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### **OUTCOME OF PROCEEDINGS**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10055/18
No. Cion doc.:	8633/17 + ADD 1 - ADD 3
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU - General approach

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Delegations will find attached the text of the above Directive, on which the Council (EPSCO) reached a general approach at its session on 21 June 2018. Changes in relation to the latest Presidency proposal (Annex to doc. 10055/18) are marked in **bold underlined**.

Draft

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

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

- (6) At Union level, several Directives in the fields of gender equality and working conditions already address certain issues that are relevant for work-life balance, in particular Directive 2006/54/EC of the European Parliament and of the Council<sup>3</sup>, Directive 2010/41/EU of the European Parliament and of the Council<sup>4</sup>, Council Directive 92/85/EEC<sup>5</sup>, Council Directive 97/81/EC<sup>6</sup> and Council Directive 2010/18/EU<sup>7</sup>.
- (7) Work-life balance remains however a considerable challenge for many parents and workers with caring responsibilities, with a negative impact on female employment. A major factor contributing to the underrepresentation of women in the labour market is the difficulty of balancing work and family obligations. When they have children, women tend to work less hours in paid employment and spend more time fulfilling unpaid care responsibilities. Having an ill or dependent relative has also been shown to have a negative impact on female employment, with some women dropping out of the labour market entirely.

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<sup>3</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 (OJ L 204, 26.7.2006, p. 23).

<sup>4</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

<sup>5</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).

<sup>6</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 - Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9).

<sup>7</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 L 68, 18.3.2010, p. 13).

- (8) The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. Lack of paid paternity and parental leave in many Member States contributes to the low take-up of such leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender differences between work and care. Conversely, use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.
- (8a) When implementing this Directive, Member States should take into consideration that the equal uptake of family-related leaves depends also on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are crucial for allowing parents and carers to enter, stay on, or return to the labour market. Removing economic disincentives can also encourage second-earners, most often women, to fully participate in the labour market.
- (9) The Commission has undertaken a two-stage consultation with the social partners on the challenges related to work-life balance, in line with Article 154 TFEU. There was no agreement among social partners to enter into negotiations on those matters, including on parental leave. It is however important to take action in this area by modernising and adapting the current legal framework, taking into account the outcome of those consultations, as well as of the open public consultation carried out to seek the views of various stakeholders and citizens.
- (10) It is appropriate to repeal and replace Directive 2010/18/EU which currently regulates parental leave by putting into effect a framework agreement concluded between the social partners. This Directive builds, in particular, upon the rules laid down in Directive 2010/18/EU and complements them by strengthening existing rights and by introducing new rights.

- (11) This Directive lays down minimum requirements related to paternity, parental and carers' leave and to flexible working arrangements for parents and workers with caring responsibilities. By facilitating the reconciliation of work and family life for parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.
- (12) This Directive should apply to all workers who have employment contracts or other employment relationships, including contracts relating to the employment or employment relationships of part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, as previously provided for by the repealed Directive 2010/18/EU. Member States should define employment contracts or employment relationships in line with the criteria for determining the status of a worker as established in the case law of the Court of Justice of the European Union.
- (12a) It is the Member States' competence to define marital and family status, as well as who is to be considered a parent, a mother and a father.
- (13) In order to encourage a more equal sharing of caring responsibilities between women and men, and to allow for an early creation of a bond between fathers and children, the right to paternity leave for fathers should be introduced. The leave should be taken around the time of the birth **for care purposes** and be clearly linked to this event. It is for the Member States to determine whether the leave can also be taken partly before or only after the birth of the child, the time frame within which it must be taken, as well as whether and under which conditions it can be on a part-time basis, in blocks separated by periods of work, for example in blocks of weeks, or in other flexible forms. Member States can specify whether paternity leave is expressed in working days, weeks or other time units, taking into account that ten working days correspond to two calendar weeks. In order to take account of differences among Member States, the right to paternity leave should be irrespective of marital or family status as defined in national law.

(14) As the majority of fathers do not avail themselves of their right to parental leave or transfer a considerable proportion of their leave entitlement to mothers, in order to encourage fathers to take parental leave, this Directive, while maintaining the right of each parent to at least four months of parental leave previously provided for by the repealed Directive 2010/18/EU, extends from one to two months the period of parental leave which cannot be transferred from one parent to the other.

(15) A minimum period of four months of parental leave is guaranteed under this Directive for working parents with children. Member States should be able to specify the period of notice to be given by the worker to the employer when applying for parental leave and to decide whether the right to parental leave may be subject to a certain period of service. In view of the growing diversity of contractual arrangements, the sum of successive fixed-term contracts with the same employer should be taken into account for the purpose of calculating the period of service. To balance the needs of workers with those of employers, Member States should also be able to decide whether to define if the employer may be allowed to postpone the granting of parental leave under certain circumstances. In such cases, the employer should provide justification for the postponement.

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

(15a) The age of the child until which parental leave can be taken should be set in such a way as to allow both parents to effectively take up their full entitlement to parental leave under this Directive.

- (16) In order to facilitate the return to work following parental leave, workers and employers should be encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and practice.
- (17) In order to provide greater opportunities to remain in the workforce for men and women with caring responsibilities, workers should have the right to carers' leave. The Member States should specify the conditions for access to this right and the modalities for its exercise, including its duration and the situations where a need for care is recognised. Due to an ageing population, the need for care will continue to rise, which should be taken into account by Member States when they develop care policies, including on carers' leave.
- (18) In addition to the right to carers' leave provided for in this Directive, all workers should maintain their right to take time off from work on the grounds of force majeure for urgent and unexpected family reasons, as previously provided for by the repealed Directive 2010/18/EU, under the conditions established by the Member States.
- (19) To increase the incentives for workers with children, men in particular, to take the periods of leave provided for in this Directive, the right to an adequate allowance while on leave should be foreseen.

Consequently, Member States should set an adequate level of payment or allowance for the minimum period of paternity leave and for **at least 1.5 months out of** the minimum non-transferable period of parental leave guaranteed under this Directive. When setting the level of this payment or allowance Member States should take into account that the take-up of paternity leave and parental leave often results in a loss of income for the family and that first earners in a family will only be able to make use of their right to parental leave if it is sufficiently well remunerated.

- (19a) This Directive should be without prejudice to the coordination of social security systems under Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>8</sup>, Regulation (EU) No 1231/2010 of the European Parliament and of the Council<sup>9</sup> and Council Regulation (EC) No 859/2003<sup>10</sup>. The Member State competent for social security of a person is determined by application of those Regulations.
- (20) As previously provided for by the repealed Directive 2010/18/EU, Member States are required to define the status of the employment contract or employment relationship for the period of parental leave. In accordance with the case-law of the Court of Justice of the European Union, the employment relationship between the worker and his employer is therefore maintained during the period of leave and, as a result, the beneficiary of such leave, remains, during that period, a worker for the purposes of Union law. When defining the status of the employment contract or employment relationship during the period of the leaves covered by this Directive, including as regards entitlements to social security, the Member States should therefore ensure that the employment relationship is maintained.

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<sup>8</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>9</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

<sup>10</sup> Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

- (21) In order to encourage working parents and carers to remain in the work force, those workers should be able to adapt their working schedules to their personal needs and preferences. Working parents and carers should therefore be able to request flexible working arrangements, meaning the possibility for workers to ask to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours, for caring purposes. In order to address the needs of workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including any reduction in working hours or any remote working arrangements. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children, long periods of reduced working hours may lead to lower social security contributions translating into reduced or non-existing pension entitlements. The decision as to whether or not to accept a worker's request for flexible working arrangements should lie with the employer. When considering requests for flexible working arrangements, employers can take into account, *inter alia*, the duration of the requested flexible working arrangements, as well as their resources and operational capacity to offer such arrangements. Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore not only have the right to return to their original working patterns at the end of a given agreed period, but should also be able to request to do so at any time where a change in the underlying circumstances so requires.
- (22) Leave arrangements are intended to support working parents and carers during a specific period of time, and are aimed at maintaining and promoting their continued attachment to the labour market. It is therefore appropriate to make express provision for the protection of the employment rights of workers taking leave covered by this Directive and in particular their right to return to the same or an equivalent post, and not to suffer any detriment in their terms and conditions as a result of their absence. Workers should retain their entitlement to relevant rights already acquired, or in the process of being acquired, until the end of such leave.

- (23) Workers exercising their rights to leave or to request flexible working arrangements should be protected against discrimination or any less favourable treatment on that ground.
- (24) Workers exercising their rights to take leave or to request flexible working arrangements provided for in this Directive should enjoy protection from dismissal and any preparations for a possible dismissal on the grounds that they applied for, or have taken such leave or have exercised the right to request such flexible working arrangements. The concept of "preparations for a possible dismissal" should be seen in the light of the case law of the Court of Justice of the European Union, in particular its judgement in Case C-460/06<sup>11</sup>. Where workers consider that they have been dismissed on those grounds, they should be able to ask the employer to provide duly substantiated grounds for the dismissal.
- (25) The burden of proof that there has been no dismissal on the grounds that workers have applied for, or have taken, paternity and/or parental leave should fall on the employer when workers establish, before a court or other competent authority, facts from which it may be presumed that they have been dismissed on such grounds. The legal protection provided for in this Directive for the types of leave referred to above takes into account their nature and objective, and the particular importance of these two types of leave for the promotion of gender equality, notably the equal sharing of care responsibilities between women and men, as well as the length of these leaves and the fact that a corresponding payment or allowance is provided.

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<sup>11</sup> Case C-460/06 *Nadine Paquay v Société d'architectes Hoet + Minne SPRL* [2007] ECR I-08511.

- (26) Member States should provide for effective, proportionate and dissuasive penalties in the event of breaches of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. Penalties can include administrative and financial sanctions, such as fines or the payment of compensation, as well as other types of sanctions. The effective implementation of the principles of equal treatment and equal opportunities requires adequate judicial protection of workers against adverse treatment or adverse consequences resulting from a complaint or proceeding relating to the rights under this Directive. Victims may be deterred from exercising their rights on account of the risk of retaliation and therefore should be protected from any adverse treatment where they exercise their rights provided for by this Directive. Such protection is particularly relevant as regards workers' representatives in the exercise of their function.
- (27) With a view to further improving the level of protection of rights provided for in this Directive, national equality bodies should be competent for the tasks in relation to non-discrimination falling within the scope of this Directive.
- (28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. Allowing one parent to transfer their non-transferable part of the parental leave entitlement to the other would not constitute a more favourable provision for that individual worker. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union legislation in this field nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.
- (29) In particular, nothing in this Directive should be interpreted as diminishing previously existing rights under Directive 2010/18/EU, Directive 92/85/EEC and Directive 2006/54/EC, including its Article 19. All references to the repealed Directive 2010/18/EU should be construed as references to this Directive.

- (30) This Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Member States are therefore invited to assess the impact of their transposition act on SMEs in order to make sure that SMEs are not disproportionately affected, paying particular attention to micro-enterprises and to the need to avoid any unnecessary administrative burden.
- (30a) Any kind of family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available under national legislation and/or collective agreements should count towards fulfilling the requirements for one or more of the leaves foreseen in this Directive and Directive 92/85/EEC, provided that all minimum requirements established therein are met and that the general level of protection afforded to workers in the field covered by these Directives is not reduced. In this case, when implementing this Directive, Member States need not rename or change the different types of family leave that are provided for under national legislation and/or collective agreements and which are used towards compliance with this Directive.
- (31) The Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (32) Since the objectives of this Directive, namely to ensure the implementation of the principle of equality between men and women with regard to labour market opportunities and treatment at work across the Union, cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

## *Article 1*

### **Subject matter**

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

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

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

## *Article 2*

### **Scope**

This Directive applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State.

## *Article 3*

### **Definitions**

For the purposes of this Directive, the following definitions apply:

- (a) "paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child, **for care purposes**;
- (b) "parental leave" means leave from work for parents on the grounds of the birth or adoption of a child, to take care of that child;
- (ba) "carers' leave" means leave from work for workers in order to provide personal care or support to a relative or a person living in the same household in need of significant care or support due to a serious medical reason, as defined by Member States;

- (c) "carer" means a worker providing personal care or support to the persons referred to in point (ba) above;
- (d) "relative" means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law;
- (e)
- (f) "flexible working arrangements" means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or a reduction in working hours.

#### *Article 4*

#### **Paternity leave**

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

## *Article 5*

### **Parental leave**

1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of four months to be taken before the child reaches a given age. This age shall be determined by Member States and/or the social partners in a way that ensures that each parent can effectively exercise their right to parental leave on an equal basis.
2. Member States shall ensure that two months of parental leave cannot be transferred.
3. Member States shall establish the period of notice to be given by workers to employers when exercising the right to parental leave. In doing so, Member States shall take into account the needs of both employers and workers. Member States shall ensure that the worker's request specifies the intended beginning and end of the period of leave.
4. Member States may make the right to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year. In the case of successive fixed-term contracts, within the meaning of Council Directive 1999/70/EC<sup>12</sup>, with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.
5. Member States may define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, may be allowed to postpone the granting of parental leave by a reasonable period of time on the grounds that it would seriously disrupt the good functioning of the establishment. Employers shall justify any postponement of parental leave in writing.

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<sup>12</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

6. Member States shall take the necessary measures to ensure that workers have the right to request parental leave also in flexible forms. Member States may specify the modalities of application of such forms of parental leave. Employers shall consider and respond to such requests, taking into account the needs of both employers and workers, and they shall justify any refusal of such a request in writing.
7. Member States shall assess the need for the conditions of access and detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents having a disability and parents with children with a disability or long-term illness.

#### *Article 6*

#### **Carers' leave**

Member States shall take the necessary measures to ensure that workers have the right to carers' leave, to be defined in national legislation or practice.

#### *Article 7*

#### **Time off from work on grounds of force majeure**

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

## *Article 8*

### **Payment or allowance**

- 1.** In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to the social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4 and 5(2) will receive a payment or an allowance to be defined by the Member State and/or social partners, taking into account the need to facilitate the take-up of paternity and/or parental leave by first earners.
- 2.** **For the leave referred to in Article 5(2), the payment or the allowance shall be paid for a period of at least 1.5 months.**

## *Article 9*

### **Flexible working arrangements**

1. Member States shall take the necessary measures to ensure that workers with children up to a given age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation. Member States may limit the requests of flexible working arrangements that can be made by a worker to a reasonable number within a given period, which shall not be less than once every twelve months.
2. Employers shall consider and respond to the requests for flexible working arrangements referred to in paragraph 1, taking into account the needs of both employers and workers.
3. When the flexible working arrangements referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall have the right to request to return to the original working pattern before the end of the agreed period whenever a change of circumstances so justifies. Employers shall be obliged to consider and respond to such requests, taking into account the needs of both employers and workers.

4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or a length of service qualification which shall not exceed six months. In the case of successive fixed-term contracts, within the meaning of Directive 1999/70/EC, with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.

#### *Article 10*

### **Employment rights**

1. Rights acquired or in the process of being acquired by workers on the date on which the leave as referred to in Article 4, 5 or 6 starts shall be maintained until the end of such leave. At the end of such leave, those rights, including any changes arising from national law, collective agreements or practice, shall apply.
2. Member States shall ensure that, at the end of leave as referred to in Article 4, 5 or 6, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.
3. Member States shall define the status of the employment contract or employment relationship for the period of leave referred to in Article 4, 5 or 6, including as regards entitlements to social security, while ensuring that the employment relationship is maintained during that period.

#### *Article 11*

### **Non-discrimination**

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

## *Article 12*

### **Protection from dismissal and burden of proof**

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

### *Article 13*

#### **Penalties**

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

### *Article 14*

#### **Protection against adverse treatment or consequences**

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

### *Article 15*

#### **Equality bodies**

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

## *Article 16*

### **Level of protection**

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive.
2. Implementation of this Directive shall not constitute sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force at the time of the adoption of this Directive, provided that the minimum requirements laid down in this Directive are complied with.

## *Article 17*

### **Dissemination of information**

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

## *Article 18*

### **Reporting and review**

1. Member States shall, at the latest by ... [*OJ: please insert the date equivalent to eight years from the entry into force of this Directive*], communicate to the Commission all relevant information concerning the application of this Directive. On the basis of this information, the Commission shall draw up a report to the European Parliament and the Council on the application of this Directive.

2. On the basis of the information provided by Member States pursuant to paragraph 1, the Commission shall submit to the European Parliament and the Council a report in which it reviews the application of this Directive, accompanied, if appropriate, by a legislative proposal.

#### *Article 19*

#### **Repeal**

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

#### *Article 19a*

#### **Transition**

Notwithstanding the repeal of Directive 2010/18/EU, any period or separate cumulative periods of parental leave taken by a worker, or transferred by that worker pursuant to that Directive prior to [*OJ: please insert the date equivalent to three years from the entry into force of this Directive*] may be deducted from that worker's parental leave entitlement under Article 5 of this Directive.

#### *Article 20*

#### **Transposition**

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

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

2. Member States shall also communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
- 2a. The detailed rules and modalities for applying this Directive shall be defined in accordance with national law, collective agreements and/or national practice, as long as the minimum requirements and the objectives of this Directive are respected.
- 2b. For the purposes of complying with Articles 4, 5, 6 and 8 of this Directive and with Directive 92/85/EEC, Member States may take into account any period of and payment or allowance for family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave available at the national level which goes beyond the minimum standards prescribed by this Directive and Directive 92/85/EEC, provided that the minimum requirements for the respective leaves as set out in these Directives are met and that the general level of protection afforded to workers in the field covered by these Directives is not reduced.
3. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

#### *Article 21*

#### **Entry into force**

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

*Article 22*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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