The costs per annum associated with the cost of space for the room

$$Space_{c,t} = Rent_{c,t} * Businesses_c * LGA_c * 0.5$$

Where:

- $Space_{c,t}$  : the total annual cost for employers of providing a room for mothers to breast feed in each country in each time period;
- $Rent_{c,t}$  : the rental price per annum for 2.5 square meters in each country in each year. The rental prices are based on studies on 2012/13 prices and are inflated to reflect 2015 prices. This is a proxy measure for the value of space for all employers;

- $Businesses_{c,t}$  : the number of businesses in each country;
- $LGA_c$  : A legal gap analysis multiplier for each country in each time period, disaggregated by gender. This multiplier takes a value between 0 and 1 based on the legal gap analysis, where 0 represents a country where the legislation already meets or exceeds the requirements of the policy option, and 1 represents a country where no measures are currently in place.

b) The costs associated with purchasing a fridge for the room

$$CF_c = Fridge_c * Businesses_c * LGA_c * 0.5$$

Where:

- $CF_c$  : the total cost for employers of providing a fridge in each country;
- $Fridge_c$  : the costs of a ‘table model’ fridge (i.e. no freezer, not built-in). The costs are based on a fridge from a Dutch consumer’s organisation (the median cost of a list of well-performing fridges<sup>396</sup>). Costs were then adjusted for each Member State using the Eurostat price level index for household appliances<sup>397</sup>;
- $Businesses_c$  : the number of businesses in each country;
- $LGA_c$  : A legal gap analysis multiplier for each country in each time period, disaggregated by gender. This multiplier takes a value between 0 and 1 based on the legal gap analysis, where 0 represents a country where the legislation already meets or exceeds the requirements of the policy option, and 1 represents a country where no measures are currently in place.

For the flexible working arrangements policy options, introducing working from home leads to costs for employers. The employer has to provide equipment and the means for an employee to work from home. This has been assumed to be the cost of purchasing a laptop computer and office chair for each additional worker who works from home. The cost of this adjustment for employers is assumed to continue every year until 2040, when the increase in home working due to the policy option is expected to plateau. The formula below summarises the method to calculate the cost to employers

$$RA_{c,t} = (CC_{c,t} + COC_{c,t}) * \Delta WFH_{c,t}$$

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<sup>396</sup> Available from: <https://www.consumentenbond.nl/koelkast/beste/vrijstaande-koelkast-zonder-vriezer> (some content requires log in)

<sup>397</sup> Available from: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Comparative\\_price\\_levels\\_of\\_consumer\\_goods\\_and\\_services](http://ec.europa.eu/eurostat/statistics-explained/index.php/Comparative_price_levels_of_consumer_goods_and_services)

Where:

- $RA_{c,t}$ : the total cost for employers for providing a computer and chair for employers to work at home in each country in each time period;
- $CC_{c,t}$ : the cost of purchasing a laptop computer in each country in each time period;
- $COC_{c,t}$ : the cost of purchasing an office chair in each country in each time period;
- $\Delta WFH_{c,t}$ : the change in the number of people working from home as a result of the legislation in each country in each time period.

### **Unemployment benefit payments**

The number of people who are unemployed in each policy option has been estimated through the E3ME model. In order to estimate the value of unemployment benefits paid by each country, the estimated number of unemployed individuals has been multiplied by the average value of unemployment payments made in each country. The value of unemployment benefit payments is expressed as a percentage of earnings, and this percentage is assumed to remain constant over the entire period analysed. This is summarised by the formula below:

$$UBP_{c,t} = Unemp_{c,t} * BPR_c * Earn_{c,t}$$

Where:

$UBP_{c,t}$ : the value of unemployment benefit payments in each country each year;

$Unemp_{c,t}$ : The number of people unemployed in each country each year;

$BPR_c$ : the benefit payment rate in each country, expressed as a percentage of earnings; and

$Earn_{c,t}$ : The level of earnings in each country in each time period.

### **Hospital discharges**

The provision of leave options and flexible working arrangements is expected to have an impact on the health and wellbeing of parents and children. One way to measure this impact is through the use of healthcare services. This is a proxy measure for overall health. However, in conjunction with information on the level of quality of life among individuals, it allows estimates to be made of how different policy options affect individuals' health.

Data on health service utilisation was taken from Eurostat for the number of hospital discharges (hospital inpatient admissions and hospital day cases). The baseline number of hospital discharges includes all health conditions which were found to have a relationship

with the provision of leave options or flexible working arrangements. A full list of conditions is provided in Annex 11. The number of hospital discharges for these conditions was divided by the population, to estimate the rate of hospital discharges. The number of hospital discharges was extrapolated to 2055 using this rate and population projections.

The cost of hospital admissions for the conditions listed above was estimated using World Health Organisation (WHO) country specific unit costs of healthcare. This allowed an estimate to be made of the cost of an inpatient stay in each country, based on the average duration of an inpatient stay in that country and the cost per bed day from the WHO estimates. The cost of a day case is assumed to be 26% of the cost of an inpatient admission. The unit cost of hospital discharges have been estimated for future years using the same methodology as for labour costs and benefit payments, and can be summarised using the formula below:

$$UCI_{c,t} = \left(1 + \frac{(Earn_{c,t} - Earn_{c,t-1})}{Earn_{c,t-1}}\right) UCI_{c,t-1}$$

Where:

$UCI_{c,t}$ : the unit cost of a hospital inpatient admission in each country in each time period;

$Earn_{c,t}$ : The average earnings in each country in each year;

$Earn_{c,t-1}$ : The average earnings in each country in the previous year; and

$UCI_{c,t-1}$ : the unit cost of a hospital inpatient admission in each country in the previous year.

The number of hospital discharges in each policy option were calculated by multiplying the number of hospital discharges by the unit cost of a hospital discharge (calculated separately for inpatient admissions and day cases). This is summarised in the formula below:

$$HD_{c,t} = (\Delta Inpat_{c,t} * LGA_{c,po} * UCI_{c,t}) + (\Delta DC_{c,t} * LGA_{c,po} * UCDC_{c,t})$$

Where:

$HD_{c,t}$ : the monetary value of hospital discharges in each country in each time period;

$UCI_{c,t}$ : the unit cost of a hospital inpatient admission in each country in each time period;

$UCDC_{c,t}$ : the unit cost of a hospital day case in each country in each time period;

$\Delta Inpat_{c,t}$ : the change in the number of inpatient admissions in each country in each time period;

$\Delta DC_{c,t}$ : the change in the number of day cases in each country in each time period; and



$LGA_{c,po}$  : A legal gap analysis multiplier for each country in each time period. This multiplier takes a value between 0 and 1 based on the legal gap analysis, where 0 represents a country where the legislation already meets or exceeds the requirements of the policy option, and 1 represents a country where no measures are currently in place.

### **Social care provision**

The level of social care from the state or private providers is assumed to reduce as a result of carers' leave provision being extended. The decrease in social care requirements has been estimated as the number of additional days of carers leave taken in each country each year (compared to the baseline scenario).

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### 3. The E3ME model

An econometric modelling approach has been used to model potential labour market and other gender equality impacts of the proposed options. E3ME is an econometric model of the global economy that covers each Member State.<sup>398</sup> The model includes a detailed representation of the European and global labour market, including econometrically estimated equations for labour market participation, employment and wage rates at a sectoral and regional level<sup>399</sup>. The structure of E3ME is based on the system of national accounts and the model uses an input-output framework to deduce industry interdependencies. More detail on the model can be found in Annex 5 of the supporting study.

For each set of options, analysis was undertaken to assess the direct impacts for mothers, fathers and carers of introducing measures to facilitate work-life balance. The direct impacts formed exogenous inputs to E3ME. They include:

- An increase in labour market activity rates
- An increase in the fertility rate
- An increase in demand for care services
- A change in hours worked
- An increase in labour productivity
- An increase in employment
- An increase in pay and benefits

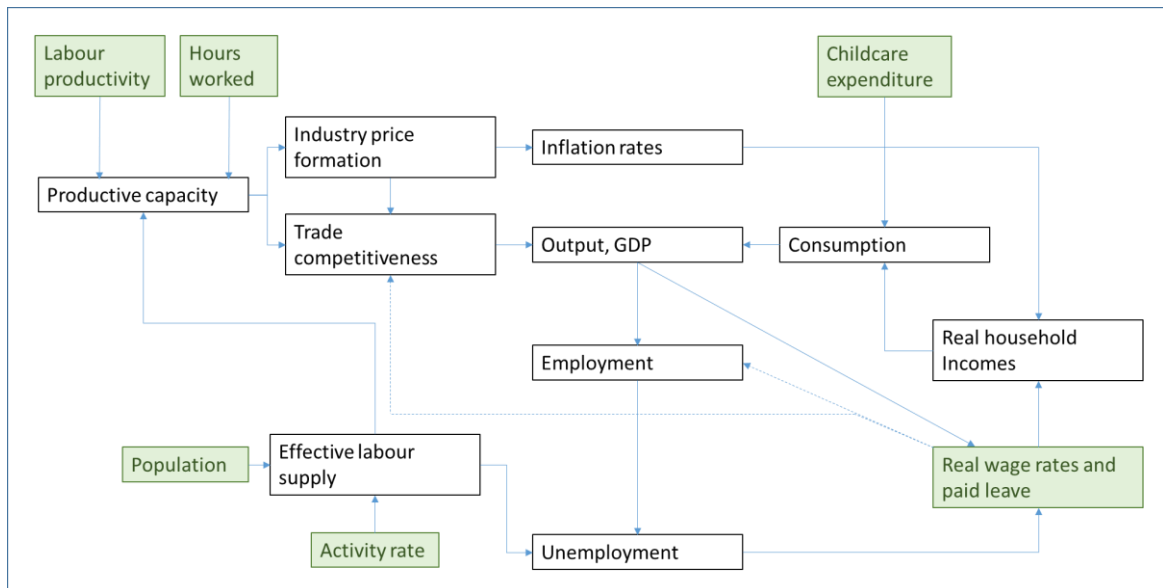
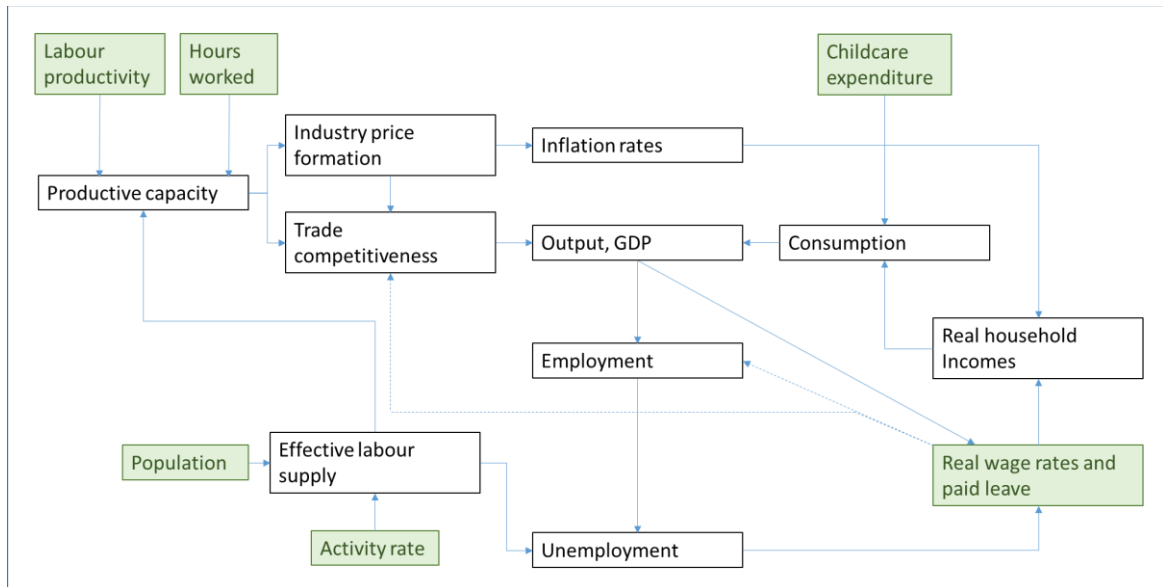
The figure below shows the key linkages in E3ME for the assessment of work-life balance options. As a simplified representation there are still some linkages that are not shown in order to reduce complexity. These modelling interlinkages are explained in the text below.

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<sup>398</sup> E3ME has been widely used to assess the macroeconomic and labour market impacts of policy scenarios at a European level. E3ME is used in producing CEDEFOP's annual skills projections and has recently been applied in studies for EIGE, to assess the macroeconomic effects of measures to improve gender equality, for DG EAC, to assess possible economic imbalances resulting from educational outcomes, and for DG Employment, to assess the economic feasibility of a European unemployment benefit system.

<sup>399</sup> It is noted that, to model the effects of these scenarios in E3ME, we used some exogenous employment and labour inputs (based on analysis of the likely direct impacts on employment and participation of mothers, fathers and carers). Secondary effects on employment and participation, following changes to economic output, GDP, prices and wages were modelled endogenously in E3ME.

The key linkages in E3ME for the assessment of work-life balance options



Increases in labour market activity rates and increases in the working age population will lead to an increase in the effective labour supply, as more people are willing and able to work. As a result, there will be an increase in the size of the potential productive economy leading to an increase in output and GDP and lower price inflation. The impact on employment and wages will depend on regional labour market conditions in the baseline. In regions where there is low unemployment and labour shortages, there could be an initial increase in employment, as existing vacancies are filled. In regions where unemployment is higher in the baseline, an increase in the labour supply is likely to lead to an initial increase in unemployment. In the long run, the increase in labour supply will put downwards pressure on wage rates and eventually this will lead to an increase in demand

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for labour. When the increases to the working age population are due to higher fertility rates, it is important to account for the lag in potential outcomes; it will take around 20 years for additional births to translate to a higher working age population.

Increases in labour productivity and hours worked will also affect the potential productive capacity of the economy and is likely to lead to an increase in output and a reduction in prices, as firms pass on some of the productivity gains by lowering prices for consumers. Lower prices will lead to higher demand (although possibly after some time) and higher production levels, so we would not expect to see higher productivity leading to lower levels of employment.

Some of the options also considered a small increase in real wage rates and paid leave. In these cases, there will be a direct increase in real incomes and consumption, which lead to further macroeconomic gains through the multiplier effect. However, the higher pay and benefits while on leave will add to employer costs which could lead to eventual price increases that could reduce real incomes and have a small negative effect on competitiveness and net exports.

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## Annex 5: Evaluation report of the existing WLB framework

### 1. Introduction

This Annex serves the purpose of consolidating and assessing the available information on the functioning of the current framework on Work-Life Balance, namely the Pregnant Workers (Maternity Leave) Directive (92/85/EEC)<sup>400</sup> for aspects related to work-life balance for pregnant workers and new mothers, and the Parental Leave Directive (2010/18/EU)<sup>401</sup>. The Directives are evaluated in terms of effectiveness, efficiency, coherence, relevance and EU added value<sup>402</sup>.

### 2. Background at EU level

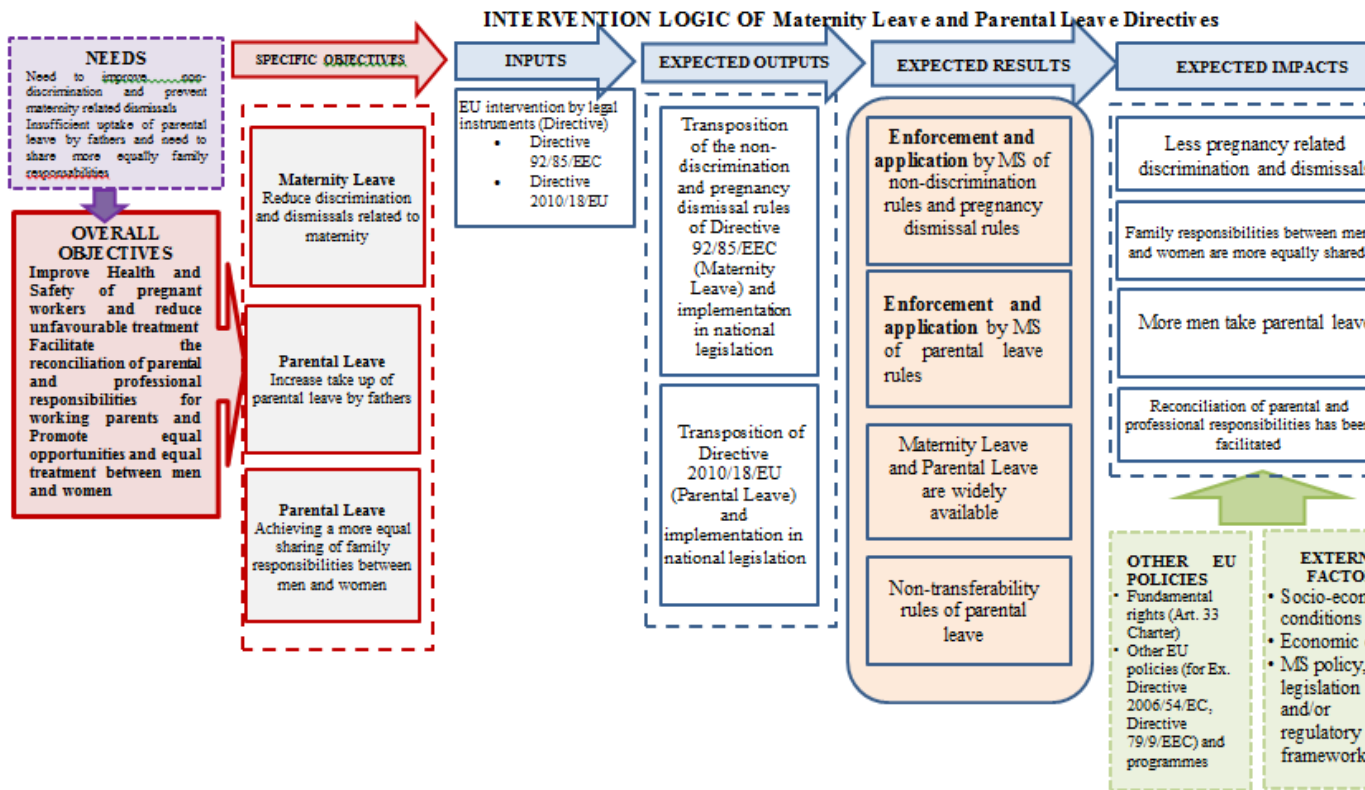
At EU level, two directives address issues that are relevant for work-life balance and set minimum standards in areas such as **parental leave** and **maternity leave**. The following graph shows the intervention logic including general and specific objectives:

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<sup>400</sup> 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

<sup>401</sup> 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 (Text with EEA relevance), OJ L 68, 18.3.2010, p. 13–20.

<sup>402</sup> It is based on relevant data, study results and national surveys.



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Having been adopted under the health and safety provisions of the Treaty, the **general objective of the Pregnant Workers (Maternity Leave) Directive (92/85/EEC)** is to implement measures to encourage improvements in the health and safety at work of pregnant women in the workplace and women who have recently given birth or are breastfeeding. The recital of the Directive clearly postulates the **specific objectives** that the protection of their safety and health should not lead to women's unfavourable treatment on the labour market nor work to the detriment of directives concerning equal treatment for men and women and **reduce discrimination and dismissals related to maternity**. It provides for maternity leave paid at least at the level of sick pay for at least 14 weeks (Article 8)<sup>403</sup>. A minimum of two of those weeks are compulsory for health and safety reasons. The Directive also provides for special rules relating to dismissal during the period from the beginning of the pregnancy until the end of the maternity leave (Article 10). During that period dismissals are prohibited in principle and admissible only in exceptional cases not connected to pregnancy or maternity leave which are permitted by national legislation and/or practice. In the event of any such dismissal the employer has to cite duly substantiated grounds in writing.

As **outputs**, the Directive sets out the basic rights of all workers who are pregnant, who have recently given birth or who are breastfeeding. The **expected impacts** of the Directive in this respect were to lower the risk of pregnancy-related discrimination and dismissals and also thereby promote a safer and healthier working environment for pregnant workers and new mothers.

The key goal and **objective** of the **Parental Leave Directive (2010/18/EU)**<sup>404</sup>, which implemented the revised Framework Agreement on Parental Leave concluded by the European social partners on 18 June 2009 was **in general** to 1) **'facilitate the reconciliation of parental and professional responsibilities for working parents...'** and more specifically 2) to promote equal opportunities and equal treatment between men and women by achieving a **more equal sharing of family responsibilities between men and women**<sup>405</sup> and 3) by increasing the take up by fathers of parental leave<sup>406</sup>.

As **outputs**, the Parental Leave Directive provides workers with an individual right to parental leave on the grounds of birth or adoption of a child (Clause 2(1)). The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-

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<sup>403</sup> 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-employer workers or female spouses of self-employed workers.

<sup>404</sup> 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.

<sup>405</sup> Recital 12.

<sup>406</sup> Clause 2(2)

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transferable basis, i.e. it cannot be transferred from one parent to the other parent. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis (Clause 2(2)).

The leave is to be provided until the child reaches a given age, up to eight years, leaving Member States the possibility to specify a lower maximum age but also, according to Clause 8(1), the possibility to introduce more favourable provisions. The Directive does not impose any obligations in relation to pay during parental leave. It leaves it to Member States, or where implemented through collective agreements, to social partners, to define the detailed conditions and rules for parental leave – they are free to decide whether this leave can be taken on a full-time or part-time basis or whether it can be taken in a piecemeal way, i.e. in several blocks.

When returning from parental leave, parents have the right to request changes to their working hours and/or patterns for a certain period of time (Clause 6(1))<sup>407</sup>. The reason was that access to flexible working arrangements makes it easier for parents to combine work and parental responsibilities and facilitates the reintegration into work, especially after returning from parental leave. However, they are not entitled to such changes; employers are only obliged to consider and respond to such requests taking into account both employers' and workers' needs.

The Directive provides protection against dismissal and less favourable treatment on the ground of applying for or taking parental leave (Clause 5(4))<sup>408</sup>. It also provides that workers have to be entitled to limited time off work for urgent family reasons (force majeure) in case of sickness or accident making the immediate presence of the worker indispensable (Clause 7).

**The main expected impacts** of the Directive were to effectively enable both parents to reconcile their private and professional lives, involving more fathers in the uptake of parental leave and distributing more equally the caring responsibilities between women and men.

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<sup>407</sup> In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.

<sup>408</sup> In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice



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Relevant EU legislation also exists in the area of equal treatment between women and men in employment and occupation. The **Gender Equality Recast Directive (2006/54/EC)**<sup>409</sup> has as its **objective to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation** and guarantees the right to return to the same job or an equivalent job after maternity leave, as well as protection for workers taking paternity or adoption leave, where such leaves are provided under the law of Member States. It further clarifies, following the well-established case-law of the Court of Justice of the European Union (CJEU),<sup>410</sup> that **any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of the Maternity Leave Directive constitutes prohibited discrimination.**

### **3. Evaluation criteria and method**

#### **3.1 Evaluation criteria**

The following available literature and evidence has been compiled and assessed in light of the evaluation criteria which inform the choices for EU measures to be taken. A critical look has been taken on the performance of relevant provisions up to the date of the planned EU intervention. The relevant evaluation criteria identified are: Effectiveness (1), efficiency (2), relevance (3), Coherence (4), EU added value (5).

#### **3.2 Method**

##### **Sources of findings**

The evaluation is based on three main building blocks:

1) a study by the external contractor ICF ('the study') - commissioned mid-2016 for the purposes of preparing the Impact Assessment as well as a light evaluation of the Work-Life balance framework. The revised version of the final report of this study including the light evaluation was completed in February 2017.

2) The available evidence such as implementation and expert reports of the European Commission and other European Institutions as well as the European Network of Legal Experts on behalf of the Commission and where available, national reports, information

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<sup>409</sup> 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) [Official Journal L 204 of 26.7.2006].

<sup>410</sup> See, for example, cases C-177/88 *Dekker*, C-32/93 *Webb*, and more recently in the same context C-460/06 *Paquay*.

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compiled by Equality bodies, reports on the practical implementation of the Directives as well as other relevant research.

3) Data collection through mapping of Work-Life Balance legislation at Member State level in the context of the impact assessment, as well as collection of stakeholders' views in the framework of the public and social partner consultations on the direction of EU level action carried out at both EU and Member State level.

### **3.3 Limitations and robustness of findings**

There are some clear data limitations in the area of Work-Life Balance which make a thorough assessment of some of the evaluation criteria difficult. For example, the quantification of the specific effects of the intervention is a challenging task, requiring very specific input data to be developed for this purpose over time.

The assessment of efficiency is hampered by a lack of systematic European monitoring data on costs involved. In order to be able to conduct a thorough analysis in the future, this challenge needs to be taken into account in any future work and monitoring arrangements.

## **4. TRANSPOSITION AND IMPLEMENTATION STATE OF PLAY**

### **4.1 Transposition and implementation of the anti-discrimination provisions of the Maternity leave Directive 92/85/EEC**

This section presents the situation as to the extent to which Member States meet the requirements of the Directive in relation to legal protection from discrimination and dismissal protection during pregnancy or maternity leave<sup>411</sup>. It presents whether the relevant legal provisions laid down in the Directive are 'met', 'not met' or 'exceeded' by the transposing laws of the Member States (+ EFTA countries), also taking into account subsequent case law by the European Court of Justice.

All Member States 'meet' or 'exceed' the legal requirement to prohibit dismissals during pregnancy and maternity leave. In fact, 23 Member States (plus Norway) 'exceed' this requirement by not only prohibiting dismissals during pregnancy and maternity leave but also stipulating further requirements within their legal framework to protect women for a specific period after their return from maternity leave.

13 countries<sup>412</sup> have further legal provisions in place to also protect women against preparatory measures for dismissals during maternity leave. This partly stems from case

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<sup>411</sup> The scope of the evaluation only addresses the issues of non-discrimination and dismissal protection, as Health and Safety issues of the Maternity Leave Directive are subject of a separate Ex-post Evaluation.

<sup>412</sup> BE, CY, CZ, DE, DK, ES, FR, IE, IT, LT, LV, PT, SI

law of CJEU which clarified that the prohibition to dismiss a pregnant woman or women on maternity leave is not limited to the notification to dismiss an employee but also the preparation for dismissal. The European Court of Justice interpreted Article 10 of Directive 92/85 as prohibiting not only the notification of a decision for dismissal but also the taking of preparatory steps for such a decision, such as searching for and finding a permanent replacement for the relevant employee<sup>413</sup>.

Nearly all Member States have a legal requirement to substantiate grounds for dismissal in writing. Only in Italy and Sweden this is not explicitly stipulated in relevant laws, and in Ireland employers are obliged to do so at the request of the employee.

### Legal compliance with the Directive and relevant case law

	Criteria 1: Protection against dismissal (Article 10)	Criteria 2: Protection against preparatory measures for dismissal (case law)	Criteria 3: Substantiation of grounds in writing (Article 10)
Exceed	AT, BG, BE, CY, CZ, DE, DK, EE, EL, ES, FR, HR, LT, MT, NL, LU, RO, SI, SK, IT, LV, PL, UK (NO)	-	-
Meet	FI, IE, HU, PL, PT, SE, (IS, LI)	BE, CY, CZ, DE, DK, ES, FR, IE, IT, LT, LV, PT, SI	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, LU, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK (IS LI NO)
Not meet	-	AT, BF, EL, FI, HR, HU, LU, MT, NL, PL, RO, SE, SK, UK	IT, SE (IE at request of employee)

*Source: ICF research on the basis of information in Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST.*

This shows that generally speaking, Member States (+ EFTA countries) do have comprehensive legal provisions in place to protect women against pregnancy and maternity related discrimination at work, with some countries going further than others.

<sup>413</sup> Case C-460/06 Paquay v Societe d'architectes Hoet and Minne SPRL [2007] ECR I-8511, para 33.

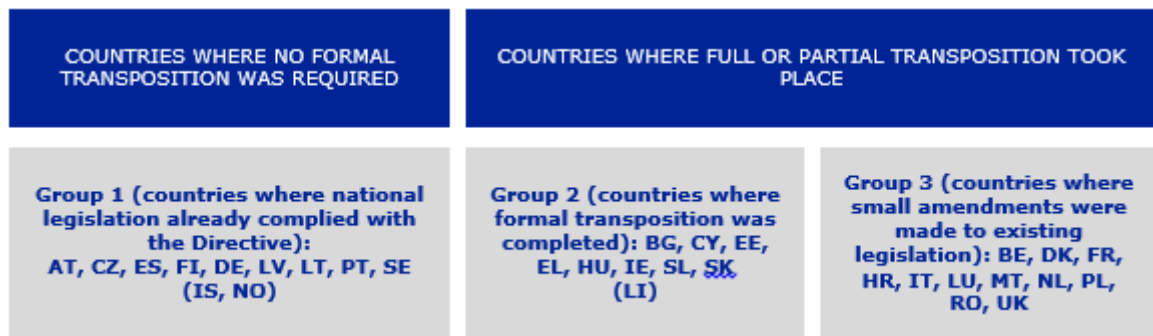
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## 4.2 Transposition and implementation of the Parental Leave Directive 2010/18/EU

**Most countries already complied fully or at least partially** with the provisions introduced by the Directive, or were in the process of introducing similar rights when the Framework Agreement was concluded:

- Approximately a third of study countries (nine Member States plus Iceland and Norway) already met the requirements when the Directive was first introduced and thereby did not require formal implementation.
- A further 11 Member States made amendments to existing legislation so as to meet the specific requirements of the Directive, for example, in terms of minimum duration of parental leave<sup>414</sup> and the right to request a temporary change in working patterns following return from the leave.
- A formal transposition was completed in the remaining eight Member States and Liechtenstein.

*Baseline analysis; extent to which legal transposition was required after the transposition deadline has expired.*



*Source: ICF on the basis of information from European Network of Legal Experts in the field of gender equality (2015) The implementation of Parental Leave Directive 2010/18 in 33 European countries. DG JUST.*

*Note: The Directive has not been transposed in Switzerland*

No systemic shortcomings have been detected in the implementation of the requirements of the Directive<sup>415</sup> (individual entitlement to parental leave of four months – of which at least

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<sup>414</sup> BE, EL (private sector), IE, HR, LI, LU, MT, UK

<sup>415</sup> European Network of Legal Experts in the field of gender equality (2015) The implementation of Parental Leave Directive 2010/18 in 33 European countries. By a review of the European Network of Legal Experts in the field of gender equality.

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one month should be non-transferable (Clause 2(1)); a right to request changes to working time / working patterns upon return (Clause 6(1)); protection from discrimination on the grounds of taking parental leave (Clause 5(4)) and a right to request leave on grounds of force majeure for family reasons (Clause 7)). Many countries not only meet but **exceed** many of the requirements of the Directive. However, some countries do currently fall short of some of the provisions of the Directive, particularly in relation to parental leave being an individual entitlement, with parental leave remaining a family entitlement. Moreover, even though not required technically by the Directive, but only in principle, a significant number of Member States still allow the transfer of a large share of parental leave entitlements from one parent to the other parent, which usually means that many women continue to take significantly long leaves, while most men do not take parental leave or take a short period of leave, thus hampering the equal treatment of women on the labour market and having a negative effect on the, their labour market participation and career opportunities and progression.

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## 5. Answers to the evaluation criteria

### 5.1 Effectiveness

- *To what extent have the objectives been achieved?*
- *What have been the (quantitative and qualitative) effects of the intervention?*
- *What factors influenced the achievements?*

#### a) Non-discrimination and dismissal protection, Directive 92/85/EEC

##### aa) The achievement of the objectives in relation to discrimination and dismissal protection

This evaluation assesses the extent to which the original **objectives** (see background above) of the Pregnant Workers' Directive (Directive 92/85/EEC) have been reached, with a particular focus of its impact on preventing less favourable treatment of women in the workplace (particularly in the form of dismissal linked to pregnancy/maternity)<sup>416</sup>.

##### Scope of the evaluation

Having been adopted under the health and safety provisions of the Treaty<sup>417</sup>, the general **objective** of Directive 92/85/EEC was to implement measures to encourage **improvements in the health and safety at work of pregnant women in the workplace** and women who have recently given birth or are breastfeeding<sup>418</sup>. This general objective of improving safety and health at work has been achieved, as there are minimum requirements to ensure the health and safety and there is paid maternity leave of at least 14 weeks in all Member States. No major problems are reported in relation to the existence and the possibility as such to take maternity leave which is available in all the Member States. Even though some stakeholders argue for an extension of the length<sup>419</sup>, nearly all

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<sup>416</sup> The scope of the evaluation only addresses the issues of non-discrimination and dismissal protection, as Health and Safety issues of the Maternity Leave Directive are subject of a separate Ex-post Evaluation.

<sup>417</sup> Article 153 (1) (a) ((ex Article 137 TEC) TFEU.

<sup>418</sup> Article 1.

<sup>419</sup> ETUC (2016) Proposal for an ETUC Position on the 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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Member States go already beyond the minimum length stipulated by the directive. Therefore this will not be further discussed here in detail.

The element of pay<sup>420</sup> will not be evaluated in detail neither. Nearly all Member States go already beyond the minimum requirement of payment (at least at the level of sick pay) and provide for a payment of 100% of the previous income<sup>421</sup>. Some stakeholders argue that paying the compulsory weeks of maternity leave could generate an additional income protection for women, thereby supporting new mothers and the family<sup>422</sup>. However, the specific aim of the Directive was merely to provide mothers and families with a minimum income of at least sick-pay level for the duration of 14 weeks and not to increase or better pay mothers during the compulsory period.

The recital of the Directive postulates the specific objective that the protection of the safety and health of should **not lead to women being treated unfavourably on the labour market nor work to the detriment of directives concerning equal treatment for men and women**. The focus in the present assessment is therefore particularly on aspects of the Directive aimed at **eliminating unfavourable treatment and pregnancy related dismissals at the workplace of mothers/pregnant women** and women returning from maternity leave. Despite the provision<sup>423</sup> *prohibiting that women are dismissed from work because of their pregnancy for the period from the beginning of their pregnancy to the end of the period of maternity leave* there is no considerable reduction in the number of dismissals following the entry into force of the Directive and numerous cases of discrimination and dismissals remain in place across many Member States. With regard to the requirement of providing substantiated grounds for dismissal in writing, the available evidence is rare and indicates that there is a lack of substantiation of grounds of dismissals in writing by employers. In all Member States women are able to pursue their claims in court if they have been wrongfully treated by failure to comply with the obligations arising from the Directive. However, there remain issues in relation to the awareness of such rights among employees and employers and thereby preventing dismissals from happening in the first place, as well as barriers to accessing remedies after the event.

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<sup>420</sup> Article 11(2)(3) of Directive 92/85/EEC.

<sup>421</sup> European Parliament, Infographic, Maternity and paternity leave in the EU: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS\\_ATA\(2014\)545695\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS_ATA(2014)545695_REV1_EN.pdf)

<sup>422</sup> European Parliament (2016) Report on creating labour market conditions favourable for work-life balance (2016/2017 (INI))

<sup>423</sup> Article 10 of Directive 92/85/EEC.

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The current levels of pregnancy-related discrimination, as suggested by Equinet and survey evidence by different Equality bodies<sup>424</sup> and the continued need to make employers aware of the dismissal protection rules contained in the EU acquis still justify the need for the dismissal rules of the maternity leave Directive. The EU dismissal rules of the Directive have been transposed and implemented in the Member States and legally speaking compliance with the EU acquis across the EU is generally good. However, the problem of women being dismissed in relation to their pregnancy remains.

### **Effectiveness of the measures related to discrimination and dismissal protection**

The available statistical evidence shows that the incidence and the number of pregnancy related discrimination and dismissals in relation to pregnant women at work still exists despite specific legal provisions in place at EU level since 1992<sup>425</sup>. Interestingly, the different stakeholders consulted in the framework of the Equinet survey<sup>426</sup> expressed their views that the dismissal protection rules are not achieving their aims and **do not suffice alone to improve the effective application of the dismissal protection rules**. In that sense, the available evidence shows that the Directive is effective in granting a certain level of protection in theory but not enough to guarantee avoiding situations of dismissals and discrimination in practice<sup>427</sup>.

Studies in relation to Directive 2006/54/EC<sup>428</sup>, highlight that **information regarding cases of unlawful dismissals is still scarce**, but underline that the existing data demonstrates the vulnerability of the employment status of the workers returning to work after using family-related leave, such as parental leave<sup>429</sup>. Consequently, this stream of research rightly recommends a careful monitoring of the situation of these employees and taking further steps to introduce an efficient system of employment protection for working parents<sup>430</sup>. Regrettably, a **lack of comparable data** in terms of numbers of dismissals or pregnancy related discrimination in Member States or statistics of all the Member States bodies receiving complaints means that it is not possible to compare the performance of countries exceeding the standards set in the Directive with those applying the basic acquis, in terms

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<sup>424</sup> Equinet Survey on Pregnancy and Maternity Leave Related Discrimination (2016); Adams, L. et al (2015) Pregnancy and maternity-related discrimination and disadvantage. Department for Business, Innovation and Skills and the Equality and Human Rights Commission; Commissie Gelijke Behandeling (2012) Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders van jonge kinderen op het werk

<sup>425</sup> Based on Equinet Survey on Pregnancy and Maternity Leave Related Discrimination (2016)

<sup>426</sup> Based on Equinet Survey on Pregnancy and Maternity Leave Related Discrimination (2016)

<sup>427</sup> This is confirmed by information from regular meetings and exchanges between Equinet, Equality bodies and the European Commission services.

<sup>428</sup> Article 14(1)(c) of Directive 2006/54 contains provisions on the prohibition of discrimination in employment and working conditions, including dismissals. Article 15 of the same Directive has foresees rules in relation to the return from maternity leave.

<sup>429</sup> D. Szelewa, p. 5.

<sup>430</sup> D. Szelewa, p. 5.



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of the continued experience of unfavourable treatment of pregnant women in the workplace. As evidenced by academic and policy-orientated national, European and international studies and reports<sup>431</sup>, unfavourable treatment of women due to pregnancy is widespread in many countries and different contexts. Despite the fact that, as shown above, all Member States comply with Article 10 of the Directive, there are **enforcement issues**<sup>432</sup> and the rights introduced by the Directive are not respected by all employers<sup>433</sup>. Moreover, a lot of discrimination remains 'hidden' because often it is not reported to the relevant authorities and the affected women do not have the means, information, knowledge or the necessary support to enforce their rights.

It can be agreed with the existing literature that **significant compliance and enforcement issues remain** and with the conclusion that although the Directive prohibits pregnancy discrimination, the failure of employers to observe national laws implementing the Directive have led to lower than anticipated impacts in terms of the effectiveness of the Directive for addressing pregnancy discrimination<sup>434</sup>. Evidence from the UK shows that *"almost half of the 440 000 pregnant women in Great Britain experience some form of disadvantage at work for being pregnant or taking maternity leave"* and predicts that if *"current trends continue, over the next five years a million British women will experience workplace discrimination directly as a consequence of becoming pregnant"*<sup>435</sup>. Employers and employees alike find the current rules at national level unclear and confusing<sup>436</sup>. The contribution of the current maternity leave Directive has therefore been limited due to the way in which it has (not) been enforced in Member States, leading to the conclusion that legislation alone is **insufficient** to address the difficulties of less favourable treatment and fighting dismissals.

In what follows, we firstly assess existing evidence of the current scale (prevalence) of pregnancy- and maternity-related discrimination and its scope (nature) before looking at the incidence and root causes of persistent discrimination in recruitment decisions. In terms

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<sup>431</sup> Cited in detail below

<sup>432</sup> EOC, Greater Expectations, available at: <http://www.eoc.org.uk>; EOR Number 138/4 February 2005; EOC, Tip of the iceberg; interim report of the EOC's investigation into discrimination against new and expectant mothers in the workplace, available at: <http://www.eoc.org.uk>; EOR Number 133/7 September 2004; European Commission, Report on Pregnancy, Maternity, Parental and Paternity Rights Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women, p. 124: [http://ec.europa.eu/justice/gender-equality/files/2007report\\_pregnancy\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/2007report_pregnancy_en.pdf)

<sup>433</sup> Equinet Survey on Pregnancy and Maternity Leave Related Discrimination (2016) [http://ec.europa.eu/justice/gender-equality/files/2007report\\_pregnancy\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/2007report_pregnancy_en.pdf)

<sup>435</sup> EOC, Greater Expectations, available at: <http://www.eoc.org.uk>; EOR Number 138/4 February 2005; EOC, Tip of the iceberg; interim report of the EOC's investigation into discrimination against new and expectant mothers in the workplace, available at: <http://www.eoc.org.uk>; EOR Number 133/7 September 2004;

<sup>436</sup> Ibid. p. 124.

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of **effectiveness**, the available and reviewed evidence shows that there is still a **prevalence of pregnancy- and maternity-related discrimination**.

It has to be highlighted that no European level study or survey is available to determine the **scale of pregnancy- and maternity-related discrimination** in the EU as a whole. Therefore, due a lack of other available data, the evidence in this section is derived from national surveys and studies covering a wide variety of countries<sup>437</sup>. This information is neither comprehensive nor comparative, thus not allowing for detailed cross-country comparisons, and only indicative conclusions can be drawn. However, considering the variety of countries with different legal and cultural traditions, the surveys can be considered as representative for the purposes of this evaluation.

The evidence from recent surveys from four different countries (Denmark, Finland, the Netherlands and the UK) shows that **45-77% of women surveyed report they have been discriminated against in the workplace due to pregnancy / maternity**<sup>438</sup>. According to these surveys, nearly half of working mothers or future mothers have been subjected to such unfavourable treatment at work in Denmark and the Netherlands and three out of four women in the UK have been subject to unfavourable treatment and report that such unfavourable treatment has had a long lasting negative impact on their careers. Discriminatory treatment is in many cases reported to begin from the moment the pregnancy is signalled to the employer. One in five women, according to the **UK survey**, have experienced for example harassment or negative comments as a result of pregnancy, motherhood or requesting family related leave or flexible working<sup>439</sup>. The **Danish survey** concluded that 18% of pregnant women have seen a deterioration in working conditions following a pregnancy announcement. Also, one in ten women feels that their relationship with their manager deteriorated following the announcement of the pregnancy. Overall, 50% of surveyed women in the UK reported a **negative impact on opportunity, status or job security**. One in ten (11%) felt forced to leave their job following pregnancy or maternity. Of the 11%, 9% were treated in such a way that they felt they had to leave, 1%

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<sup>437</sup> Warming, K. (2016) *Diskrimination af forældre – oplevelsen af diskrimination i forbindelse med graviditet og barselsorlov*. Institut for Menneskerettigheder [Danish Institute of Human Rights] A representative? survey of 1,589 people, interviews with 18 parents or expecting parents and interviews with six employer representatives from large enterprises; TRAL (2012) *Tradenomit ja työelämän tasa-arvo*. A survey carried out by trade union TRAL in 2009 and again in 2012; Commissie Gelijke Behandeling (2012) *Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders van jonge kinderen op het werk* Based on an online survey of 1,000 women, 6 in-depth interviews/case studies with working women and 19 with employers/personnel managers. The statistics refer to answers from women who had given birth to a child in the previous 4 years (2007-2011); Adams, L. et al (2015) *Pregnancy and maternity-related discrimination and disadvantage*. Department for Business, Innovation and Skills and the Equality and Human Rights Commission. The study is based on a survey of 3,254 mothers and 3,034 employers.

<sup>438</sup> See for example, Warming, K. (2016) *Diskrimination af forældre – oplevelsen af diskrimination i forbindelse med graviditet og barselsorlov*. Institut for Menneskerettigheder. 45% in Denmark and the Netherlands and 77% in the UK.

<sup>439</sup> Adams, L. et al (2015) *Pregnancy and maternity-related discrimination and disadvantage*. Department for Business, Innovation and Skills and the Equality and Human Rights Commission.

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were made compulsorily redundant (whereas no other employees were made redundant) and 1% of women were dismissed.

In terms of the types of tasks and duties to which workers have returned following maternity (or parental) leave, under half (45%) of women surveyed in Finland returned to similar duties. 8% returned to different duties at a lower level, with 35% returning to different duties at the same or higher level. Employment was terminated in 12% of the cases following return to work after maternity leave. In Denmark, 6% of the returners reported that they had been demoted<sup>440</sup>.

It is difficult to carry out a **trend analysis**, as most relevant surveys were carried out in one-off studies, but overall the available survey evidence suggests that **the level of discrimination has increased** (e.g. Austria, Belgium, Cyprus, Greece, France, UK). Notably the financial crisis has aggravated the problem in relation to the dismissal of pregnant women<sup>441</sup>. For example, the Irish Human Rights and Equality Commission recorded a **continuous increase in queries related to maternity leave and dismissal protection** between 2010 and 2013<sup>442</sup>. In the framework of a survey conducted between 2007 and 2009, 30 % of women reported unfair treatment during pregnancy and 5% reported dismissal<sup>443</sup>.

The observed levels of discrimination reported in the surveys could be related to the protection and its **enforcement by the national regulatory framework**. Despite the fact that data is only available from some countries, it is nevertheless notable that all the countries that have surveyed women meet or exceed the legal requirements as required by the maternity leave Directive. However, in all these countries **high levels of pregnancy-related discrimination persist**. In view of the long time period between the adoption of the Directive and the date of the surveys, it can be concluded that national legislation alone transposing the Directive has not been sufficiently effective in avoiding unfavourable treatment and dismissals of women. For instance, an evaluation of the extent to which employers **provide appropriately substantiated grounds for dismissals in writing (Article 10(2))** is based on a limited number of responses from national equality bodies to

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<sup>440</sup> It is interesting to note that the Danish survey indicates that men are also affected by such discrimination. The survey revealed that 23% of men have experienced discrimination for taking paternity leave.

<sup>441</sup> Bettio, Corsi, D'Ippoliti, Lyberaki, Lodovici and Verashchagina (2012) The impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies.

<sup>442</sup> Russell, Watson and Banks (2011), Pregnancy at Work: A National Survey, HSE Crisis Pregnancy Programme and the Equality Authority notes a 25% increase between 2010 and 2011, a further 20% increase between 2011 and 2012, and reaching 1,278 queries by 2012, see

[https://www.ihrec.ie/download/pdf/pregnancy\\_at\\_work\\_a\\_national\\_survey.pdf](https://www.ihrec.ie/download/pdf/pregnancy_at_work_a_national_survey.pdf)

<sup>443</sup> Russell, Watson and Banks, Pregnancy at Work: A National Survey, p. XI; This survey report describes the experiences of 2,300 women who had a baby between July 2007 and June 2009. It documents their experiences at work during their pregnancy and examines patterns in maternity leave taken and return to employment.

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a questionnaire of the Equinet network<sup>444</sup>. Responses are mixed but generally suggest that despite of the rules being clear, in practice **there is a lack of substantiation of grounds of dismissals in writing**.

Finland is the only country where a study found that discrimination due to the family situation or pregnancy had slightly fallen from 7% to 4%, in 2013. According to the regular working conditions survey of the Finnish Statistics office<sup>445</sup>, **the level of discrimination in the workplace due to family situation or pregnancy**, as measured by the percentage of female and male respondents having *witnessed* such discrimination in 1997, **has fallen from 7% to 5%** in both 2003 and 2008, and 4% in 2013<sup>446</sup>. Even though this evidence from Finland suggests declining numbers, the problem still exists in reality. For example, in 2013, there are still 6% of female respondents who reported having witnessed discrimination on this basis (as opposed to 3% of men) (down from 10% of women in 1997). Nevertheless, commentators<sup>447</sup> have highlighted and identified significant case law in the area of pregnancy-related discrimination and dismissal protection. This can be partly explained by the occurrence of pregnancy-related discrimination which gives the opportunity for the Court of Justice to interpret and clarify European Union law in this regard. It also shows the need to give further guidance on how to apply the dismissal rules in Member States and potentially the need for further awareness-raising among employers and employees with regard to the existing rights of pregnant women on the basis of the maternity leave Directive as well as the case law of the Court of Justice.

### **Groups of women most affected by discrimination due to pregnancy at the workplace**

The following section assesses the **groups of women most affected** by this type of discrimination, including by **type of employer and the nature of discrimination** related to dismissals during protected periods. It also provides existing evidence on the experienced discrimination during recruitment (for family reasons, or as a result of the possibility of becoming pregnant) and assesses the extent to which employers provide **appropriately substantiated grounds for dismissals in writing**.

Those most at risk of discrimination are **female workers who are not aware of their employment rights** related to pregnancy and maternity as well as **temporary workers** (for example those who are on fixed-term or project contracts and agency workers). Expert reports and ombudsmen from a number of countries report that agency workers are often dismissed upon announcement of the pregnancy and women on fixed-term contracts do not have their contracts renewed despite earlier promises to do so<sup>448</sup>. Other groups of women

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<sup>444</sup> Equinet survey, Responses from Austrian, Cypriot, Finnish and Irish equality bodies to this question.

<sup>445</sup> The survey was carried out seven times since 1977 among 3 000-6 600 workers.

<sup>446</sup> Sutela, H., Lehto, A-M. (2014) Työolojen muutokset 1977-2013. Tilastokeskus

<sup>447</sup> In the framework of the study conducted by ICF.

<sup>448</sup> E.g. Equinet survey on Pregnancy and Maternity Leave Related Discrimination, Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST.

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disproportionally affected by discrimination include: 1) those who are frequently on sick leave as a consequence of the pregnancy, 2) women with children who suffer from health problems<sup>449</sup>, and 3) women in social groups, countries or regions where particularly strong cultural stereotypes prevail regarding the role of women as caregivers.

A Dutch study on pregnancy-related discrimination that showed that 45% of the women who became mothers and worked and/or applied for a job in the period 2007 to 2011 experienced a situation that involved possible discrimination also found that **higher- and lower-educated workers experience different types of unfavourable treatment**<sup>450</sup>. Higher-educated women suffer more often with respect to their possibilities for career advancement as many find that their position and duties have changed during their maternity leave to their disadvantage. Lower-educated women are more likely to suffer from temporary contracts of employment not being extended or dismissal while employed on temporary contracts of employment<sup>451</sup>.

Evidence shows that in some Member States like Austria and Malta there is **less discrimination against women in the public sector than in the private sector**. For example, UK survey evidence found that women working in public administration are less likely than those working in the private sector to report feeling forced to leave their jobs (3% compared to 11% on average) or to report financial loss resulting from pregnancy or maternity<sup>452</sup>. This is partially due to better awareness among public sector managers of employment rights of pregnant women, and they are also more likely to feel it is in the best interest of their organisation to support pregnant women and those on maternity leave (97% compared to 84% on average). Similar findings, albeit of a more anecdotal nature, have been reported in Belgium, Croatia, Cyprus, the Czech Republic and Portugal<sup>453</sup>.

There is some evidence that suggests the prevalence of **more pregnancy-related discrimination in smaller as compared to larger firms**, as shown by the Dutch<sup>454</sup> and

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<sup>449</sup> Commissie Gelijke Behandeling (2012) Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders van jonge kinderen op het werk Utrecht March 2012 in Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST

<sup>450</sup> More than 1,000 women were surveyed as part of the study and in-depth interviews were conducted with employers and women, Commissie Gelijke Behandeling (2012) Hoe is het bevallen?, <https://mensenrechten.nl/publicaties/detail/9889>

<sup>451</sup> Commissie Gelijke Behandeling (2012) Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders van jonge kinderen op het werk Utrecht March 2012 available at: <https://mensenrechten.nl/publicaties/detail/9889>

<sup>452</sup> Adams, L. et al (2015) Pregnancy and maternity-related discrimination and disadvantage. Department for Business, Innovation and Skills and the Equality and Human Rights Commission.

<sup>453</sup> On the basis of a review of country chapters included in Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST

<sup>454</sup> Commissie Gelijke Behandeling (2012) Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders van jonge kinderen op het werk Utrecht March 2012

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the UK studies<sup>455</sup>. The survey evidence further found that mothers who work for employers with a staff of less than 50 are more likely to indicate that they felt forced to leave their jobs as a result of pregnancy/maternity (13% compared to the average of 11%)<sup>456</sup>.

**bb) Factors that influence the effectiveness of the discrimination and dismissal protection provisions of the maternity leave directive.**

With regard to the **factors improving the effectiveness of the provisions on dismissal protection for pregnant women**, it can be highlighted that **awareness-raising campaigns and guidance** by stakeholders and courts, as well as better data collection as regards the occurrence of discrimination and dismissals related to pregnancy, can significantly improve the effectiveness of existing EU action. The report prepared by the European Network of Legal Experts on behalf of the Commission<sup>457</sup> found that generally speaking, a good level of awareness of rights will lead to a higher degree of enforcement and effectiveness. Sweden and Finland were identified as prime examples of this as these countries are characterised by widespread awareness, which has then been followed by a considerable amount of case law from both labour courts and ombudsmen. On the contrary, low awareness of rights among both employers and employees, case law and procedural EU rules, such as the burden of proof in discrimination cases, translates to fewer cases. This is evident, for example, in Croatia, Greece and Spain.

In this regard, the work of **the equality bodies** is very relevant<sup>458</sup>. Many Equality Bodies see this as one area of core focus. It often emerges as a priority, the dominant issue including litigation work which usually forms part of the strategy by equality bodies to combat pregnancy-related discrimination. Many Equality Bodies have launched formal investigations<sup>459</sup> or even combined litigation with studies on pregnancy-related discrimination in order to secure publicity for cases on this issue. Norway<sup>460</sup> has even gone further in addressing the issue of data collection on pregnancy-related discrimination, launching a campaign on under-reporting of pregnancy-related discrimination and also conducting a survey on the extent of the issue.

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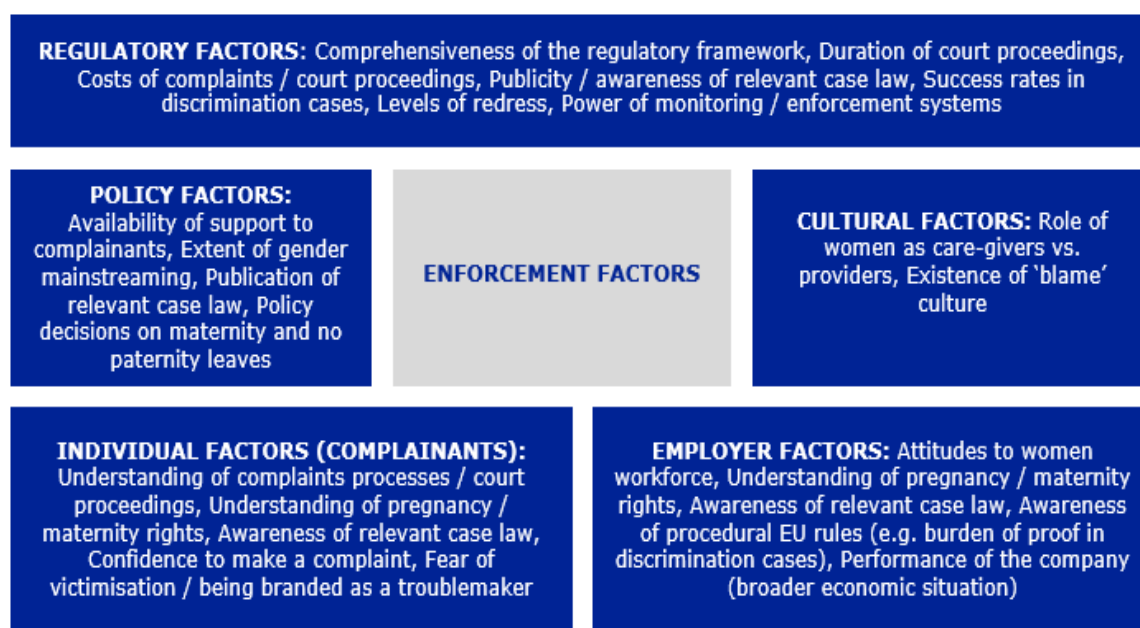
<sup>455</sup> Adams, L. et al (2015) Pregnancy and maternity-related discrimination and disadvantage. Department for Business, Innovation and Skills and the Equality and Human Rights Commission.

<sup>456</sup> Adams, L. et al (2015) Pregnancy and maternity-related discrimination and disadvantage. Department for Business, Innovation and Skills and the Equality and Human Rights Commission.

<sup>457</sup> Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST.

The UK Equal Opportunity Commission found that another factor that improves the effectiveness of dismissal protection is **the availability of flexible work practices** which resulted in better treatment of pregnant workers<sup>461</sup>. These findings suggest that there is a higher chance of women experiencing problems with their employer concerning their pregnancy and maternity leave in firms without flexible working arrangements. According to the evidence, the availability and acceptance of flexible working arrangements is *"likely to indicate that the employer is aware of the competing demand facing employees outside of work and may also suggest a greater concern for employees' welfare more generally"*.<sup>462</sup>

#### Factors contributing to the effectiveness of enforcement



Source: ICF on the basis of findings from [Masselot et al. \(2012\) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood](#). DG JUST, and other literature.

- With regard to the **factors impeding the effectiveness of the provisions on dismissal protection for pregnant women**, several factors can be highlighted.

<sup>461</sup> Callender, C., Millward, N., Lissenburgh, S. and Forth, J. (1997) *Maternity Rights and Benefits in Britain 1996*, London: Dept of Social Security, Research Report No. 61.; La Valle, I., Clery, E. and Huerta, M.C. (2008) *Maternity Rights and Mothers' Employment Decisions*, Department of Work and Pensions.

<sup>462</sup> Equal Opportunities Commission (2005) *Greater Expectations: Final report of the EOC's investigation into discrimination against new and expectant mothers in the workplace*, Manchester: Equal Opportunities Commission; La Valle, I., Clery, E. and Huerta, M.C. (2008) *Maternity Rights and Mothers' Employment Decisions*, Department of Work and Pensions.

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The main factor that impedes the effectiveness of the maternity leave Directive is the substantial and persisting gap that can be observed between the law and practice in most countries, often resulting from a **lack of compliance and/or effective enforcement of the law** at national level. This is due to many factors including, for example, the lack of confidence and availability of support in making a claim or complaint. Many women are afraid to defend their rights because they are afraid of reputational consequences (especially in small Member States, small sectors, etc.) and the impact on their chances of renewing their temporary or project contracts. Others are put off by high costs of litigation (e.g. Norway, Croatia)<sup>463</sup>, lack of advice (e.g. Lithuania) and low chances of achieving redress (e.g. Latvia)<sup>464</sup>. Other contributing factors are the length of the procedure (e.g. Greece, Ireland, Germany), the lack of case law and lack of transparency because cases are not published (Hungary, Lithuania, Liechtenstein, Luxembourg), and generally the difficulty of proving discrimination (e.g. Germany)<sup>465</sup>.

In general, according to the French Défenseur des Droits, pregnancy and maternity leave are a constraint in professional life for nearly one in every two active women<sup>466</sup>. The evidence base on the prevalence of dismissals during the protected periods of maternity leave and after return from maternity leave suggests that such dismissals take place. For instance, according to the office of the Austrian Ombudsman for Equal Treatment, such dismissals are particularly common after announcing a pregnancy during a trial period or after the end of the protected period following return from leave<sup>467</sup>. Dismissal just following this protected period was also found to be fairly commonplace in Germany. A Spanish study indicates that as many as 25% of pregnant women are dismissed or encouraged to resign voluntarily. According to a Danish survey, 1 in 7 women do not return to the same employer following maternity or parental leave<sup>468</sup>.

Another problem concerning around 800 000 pregnant women<sup>469</sup> is the practice in some Member States like Italy, Croatia or Greece for example to make women sign **blank resignation letters** when they prior to being employed<sup>470</sup>. According to a recent

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<sup>463</sup> Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 30.

<sup>464</sup> Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 30.

<sup>465</sup> Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 30.

<sup>466</sup> See page 2 of the "Avis concernant la proposition de loi n°2927 visant à prolonger la période légale d'interdiction de rupture du contrat de travail à l'initiative de l'employeur pour les femmes à l'issue de leurs congés liés à la grossesse et à la maternité."

[http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_avis\\_20160224\\_16-05.pdf](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_avis_20160224_16-05.pdf)

<sup>467</sup> Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST

<sup>468</sup> Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST

<sup>469</sup> "Resignation letters of this kind are mostly brought out when an employee informs her employer that she is pregnant. Statistics suggest that over 800 000 pregnant women are being forced to leave their jobs.", <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-000233&language=SV>

<sup>470</sup> Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 17.



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Parliamentary Question, *"In practice, when a female candidate is recruited, she is asked to sign the employment contract together with a blank resignation letter which, being updated, can be enforced by the employer whenever he or she might decide."*<sup>471</sup> An example of good practice can be reported from Portugal where this *"practice of white resignations has been eradicated by the legal requirement that resignations of contracts of employment need to be signed before a public authority and, should this not be the case, the worker can reverse the resignation in the first seven days after it was signed."*<sup>472</sup>

Some women returning from maternity (or parental) leave find that their role has either disappeared or been transferred to someone else, with the consequence of some returnees losing their job soon after returning to work. This phenomenon seems to increase in frequency during economic downturns as a result of the financial crisis, which has led to a rise of fixed-term contracts<sup>473</sup>. Even though relevant case law of the CJEU<sup>474</sup> has stated that the refusal to extend a fixed-term contract of a pregnant worker constitutes unlawful direct discrimination on grounds of sex, it is very common that women employed on fixed-term contracts or working through agencies do not have their contracts renewed even if such promises were made before the announcement of the pregnancy. For example, the Dutch survey discussed above found that in nearly half of cases (44%), a temporary contract was not renewed.

Those identified shortcomings do not represent a lack of effectiveness as such of the EU legislative framework in place. Such issues could, in principle, be addressed within the current legislative framework by encouraging Member States to address enforcement processes and increasing guidance, awareness raising and dissemination of information about existing rights; this is confirmed by available evidence from stakeholders<sup>475</sup>. However, broader factors are at play which influence perceptions and action which can lead to discrimination in recruitment decisions and in the treatment of employees (particularly those taking and returning from leave). Current patterns in the sharing of paid and unpaid work and the impact of the available leave guaranteed under EU and national law on such patterns influence employer perceptions and can contribute to the direct or indirect discrimination of women in recruitment and career decisions.

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<sup>471</sup> Stakeholders such as the European Parliament have raised this question:

<http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-000233&language=SV>

<sup>472</sup> Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 17.

<sup>473</sup> Bettio, Corsi, D'Ippoliti, Lyberaki, Lodovici and Verashchagina (2012) The impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies.

<sup>474</sup> Cases C-109/00 *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark* (HK) [2001] ECR I-2785 and C-438/99 *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios* [2001] ECR I-6915.

<sup>475</sup> As suggested by the European Implementation Assessment of the European Parliament on Directive 2006/54/EC, p. 20: *"increase its knowledge about the scale of awareness on the rights of pregnant workers, and maternity leave and paternity leave and parental leave takers."*

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### cc) Nature of discrimination during recruitment

In terms of discrimination, gender equality legal experts tend to agree that the law prohibiting discrimination regarding recruitment of pregnant women and new mothers is “*sufficient and satisfactory*”<sup>476</sup>, although compliance and enforcement issues remain. However, existing maternity leave legislation finds it more difficult to prevent discrimination pre-pregnancy which can take place at the recruitment stage and can prevent women of childbearing age (whether they have children or not) to enter or return to the labour market.

By way of example, a third (35%) of surveyed women in Finland were asked about plans to start or expand family during a job interview, and 16% of the surveyed women in Denmark<sup>477</sup>. It is to be welcomed that the share of women who have been asked about such plans has declined in Finland, from 42% of respondents in 2009 to 35% in 2012<sup>478</sup>. However, more alarming are the findings from Latvia, where according to a 2011 survey of the Latvian Ombudsman’s office, half of respondents (50%) had been asked about their family status by their (or potential) employer<sup>479</sup>.

Such findings demonstrate that the factors leading to discrimination and the under-representation of women in the labour market go deeper than the issues directly addressed by the maternity leave Directive (although all these issues are interlinked). The behaviour of employers is conditioned by perceptions that women are likely to take long leaves and are more likely than men to be absent should a child (or an older relative) require care. These perceptions reflect currently observed gender gaps in paid and unpaid work and patterns of leave taking, which would be more effectively addressed by measures which support both parents and carers in achieving better work-life balance and encourage the greater sharing of caring responsibilities. In most countries, existing measures are currently insufficient to achieve this outcome.

### dd) Pregnancy and maternity related discrimination queries and cases

National equality bodies and ombudsmen deal with potential discrimination cases in the form of informal information queries as well as through formal investigations of potential discrimination cases. Data gathered at this level can therefore shed more light on the prevalence and nature of reported discrimination cases and the concerns of pregnant

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<sup>476</sup> Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST

<sup>477</sup> Warming, K. (2016) Diskrimination af forældre – oplevelsen af diskrimination i forbindelse med graviditet og barselsorlov. Institut for Menneskerettigheder

<sup>478</sup> TRAL (2012) Tradenomit ja työelämän tasa-arvo.

<sup>479</sup> Tiesībsarga 2011. gada ziņojums (Annual Report of Ombudsman for 2011), [http://www.tiesibsargs.lv/files/gada\\_zi%C5%86ojumi/ties%C4%ABsarga\\_gada\\_zi%C5%86ojums\\_2011.pdf](http://www.tiesibsargs.lv/files/gada_zi%C5%86ojumi/ties%C4%ABsarga_gada_zi%C5%86ojums_2011.pdf), accessed 17 September 2012.

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workers. However, because not all such bodies gather or publish such data, or data does not distinguish between different types of discrimination, it is difficult to provide comparisons between countries and to come to definite conclusions.

That being said, the number of cases<sup>480</sup> in the area of maternity leave discrimination in relation to pregnancy has not changed significantly since those provisions have been introduced<sup>481</sup>. Between 1999 and 2008 the Irish Equality Tribunal and the Labour Court dealt with 54 cases of pregnancy-related discrimination. However, the magnitude of the problem is in reality much bigger considering the fact that the number of cases in courts does not capture the problems that have not been reported and addressed through a formal legal procedure. It can be safely assumed that the number of cases brought is only a fraction of the number of occurrences of maternity discrimination, taking into account the general disincentives to pursuing a case in court, and the fact that women who are pregnant or who have recently given birth face even stronger barriers, as they may not want or have the possibility, time, energy or financial resources to launch a court procedure<sup>482</sup>.

The table below offers a summary overview of findings from 14 countries<sup>483</sup>. These findings are fragmented but nevertheless demonstrate that the number of information requests and cases equality bodies investigate varies considerably. The number of queries received per year ranges from just one case or two to hundreds. There is no direct correlation with the size of the country (or the precise nature of legal provisions). Therefore, it is more likely to be an indication of the confidence of women to take action, awareness of their legal rights, understanding of complaints processes and accessibility of the system in terms of costs.

Pregnancy- and maternity-related discrimination cases comprise between 2% and 50% of all discrimination cases handled, per country. They constitute a low share in countries like Poland (2%) and France (5%), and a very high share of up to 42% in Belgium and 50% in Latvia.

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<sup>480</sup> As a matter of illustration an Irish case, where an award was given by the Equality Tribunal of €56,315 against MBNA in a case of pregnancy related discrimination: <https://www.ihrec.ie/mbna-to-pay-e56315-for-pregnancy-discrimination-and-victimisation/>

<sup>481</sup> <https://www.ihrec.ie/two-important-decisions-protect-the-rights-of-women-workers/>

<sup>482</sup> Russel/Banks, *Pregnancy and Employment: A Literature Review*, p. 12, [https://www.ihrec.ie/app/uploads/download/pdf/pregnancy\\_at\\_work\\_a\\_literature\\_review.pdf](https://www.ihrec.ie/app/uploads/download/pdf/pregnancy_at_work_a_literature_review.pdf)

<sup>483</sup> Based on Equinet 2016, on the basis of information from the Belgian Institute for Equality for Women and Men, Cyprus Office for the Commissioner for Administration and Human Rights, German Federal Anti-Discrimination Agency (FADA), Finnish Ombudsman for Equality, Irish Human Rights and Equality Commission, Malta National Commission for the Promotion of Equality (NCPE), The Slovak National Centre for Human Rights, and country authors of Masselot et al. (2012) *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood*. DG JUST.

*Pregnancy- / maternity-related discrimination queries and cases handled by equality bodies (based on information from 14 countries)*

Criteria	Findings
Volume of information queries and handled cases	<p>Countries with a high number of queries or cases in relation to size of population in last 5 years: Cyprus (120), Finland (181), Ireland (unknown for the past 5 years but 1,278 queries in 2012 alone), Netherlands (unknown for the past five years but 62 cases in 2011 alone plus further 288 information requests)</p> <p>Countries with a relatively medium or low number of queries or cases in relation to size of population: France (unknown for the past 5 years but 126-618 case per year between 2008-2010), Germany (78), Hungary (5-7 per year), Malta (8), Slovakia (6)</p>
Baseline analysis; the share of potential pregnancy / maternity related discrimination cases from all discrimination cases handled by the equality bodies:	<p>Pregnancy / maternity related discrimination cases constitute up to 40-50% of all discrimination cases handled by relevant equality bodies / ombudsmen (e.g. Belgium with 42% and Latvia with around 50%).</p> <p>In Denmark, such cases make up the largest share of discrimination cases related to workplace and in Finland, they are the third largest group of cases, after access to employment and pay related cases.</p> <p>In Cyprus, 25% of discrimination cases are related to maternity and family disputes in workplaces. Their share from all work-related complaints has gradually increased from 18% in 2011 to 33% in 2015 and 36% in 2016.</p> <p>Nearly half (45%) of sex discrimination cases handled by the Netherlands Institute for Human Rights are related pregnancy and motherhood (e.g. 62 out of 139 sex discrimination cases in 2011).</p> <p>Pregnancy / maternity related claims make up a much smaller share of claims handled by the equality body in France, where such claims represent less than 5% of all claims.</p> <p>In Poland, maternity / pregnancy related complaints to the National Labour Inspectorate stand for just 2% of discrimination cases.</p>
Trend analysis	<p>Very limited trend data is available, but the limited data suggests that the number of cases / queries is on the rise, either through increases in the total number of cases (e.g. Ireland, France) or as a share of all discrimination cases (e.g. Cyprus).</p>

Criteria	Findings
	In the case of Cyprus, the actual number of cases handled each year has gone down but their share from all work-related complaints has gradually increased from 18% in 2011 to 36% in 2016. The former Irish equality body saw annual increases of 20-25% in queries related to maternity leave and protection between 2010 and 2012 (disaggregated data is no longer available).

*Sources: Equinet 2016, on the basis of information from the Belgian Institute for Equality for Women and Men, Cyprus Office for the Commissioner for Administration and Human Rights, German Federal Anti-Discrimination Agency (FADA), Finnish Ombudsman for Equality, Irish Human Rights and Equality Commission, Malta National Commission for the Promotion of Equality (NCPE), The Slovak National Centre for Human Rights. Country authors of Masselot et al. (2012) Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. DG JUST.*

To **summarise and recall the main findings on effectiveness** in relation to dismissal protection of Directive 92/85/EEC, it can be observed that, although all Member States meet or exceed the EU legal framework in place, the **objectives** of the Directive in relation to the prevention of discrimination on grounds of pregnancy and maternity (particularly in relation to dismissal) have not been sufficiently reached. There are several factors that influence (improve or impede) the effectiveness of the discrimination and dismissal protection provisions of the maternity leave directive. While issues remain in relation to awareness of rights, compliance and the ability to enforce such rights<sup>484</sup>, much broader factors prevail in conditioning the behaviour of employers, which cannot be addressed through discrimination provisions alone. Other practices such as the signing of blank resignation letters, low awareness of rights among both employers and employees, lack of compliance and/or effective enforcement of the law at national level all hamper the effectiveness of the discrimination rules.

Regarding the **nature of discrimination**, the above findings demonstrated that discrimination of women in the labour market go deeper than the issues directly addressed by Directive 92/85/EEC and are often the consequence of perceptions and stereotypes. Finally, the **number of cases dealt with by Equality Bodies and national courts** can be regarded as proxy to the real magnitude of the problem of dismissal protection, considering the problem of underreporting and refraining to launch court proceedings.

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<sup>484</sup> See Equinet Survey.

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## b) Directive 2010/18/EU

As mentioned above, the general **objective** of the Parental Leave Directive 2010/18/EU was, first of all, and in general, to *‘facilitate the reconciliation of parental and professional responsibilities for working parents...’*<sup>485</sup>; secondly, more specifically, to promote equal opportunities and equal treatment between men and women<sup>486</sup> by providing for positive incentives for the take up by fathers of parental leave<sup>487</sup>; and, thirdly, to reduce the inequality in distribution of caring responsibilities in line with the Treaty obligation ensuring gender equality.

As the Parental Leave Directive amended a previous Framework Agreement (and Directive 96/34/EC) on Parental Leave, Member States had already developed basic parental leave frameworks, as part of a wider framework of work-life balance measures.

- Individual right to parental leave of at least four months (Clause 2(1)): There are no systematic or major issues with regard to the existence of parental leave being designed as an individual right.
- Age of the child up to eight years (Clause 2(1)): Member States have provided for different ages in their legislation until when parental leave can be taken which ranges from 2 in Romania until 12 (BE, IT) and even up to 19 in the UK.
- Non-transferability (Clause 2(2)): As many Member States are allowed to make the entitlement partly transferable, in practice a lot of fathers still transfer their entitlement to parental leave to mothers, which gives very weak incentives to fathers to take the leave.
- Pay: As the Directive does not impose any obligations in relation to pay during parental leave, not all Member States have provided for pay which does not give sufficient incentives for men to take up the leave.
- Flexibility (Clause 3(1)): Member States are free to decide whether this leave can be taken on a full-time or part-time basis or whether it can be taken in a piecemeal way, i.e. in several blocks<sup>488</sup>.

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<sup>485</sup> Clause 1(1) of the Directive.

<sup>486</sup> Clause 2(2) of the Directive: *"to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis."*

<sup>487</sup> Recital 16 of the directive.

<sup>488</sup> See Clause 3(1) of the Directive.

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- Right to request flexible working arrangements (upon return) (Clause 6): The right to request changes to their working hours and/or patterns for a certain period of time and to have such requests duly considered by the employer, taking into account both employers' and workers' needs. Most Member States seem to have implemented the right to request changes to their working hours and/or patterns for a set period of time after the return from parental leave, by providing for specific working-time arrangements <sup>489</sup>.
  - Protection against dismissal and less favourable treatment on the ground of applying for or taking parental leave (Clause 5(4)). There seem to be no major problems with the provisions concerning the protection of the workers against dismissal and against discriminatory treatment on the grounds of parental leave as they seem to have been implemented at national level by the Member States.
  - Force majeure leave (Clause 7): There are no major issues with the provision of force majeure leave that workers are entitled to limited time off work for urgent family reasons in case of sickness or accident making the immediate presence of the worker indispensable.

In terms of **effectiveness**, a **striking difference remains between average take-up rates of parental leave between mothers and fathers**. It was already observed in 2000 in relation to the "first" parental leave directive<sup>490</sup> that even though legally the Directive brought changes, in practice there was a minimal effect because this did not produce changes in society to change the behaviour of men leading to more men deciding to take parental leave<sup>491</sup>. This scenario is still confirmed today by the available evidence and stakeholders according to which *"the differences in men's and women's uptake of parental leave show not only gender-based discrimination but also that the participation rate of fathers in parental leave in the Member States remains low, with only 10 % of fathers taking at least one day of leave, and 97 % of women using the parental leave that is available for both parents"*<sup>492</sup>. Previous Impact Assessment reports prepared by the

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<sup>489</sup> The Implementation of Parental Leave Directive 2010/18 in 33 European Countries, p. 20; According to this report this issue is not addressed at national level in some countries (France, Greece, Italy, Lithuania, Romania and Spain), but it can be settled by an agreement between the employer and the worker, and the collective agreements also deal with the subject (as for example in Italy).

<sup>490</sup> Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

<sup>491</sup> Clauwaert/Hargern, ANALYSIS OF THE IMPLEMENTATION OF THE PARENTAL LEAVE DIRECTIVE IN THE EU MEMBER STATES, p. 11.

<sup>492</sup> European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance, point U.

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Commission<sup>493</sup> highlighted that the take-up rate has not been monitored systematically by Eurostat (at least until the publication of the IA report) and that data on fathers' share of parental leave exists only in some Member States<sup>494</sup>. Even if in general the Directive was successful to increase the total uptake of parental leave by parents, the Directive has only partly met the objective related to **greater involvement of fathers** and a **more equal sharing of caring responsibilities**. As the Directive can only be considered to be effective when the objectives have been attained, this suggests that the current provisions at EU level on parental leave are not enough to address the gap between policy and legal goals (related to work-life balance and reconciliation of professional and caring responsibilities) and practice.

Reports<sup>495</sup> identified different underlying reasons which suggest that the overall effective taking of the leave by women and men depends greatly on the **level of payment**<sup>496</sup>. While the Directive itself acknowledges the fact that "*experiences in Member States have shown that the level of income during parental leave is one factor that influences the take up by parents, especially fathers*"<sup>497</sup>, evidence also suggests that fathers are more likely to take parental leave if it is well remunerated<sup>498</sup>. General evidence shows that **paying parental leave increases the likelihood of uptake especially by men**<sup>499</sup>. Indeed, the take up rate of fathers at 17.2% in countries where the compensation rate varies from 60% to 100% of income<sup>500</sup> is nearly twice as high as the take up rate of 9.4% in countries where the level of compensation varies between zero and 60%<sup>501</sup>. Compensation also has an impact on the duration of leave taken. When only a part of the parental leave is paid, mothers and fathers tend to limit the leave to the paid period.

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<sup>493</sup> Maternity Leave proposal IA report, p. 47.

<sup>494</sup> The IA report therefore suggested: "*The Commission could endeavour to improve the availability of statistics on this point. Data would be published regularly. If figures on fathers' take-up rate could be determined, they could also be published regularly in the Commission's annual report on equality between women and men.*"

<sup>495</sup> The Implementation of Parental Leave Directive 2010/18 in 33 European Countries, p. 25.

<sup>496</sup> European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance, point U: "available data confirms that unpaid or poorly paid family-related types of leave result in low participation rates".

<sup>497</sup> Recital 20.

<sup>498</sup> Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union (2015), p. 11, available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL\\_STU\(2015\)509999\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL_STU(2015)509999_EN.pdf) ;

<https://www.theguardian.com/money/2016/apr/05/shared-parental-leave-slow-take-up-fathers-paternity>;

Eurofound (2015); Promoting uptake of parental and paternity leave among fathers in the EU

<sup>499</sup> If the parental leave is well paid, evidence suggests, that the uptake will even be higher, see OECD, Policy Brief: Parental Leave, where are the fathers, 2016; Recent evidence from California shows these effects, see Paid Family Leave, Fathers' Leave-Taking, and Leave-Sharing in Dual-Earner Households, Ann Bartel, Maya Rossin-Slater, Christopher Ruhm, Jenna Stearns, and Jane Waldfogel, NBER Working Paper No. 21747, available at: <http://www.nber.org/papers/w21747.pdf>

<sup>500</sup> HR, LT, SI, EE, DK, NO, RO, SE, CZ, DE, FI, HU, LV

<sup>501</sup> AT, BE, BG, FR, IT, LU, PL, PT, SK, MT, EL, CY, IE, ES, CH, UK, NL, IS



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In addition, some provisions – such as the provision on non-transferability<sup>502</sup> set out in the Directive (which ensures that one month of parental leave cannot be transferred to the other parent) are not effective in addressing gender imbalances. Stakeholders express that *"entirely or partially non-transferable, properly paid parental leave supports a more balanced take-up by both parents and helps to reduce discrimination against women in the labour market"*<sup>503</sup>.

Furthermore, the requirement for parents to have taken parental leave before being able to request flexible working arrangements may reinforce the role of women as caregivers. As much more women take parental leave, only they can profit from the right to request flexible working arrangements<sup>504</sup>. This is notably linked to the existing patterns of take-up (higher up-take by women) which in turn is linked to compensation levels.

In terms of **achieving the objectives** of better reconciliation between work and private life, the information on take-up rates<sup>505</sup> show that the overarching goal of the Directive has not been fully achieved. This can be explained by the lack of having achieved the specific objectives, e.g. the fact that father's participation in childcare improved only marginally. This can be explained by the fact that take up rates among men remain very low, and this affects the length of leave taken by women and their subsequent employment opportunities.

## 5.2 Efficiency

- To what extent are the costs involved justified, given the changes/effects which have been achieved?

-To what extent has the intervention been cost effective?

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<sup>502</sup> See Clause 2(2): *"to promote equal opportunities and equal treatment between men and women, **should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis.**"*

<sup>503</sup> European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance, point U.

<sup>504</sup> 3 518 600 EU citizens took parental leave in 2010 of which only 94 800 (2.7 %) were men, <http://appsso.eurostat.ec.europa.eu/nui/show.do>

<sup>505</sup> ICF (2016) Study on the costs and benefits of possible EU measures to facilitate work-life balance for parents and care givers, p. 39-40; European Parliament Study for FEMM Committee, Maternity, paternity and parental leave: data related to duration and compensation rates in the EU (2015)

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- If there are significant differences in costs (or benefits) between Member States, what is causing them?

**a) Non-discrimination and dismissal protection, Directive 92/85/EEC**

The criterion of efficiency could not be assessed in a satisfactory way as thorough research showed insufficient data was available to carry out such an assessment. The lack of data is confirmed also according to the judgement of the evaluators as well as the available opinions of stakeholders<sup>506</sup> found during the research.

However, it can be observed that the costs involved in order to transpose the Directive 92/85/EEC are justified in order to fulfil the Treaty obligations of combating discrimination and ensuring equality between women and men are justified. Therefore, given the changes and effects which have been achieved by creating minimum standards for the Member States in relation to non-discrimination and dismissal protection for pregnant women, the EU intervention was justified and cost effective as it was **producing satisfactory results without costing the Member States more money than necessary** in order to achieve the objectives of the Directive.

Considering the analysis on the effectiveness of the Directive provided above, future cost savings could nevertheless be achieved by addressing problems in relation to dismissal protection and discrimination by policy measures rather than new legislative changes in the area. This will decrease costs for businesses arising from discriminatory decision-making based on a worker's pregnancy or maternity rather than her ability to perform her work. Policy measures aimed at better prevention could reduce the costs of dismissals to Member States, and will not create new burdens in administrative and financial terms.

**b) Directive 2010/18/EU**

Due to limited data collection in relation to the costs entailed by the Directive, rather than a quantitative analysis, the criterion of efficiency is mainly assessed based on a qualitative evaluation of the costs and the beneficial outcomes. Research identifies this lack of available data and suggests that there is a need for a stronger monitoring of the Directive's implementation, including observations of the directive's impact on men's behaviour in relation to parental leave<sup>507</sup>.

Direct costs resulting from the application of the Directive are mostly borne by the national public administrations (i.e. amendments of existing laws, monitoring and enforcement activities). In most Member States businesses or citizens are not required to take any

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<sup>506</sup> D. Szelewa, p. 5

<sup>507</sup> D. Szelewa, Maternity, paternity and parental leave, Research paper, p. 5.

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specific actions that may lead to a cost to be taken into account for the purposes of this evaluation.

Costs which arose for Member States can be mainly grouped into three categories: (1) implementation costs (costs relating to the introduction of new laws, regulations, procedures, etc.), (2) monitoring costs (costs relating to the personnel employed for monitoring and reporting purposes) and (3) enforcement costs (costs associated to the introduction of new mechanisms for claims.) Any differences in costs (or benefits) and increases in costs between Member States depends on the legislative measures that have been in place prior to the EU action being implemented. Higher costs are caused in those countries with higher rates of up-take of parental leave.

It can be observed that the assessment of **efficiency** for both Directives was hampered to some extent due to a lack of systematic European monitoring data. In order to be better able to assess the performance of legislation in this field, monitoring arrangements on EU and Member State level need to be strengthened in future where possible.

### 5.3 Relevance

*-To what extent are the relevant parts of the maternity leave directive and the parental leave directive still relevant?*

*-How well do the original objectives still correspond to the needs within the EU?*

*-How well adapted is the intervention to subsequent technological or scientific advances?*

*- How relevant is the EU intervention to EU citizens?*

#### **a) Non-discrimination and dismissal protection, Directive 92/85/EEC**

The need to reduce discrimination and dismissals related to pregnancy and maternity remains relevant today, in that pregnancy- and maternity-related discrimination continues to persist in all Member States, which means that women continue to require the maintenance of legal protection against dismissal and other forms of less favourable treatment. Studies highlight that Maternity Leave provisions are *"an important pillar*

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among family leave for the reconciliation of work and family life as they protect the health of mothers and children"<sup>508</sup>. However, as indicated above, pregnancy-related discrimination measures on their own have been insufficient in addressing the persisting problem of dismissals and discrimination of pregnant women<sup>509</sup>. One recent evidence report states that "The fact that a platform of rights is available, however, does not mean that problems do not exist: these are more difficult to assess as they are often 'hidden'. One of the most fundamental findings of this report is the existence of a large gap between the letter of the law and its practice. In other words, if on paper the law exists and is comprehensive, it is too often circumvented in practice and individuals do not always attempt to enforce their rights."<sup>510</sup>. This assessment is confirmed by the existing case law<sup>511</sup>, complaints received by Member States Equality bodies by the European Commission and shows the continuing relevance of the legislative framework with supporting measures on the enforcement side<sup>512</sup>.

EU intervention to address the issue of pregnant women being discriminated at work and being dismissed is very relevant to EU citizens<sup>513</sup>. Today there are still more mothers than fathers who avoid participation in the labour force when they become parents and instead take predominantly leave. Because of this employers tend to perceive women as less committed to their careers than men and will be less likely to employ women in the first place and invest in female career opportunities<sup>514</sup>. This is supported by evidence from a survey on parental leave conducted by the European Foundation for the Improvement of Living and Working conditions and published in 2007<sup>515</sup>, which shows that mainly women – and not men – take long family-related leave periods and this in turn propagates gender-related, stereotypical assumptions about the sharing of care responsibilities and employment abilities<sup>516</sup>. There is research that suggests in Germany that 1/5 of firms have no incentives to employ young women<sup>517</sup> and other research highlighting employer's

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<sup>508</sup> Study of the EP, Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union, p. 21, available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL\\_STU\(2015\)509999\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL_STU(2015)509999_EN.pdf)

<sup>509</sup> Masselot et al., Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 12

<sup>510</sup> Masselot et al., Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, p. 12

<sup>511</sup> See for example as a matter of illustration, Pregnancy discrimination cases in the Equality Tribunal and Labour Court, 1999 – 2008 (Banks & Russell, 2011: Between 1999 and 2008 in Ireland alone, 54 decisions have been issued by the Equality Tribunal and Labour Court on the sole ground of pregnancy Related Discriminatory Dismissal.

<sup>512</sup> Enforcement measures could be awareness raising campaigns, guidance or other forms of making employees and employers aware of their rights and obligations under European and national law.

<sup>513</sup> Evidence of the manifest problems still existing today for female EU citizens have been cited above in Section 5.1a) highlighting the continuing demand for this EU intervention.

<sup>514</sup> Babies and Bosses, Reconciling Work and Family life, OECD 2007, p. 59.

<sup>515</sup> Anxo, Fagan, Smith, Letablier, Perraudin, Parental leave in European Companies, European Foundation for the Improvement of Living and Working Conditions, Survey on Working Time 2004/2005, Luxembourg 2007.

<sup>516</sup> Ibid, page 9.

<sup>517</sup> Janneke Plantenga & Chantal Remery, Reconciliation of work and private life, A comparative review of

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tendency to limit the costs that could potentially arise due to pregnancy related replacement for jobs<sup>518</sup>. In addition, the existing rules seem not to address sufficiently the cultural barriers which see women as main caregivers and men as providers. In addition to specific leaves for fathers (paternity leave) being much shorter than specific leaves for mothers (maternity leave), the transferability of parental leave only reinforces the idea that women will be out of the labour market for a much longer period of time.

There is some **stakeholder feedback** suggesting that the needs of society have not fundamentally changed, for example trade unions believe that the EU legal framework is still relevant and even could be improved by providing strengthened protection against dismissal upon return from maternity leave<sup>519</sup>. As a matter of illustration, the European Parliament stresses that maternity leave must be accompanied by effective measures protecting the rights of pregnant women<sup>520</sup>.

Therefore the original objective of the maternity leave directive to ensure non-discrimination and dismissal protection for pregnant women still corresponds to the needs of the European society as shown by the existing problems<sup>521</sup>. Notably, as identified in the section on effectiveness, the problem remains despite the initially intended role of the dismissal rules to serve as a mechanism that effectively prevents discrimination and dismissals in relation to pregnancy.

The need to fight pregnancy related discrimination remains. EU action is highly relevant, given that the necessity to ensure the principle of non-discrimination and a high level of protection for pregnant women in order to prevent still prevailing discrimination based on sex. Employers across Europe need to be constrained by these rules but still need to be made more aware of the obligations which are imposed on them by the EU minimum standards transposed by national rules. The awareness of employers and attitudes regarding pregnancy discrimination and dismissal rights and their obligations still persist today and have not changed, as shown by a survey in the UK where 31% of employers reported low

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thirty European countries, EU Expert Group, European Commission, 2005, page 76.

<sup>518</sup> C. Ruhm, The Economic consequences of Parental leave Mandates: lessons from Europe, (1998) Quarterly Journal of Economics, 131, pp. 285-317 (288) with further reference to research carried out for Sweden.

<sup>519</sup> See Annex 3 of the Impact Assessment on stakeholders.

<sup>520</sup> European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance, point 27, available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0338>

<sup>521</sup> The latest Annual report of the Belgian Equality Body of 2015, highlights the still existing problem of discrimination against pregnant women and young mothers, giving the following example: " *Quand une mère a postulé à un emploi, sa candidature n'a pas été retenue et le message suivant lui a été adressé : « Nous n'avons pas retenu votre candidature. Votre rôle de mère doit primer sur votre carrière et nous recherchons une personne libre d'obligations familiales et pouvant travailler selon un horaire flexible. »* Rapport d'activités 2015, p. 32, available at: [http://igvm-iefh.belgium.be/sites/default/files/101\\_-\\_rapport\\_dactivites\\_2015\\_fr.pdf](http://igvm-iefh.belgium.be/sites/default/files/101_-_rapport_dactivites_2015_fr.pdf)

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awareness of rights of pregnant employees<sup>522</sup>. Enforcing the existing rights and additionally providing information is necessary in order to achieve the stated objectives.

#### **b) Directive 2010/18/EU**

In addressing the challenges of working families to reconcile private and working life, the Directive has laid down minimum standards and provided some harmonising effects on the availability and provisions of parental leave across Europe and thereby it was a *relevant* approach to take to ensure that parents had access to leave arrangements to manage their caring responsibilities. However, it had only effects to a limited extent, considering that most countries already have different types of leave with the purpose of reconciling work and family life in their national frameworks. Approximately two-thirds of study countries either already met the requirements when the Directive was adopted and thereby did not require formal implementation or made some amendments to existing legislation so as to meet the specific requirements of the Directive. The Directive arguably did not go far enough though to propose legislative changes in terms of compensation levels and non-transferability clauses; this had the effect of reducing its effectiveness, as discussed above.

The EU intervention in the area of work-life balance, notably parental leave, is **still continuing to be relevant to EU citizens** considering the revised parental leave agreement of the social partners has been adopted only a couple of years ago. This even if and despite latest statistics<sup>523</sup> showing on average a slight decrease in working time<sup>524</sup>. The decrease of working time as such does not solve the underlying problem of unequal distribution of care between women and men and the persistent problem for women to increase their participation the labour market considering the burden that often lies with them to care for children and other dependent relatives<sup>525</sup>.

The above analysis showed that there is a persisting problem and still the need for the European society to achieve a more equal distribution of care related activities between women and men. **Stakeholder feedback** indicates that there is a need for introducing payment and flexibility in uptake for parental leave and increase the non-transferable period and the maximum age of the child, as well as introduce EU legislation for paternity leave<sup>526</sup>.

The current parental leave directive foresees the possibility to request changes to the working hours and/or patterns for a set period of time. However, this only applies to workers who have taken, and returned from, parental leave. The needs of parents and other

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<sup>526</sup> See Annex 3 of Impact Assessment, Stakeholder consultation

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people with dependant relatives to access flexible working arrangements are not addressed, thereby reducing the effectiveness of this provision due to its narrow personal scope. Moreover, there are no provisions for workers to request changes to their working location, such as working from home or another location than their usual workplace; the absence of such a possibility is a failure in the potential relevance and effectiveness of the work-life balance framework, because it is not **adapted to technological or scientific advances** by including the possibility for telework where full use can be made of the advances of technology.

To summarise, the Parental Leave Directive 2010/18 has thus provided some harmonising effects on the availability and modalities of parental leave across Europe and thereby it was a relevant approach to take. However, in view of the limited results of the Directive in terms of balancing caring responsibilities between women and men, it can be concluded that the objectives of the initiative are still relevant today.

#### 5.4 Coherence

- To what extent is the intervention coherent internally?
  
- To what extent is the intervention coherent with other interventions with similar objectives ?
  
- To what extent is the intervention coherent with wider EU policy?

##### a) **Non-discrimination and dismissal protection, Directive 92/85/EEC**

Regarding **internal coherence**, the various internal components of the intervention operate together to achieve its objectives e.g. the different articles of the legislation such as Article 10 which guarantees that Member States shall take the necessary measures to prohibit the dismissal of workers, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (which lays down the minimum standards of maternity leave of a least 14 weeks). Therefore, Article 8 enables mothers to effectively go on maternity leave while Article 10 strengthens these rights by ensuring non-discrimination of mothers due to the take-up of the leave. Consequently, this provision of non-discrimination and dismissal protection guarantees and complements effective and non-discriminatory up-take of maternity leave.

The non-discrimination angle of the Directive ties in with a broader framework of other EU regulatory and policy measures in the area of gender equality. For example, it is coherent with Art. 33(2) of the Charter of Fundamental Rights of the European Union, who stipulates that in order "*to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave.*" Another example is **Directive 2006/54/EC** which aims at ensuring

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the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and foresees in Articles 14 and 15 additional protection against discrimination based on sex as well as protection in relation to maternity leave. Ensuring gender equality and protecting workers of both sexes from discrimination with regard to all forms of leave is coherent with existing EU policies. Achieving coherence and non-discrimination requires the implementation of a broader set of measures to address all the drivers underlying the discrimination and under-representation of women in the labour market in order to be successful.

The intervention is also **coherent with other interventions** which have similar objectives, such as Directive 79/9/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

#### **b) Directive 2010/18/EU**

The non-discrimination objective of the Directive tie in with a broader framework of other EU regulatory and policy measures and require the implementation of a broader set of measures to address all the drivers underlying the unequal take up of family leaves. The intervention is in line and coherent with Art. 33(2) of the Charter of Fundamental Rights of the European Union, who stipulates that in order *"to reconcile family and professional life, everyone shall have the right to parental leave following the birth or adoption of a child."* This is why it is important to look into the performance of the available framework and not only individual pieces of legislation. The analysis shows, that at EU level there is no paternity leave legislation, but only maternity leave. This means, that a shortcoming of the current framework is the non-availability of a father-specific leave which needs to be seen together in light of the parental leave rules that can have negative consequences for women as regards the uptake of childcare related tasks.

Regarding **internal coherence**, the various internal components of the intervention operate together to achieve its objectives e.g the provisions defining the minimum period of leave<sup>527</sup>, the modalities of application which specify whether parental leave is taken on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system for example<sup>528</sup> or the provisions which foresee non-discrimination and protect against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave<sup>529</sup>.

Another aspect of **coherence** has been identified in relation to **Directive 79/9/EEC** on the progressive implementation of the principle of **equal treatment for men and women in matters of social security**. Even though the directives are formally coherent, there could

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<sup>527</sup> Clause 2(2)

<sup>528</sup> Clause 3

<sup>529</sup> Clause 5



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be an area where indirect discrimination in social security may still occur due to the transferability of the parental leave. This is due to the fact that the parental leave directive allows in practice women to take over the biggest part of the time off work in order to care for their children and this is not only a problem for the equal uptake of the rights but it can be also detrimental for the acquisition of related social security rights.

The Directive is also coherent with the **Working Time Directive (Directive 2003/88/EC)** although it does not target the reconciliation of work and family life and the equal sharing of caring responsibilities as such<sup>530</sup>..

The intervention was and is also coherent with other wider EU policies such as the **Strategic Engagement on gender equality 2016-2019**<sup>531</sup> which recalls that "*coordinated efforts will be required to facilitate women's labour-market participation. (...) This will involve making it easier to balance caring and professional responsibilities. It also requires a more equal sharing of time spent on care and household responsibilities. The Barcelona targets on childcare must be attained and reflection undertaken with Member States on ways of making them more ambitious and extending them to cover care of other dependants should be considered.*" All the measures mutually reinforce and complement each other.

## 5.5 EU added value

- What is the additional value resulting from the EU intervention, compared to what could be achieved by Member States at national level?

-To what extent do the issues addressed by the intervention require action at EU level?

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<sup>530</sup> The Directive contributes to a positive work-life balance by limiting weekly working hours to a maximum of 48 hours in average (over 4, 6 or 12 months), providing a minimum of 4 weeks of paid annual leave, and imposing a daily rest of at least 11 continuous hours and a weekly rest of at least 35 hours. It also allows some flexibility in the arrangement of working time (e.g. working time can be averaged and annualised, and it is not required to be at the workplace) . Nonetheless, these minimum standards aim for the protection of health and safety, they do not target work-life balance or sharing of caring responsibilities among parents as such and the Directive includes substantial possibilities for derogations .  
<https://www.eurofound.europa.eu/publications/foundation-focus/2016/working-conditions-labour-market-social-policies/work-life-balance-creating-solutions-for-everyone> (E.g. when there is need for continuity of service, or in the case of shift work.)

<sup>531</sup> [http://ec.europa.eu/justice/gender-equality/files/documents/160111\\_strategic\\_engagement\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/160111_strategic_engagement_en.pdf)

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- What would be the most likely consequences of stopping or withdrawing the existing EU intervention?

**a) Non-discrimination and dismissal protection, Directive 92/85/EEC**

The **European added value** of the Directive partly depends on the different legislative frameworks that were in place in Member States at the time it was adopted and transposed. With regard to the national legislative frameworks in place at the time of the Directive's adoption several approaches can be identified. In the Member States where no legislation in the area of maternity leave enforcing the principle of equal treatment between men and women (including non-discrimination and dismissal protection for pregnant women) was established, the Directive had and still has a clear European added value as it represents a key driver for the integration of the principle of equal treatment, the level of protection and the setting up of specific national legislation<sup>532</sup>. Also, in the Member States where the principle of equal treatment was already integrated in the national legislation, the Directive reaffirmed the principle and contributed to the development of specific measures in the area of dismissal protection. This is also the case for the Member States that had already developed frameworks for non-discrimination and dismissal protection, sometimes with a scope going beyond the Directive's provisions.

The EU has been successful in establishing minimum standards against discrimination, as established by the transposition review carried out for the Directive. This has provided for a more harmonised baseline of rights than exists in areas of family leave (and access to flexible working arrangements) where EU measures are currently absent. The current situation demonstrates that EU action has a very strong influence on Member States' legal frameworks. It is only when EU legislation is in place that there is legislation in place in every Member State. By way of contrast, in the area of paternity leave, there is no paternity leave provision at EU level and there is no comprehensive availability of paternity leave in all Member States. EU legislation ensures that leave arrangements are available in all Member States whereas without EU intervention there is no guarantee that this is the case. The lack of more harmonised provisions in all these areas contributes to limitations in achieving some of the goals of the maternity leave Directive. As EU action compares and takes into account the different Member States' experiences and contexts, by acting at EU level there has been a possibility to build on Member States' recognised good practices and to create a momentum for Member States to advance together towards less pregnancy and maternity related discrimination. EU-level intervention does contribute to mitigate trends of increasing levels of discrimination in some Member-States. EU level intervention leads to European Law on which basic questions of interpretation of European Law can be raised

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<sup>532</sup> An example is the UK, which was relatively late with introducing minimum standards in the area of maternity leave and which as a result of the maternity leave directive introduced higher levels of protection for pregnant women, see for example: <http://www.independent.co.uk/life-style/health-and-families/features/the-timeline-maternity-leave-2113236.html>

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by national judges. Art. 267 TFEU enables national judges to raise a legal issue regarding the interpretation of European law and receive clarification from the Court of Justice of the European Union in the framework of the preliminary ruling procedure. Thereby EU intervention contributes to address and solve vital issues of pregnancy related discrimination which would not be the case without EU legislation. Without a Directive existing in the field and mere national rules, this possibility to interpret and often extend the protection of pregnant women under EU law would not exist<sup>533</sup>.

As regards the **maternity leave directive**, changes in some Member States<sup>534</sup> with regard to a minimum protection standard for pregnant women including dismissal protection can be reasonably assumed to be due to EU intervention rather than any other factors such as employers introducing widespread rules in this area on their own account. The situation in some Members States could be described as "patchy" and as a matter of illustration, in the UK the level of protection varied from company to company<sup>535</sup>. Another example that shows how the EU legislation had a direct impact on national law is the UK which amended their laws in order to introduce a category of pregnancy discrimination ("unfavourable treatment because of pregnancy or maternity leave" in the Equality Act 2010). This change in UK law was achieved following a case taken against the UK government by the old Equal Opportunities Commission relying on EU law<sup>536</sup>. The Directive 92/85 was indeed effective and succeeded at establishing a minimum level of legal protection for dismissal protection and in fact, many countries have introduced even more protective conditions than those stipulated by the Directive and relevant case law.

#### **b) Directive 2010/18/EU**

For parental leave, the EU has been relatively successful in harmonising and establishing a common framework for the provision of parental leave which allows for the sharing of parental responsibilities and enhancing the reconciliation of work and family life. The changes introduced by the minimum standards of the parental leave directive notably in relation to an EU wide availability regarding provisions on some form of non-transferability as well as flexibility in relation to the up-take of parental leave can be reasonably assumed to be to a large extent due to EU intervention in this area rather than any other factors. For example in countries like Finland (and Norway for the EEA) where technically no transposition was considered necessary, **as a result of the Directive those countries took the opportunity to**

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<sup>533</sup> A good example is the extension of the protection of pregnancy related dismissal protection to include preparatory steps, Case C-460/06 Paquay v Societe d'architectes Hoet and Minne SPRL [2007] ECR I-8511, para 33.

<sup>534</sup> For example the UK

<sup>535</sup> <http://www.independent.co.uk/life-style/health-and-families/features/the-timeline-maternity-leave-2113236.html>

<sup>536</sup> Equal Opportunities Commission v Secretary of State for Trade and Industry [2007] IRLR 327

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**improve national parental leave legislation or introduced formal changes** or in the case of Ireland indicated that new changes are being prepared<sup>537</sup>.

However, **current provisions and their implementation are insufficient in shifting the persisting stereotypes over the caring roles of men and women**, leading to strong imbalances in take-up rates. This can partly be attributed to a lack of provision on the payment of parental leave at EU level which results in some countries providing for paid parental leave and others only enable parents the minimum standard of unpaid parental leave required by the Directive. Another deficiency of the directive that can be identified is in particular the relative flexibility which is possible under the parental leave directive<sup>538</sup>. This has as a consequence that it is possible to transfer leave entitlements between parents, in practice mostly from the men to the woman<sup>539</sup>. As the right to request flexible working remains a procedural right in many countries and is limited to individuals returning from parental leave in many countries, existing patterns of leave taking encourage take up of flexible working time options primarily by women, thus further impacting their career and earnings potential.

The added value of EU measures as opposed to national intervention is the provision of a common set of minimum standards that are applicable in the whole EU, and that would also protect families moving from one Member State to another in the EU territory. During the public consultation conducted for the Work-Life Balance initiative some stakeholders such as companies highlighted the need for European wide and uniform rules for parental leave. Further value is added by EU intervention because it gives EU citizens the possibility to profit from national judges raising preliminary questions in pending court cases, in case there is a question on how to interpret the Parental Leave Directive. This **added value** for national judges and the possibility to extend or clarify the protection granted at national level **only exists because of the EU intervention**.

In light of the above, the most **likely consequences of stopping or withdrawing the existing EU intervention**, would not only send the wrong policy messages considering the importance of social policy developments (for example the European Pillar of social rights). In legal terms, withdrawing the European framework that exists in terms of discrimination and dismissal protection for pregnant women as well as parental leave would lead to lower levels of protection for pregnant women and working parents as it would enable Member States to decrease their level of protection and minimum standards that have been established by the Directives. Withdrawing the existing directive would take away the opportunity for European Courts to interpret EU law in order to solve national cases of discrimination and improve the protection of workers under the Parental

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<sup>537</sup> The Implementation of Parental Leave Directive 2010/18 in 33 European Countries, p. 8

<sup>538</sup> See clause 2(2) of the Directive on non-transferability.

<sup>539</sup> ICF (2017) Study on the costs and benefits of possible EU measures to facilitate work-life balance for parents and care givers, p. 35.

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Leave Directive. As explained above, this would limit the possibility in the Member States to achieve better protection for workers which sometimes stems from the case law of the European Court of Justice in the framework of preliminary rulings<sup>540</sup>.

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<sup>540</sup> Case C-222/14, *Maïstrellis*, ECLI:EU:C:2015:473. In which case the ECJ found a violation of European law because a civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession, unless it is considered that due to a serious illness or injury the wife is unable to meet the needs related to the upbringing of the child.

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## 6. Conclusions and Recommendations

The **objectives** of the maternity and parental leave Directive **have not been fully reached**.

This evaluation has shown that the existing framework, e.g. the maternity leave and parental leave directives fulfil to some extent the objectives but **to a large extent is not an effective tool to achieve the pursued objectives**.

Several factors contribute to this: with regard to *maternity leave*, despite the legal framework for dismissal protection, the evidence shows that not all employers do respect the legal rules transposed by the Member States in this field. Even though Member States did comply when transposing the provisions of the Directive, in practice the transposed EU rules are not achieving the objective of combatting dismissal and discrimination of pregnant women. Hence, the problem of dismissals of pregnant women remains despite the initially intended role of the dismissal rules by the legislators to serve as a mechanism that effectively prevents discrimination and dismissals in relation to pregnancy. The **effectiveness** of the dismissal protection rules is limited by the fact that some employers do not comply. This hampers achieving this **objective** of the maternity leave Directive, even though all Member States comply with the transposition of these rules as laid down in the Directive.

With regard to *parental leave*, part of the **objectives** set by the Directive 2010/18 are **not sufficiently met and addressed**, such as the objective of achieving work-life balance through a better balancing of the caring responsibilities between women and men. The current design of the leave for parents leads in practice to an unequal uptake between women and men, with a vast majority of women taking leave. This was identified as being due to a lack of payment in many Member States and rules allowing one parent to transfer his or her individual entitlement to the other parent which all reinforce the take-up by women instead of reserving their individual entitlement to each parent. It can be observed that Member States have chosen various models for their legal transposition of the requirements of the two directives under assessment, while these directives included the core substance of the level of protection for workers in the area of work-life balance.

The assessment of **efficiency** for both Directives was hampered to some extent due to a lack of systematic European monitoring data on costs. In order to be better able to assess the performance of legislation in this field, monitoring arrangements on EU and Member State level need to be strengthened in future. It is therefore recommended to address those shortcomings in future EU interventions.

With regard to *parental leave*, the need for minimum standards as such remains highly **relevant** today. EU action is also still relevant in the area of *maternity leave*, considering the need to ensure the respect of the principle of non-discrimination and a high level of protection for pregnant women in order to prevent still prevailing discrimination based on sex.

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In terms of **coherence**, it can be concluded that the evaluated directives are in principle coherent. Both Directives are **coherent** internally, and also with other EU policy actions. It is however recommended to reinforce the interaction between provisions within and between legal instruments in order to achieve coherent outputs.

**In terms of EU added value**, it has to be underlined that, EU action as regards maternity and parental leave created additional value and triggered even further action in Member States that would not have occurred without EU intervention. The EU added value can be seen in the causative effects of EU intervention to provide all working parents in the European Union with family leaves such as maternity or parental leave.