



# COFACE Families Europe assessment of the Council position on the EU Work-Life Balance Directive

**#IwantWorkLifeBalance**

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# Summary

On 21 June 2018, the EPSCO Council agreed on a Council position, a so-called General Approach, on the Work-Life Balance Directive. This means that the process can continue and, with a vote in the European Parliament expected on July 2018, families in Europe can still hope to see this directive approved before the 2019 European elections. However, we have to strike a balance between recognising that Ministers agreed to move forward with the legislative process and the text that resulted from this decision.

This debate has its origins in 2008 when the European Commission proposed a revision of the Maternity Leave Directive (1992/85/EEC). The European Parliament followed and adopted its position on this directive in 2010. However, the Council of Ministers never adopted a position, stalling for 7 years. As a consequence, in an attempt to respond to the needs of families (despite this blockage), the Maternity Leave Directive was withdrawn and the Work-Life Balance Directive was proposed in 2017. Therefore, yesterday's decision is crucial because it allows the democratic process to continue. We acknowledge that the Council has taken its responsibility and delivered what they are mandated to do.

However, Ministers have agreed on a text which has been emptied of many of its key components. The initial Commission proposal had some elements that clearly show the intention of moving towards a fairer and more equal Europe, such as: full non-transferability of parental leave and a high income replacement, proposed as the equivalent of pay received during sick leave for all three leaves (paternity, parental and carers). The Member States, in their position, have gone backwards and deleted these just and gender sensitive elements.

The level of standards included in the Council position is extremely low and one could conclude that Member States would agree only on a text where the obligations upon them were so limited to allow them to change as little as possible in their national legislations, instead of working together to create a progressive EU-wide framework.

This Directive was the first proposal that followed the proclamation of the European Pillar of Social Rights, when Member States committed to develop a framework for a social Europe. For this reason, a success of this text will also be a symbolic statement that Member States are committed to keep their word.

In the next pages, we analyse the Council position and compare it to the initial European Commission's proposal, measuring it against the COFACE position, as expressed in our [Families on the Edge](#) paper and in our [Assessment](#) of the Commission's proposal. We have chosen to focus on five main elements: the definitions, the three leave schemes (paternity, parental and carers) and flexible working arrangements.

# Definitions (art. 3)

Definitions may seem a small detail but they define the perimeter of the Work-life balance Directive and they are key to ensure the principle of non-discrimination among family forms and beneficiaries of the provisions included in the text.

**COFACE Position**

**Paternity Leave:** COFACE welcomes, in the proposal for a Directive, the explicit mention that this right is to be granted irrespective of the marital or family status but suggests to be more inclusive, with the explicit mention of the “father or mother’s partner”, in order to take into account the needs of rainbow families and recomposed families.

**Carers, Relatives and Carers’ Leave:** The Directive defines “relatives” entitled to apply for carers’ leave as “a worker’s son, daughter, mother, father, spouse or partner in civil partnership”. COFACE would underline the need to enlarge this definition to include siblings of the person in need of care or support but also any other person chosen by the person in need of care and support. With increasing mobility of workers across Europe, and with a clear EU will to support mobility, it would be short-sighted to limit access to carers’ leave to first-degree relatives who are, in increasing numbers, living in different cities or countries. Moreover, care and support have a high social and personal relationship component and an adult with disabilities or an ageing person may prefer to choose a friend or a neighbour for the light support that can be provided for a short-term leave.

**Dependency:** The use of the word “dependent” is not aligned with the UN Convention on the Rights of Persons with Disabilities (UNCRPD), signed and ratified by the EU in 2010. Therefore, this wording is not admissible in any EU text and should be amended to “persons with care or support needs”.

**Commission Proposal**

**Council Position**

<p>"paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child;</p>	<p>"paternity leave" means leave from work for fathers to be taken on the occasion of the birth of a child;</p>
<p>"parental leave" means leave from work on the grounds of the birth or adoption of a child to take care of that child;</p>	<p>"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;</p>
	<p>"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</p>

"carer" means a worker providing personal care or support in case of a serious illness or dependency of a relative;	"carer" means a worker providing personal care or support to the persons referred to in point "carers' leave" above;
"relative" means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law;	"relative" means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law;
"dependency" means a situation in which a person is, temporarily or permanently, in need of care due to disability or a serious medical condition other than serious illness;	deleted

### ***Analysis of Council Position***

The Council General Approach has one point of merit, amending the wording and aligning the text with the UN Convention on the Rights of Persons with Disabilities. However, on all other points it has made sure to keep the eligibility for the rights listed in this directive very limited. In particular, in the definition of relative and on the eligibility of carers' leave, this is still very narrow and does not cater for the needs of modern families who often live in different cities and countries. Limiting access to carers' leave to first degree relatives reduces, de facto, its effectiveness as it will cut out from this right a big part of the family and social network that may be involved in supporting a family member with support needs.

Finally, a carers' leave must respond to the needs of family and informal carers, who often reduce their working hours or drop-out from the labour market to assist their family members with disabilities or with age related impairments. Therefore, carers' leave cannot be limited to assist persons with (severe) illnesses but must be open to disability and age related conditions.

### ***Recommendations to the European Parliament***

- Paternity leave: introduce an explicit reference to mother's partner or second parent;
- Carers, relatives and carers' leave: enlarge the scope to second degree relatives, explicitly mentioning first-degree relatives (son, daughter, mother, father, sibling), and second-degree relatives (uncles, aunts, nephews, nieces, grandparents, grandchildren, half-siblings), as well as spouse or partner in civil partnership, where such partnerships are envisaged by national law, step- and foster children, both in the own and in the spouse's or partner's family. It should also include disability, mental health and age-related impairments to the justification for the leave;
- Dependency: support the Council proposal to delete this definition and align with the UN CRPD language "in need of care and support".

# Paternity leave (art. 4 and art. 8)

## **COFACE Position**

COFACE Families Europe calls for the introduction of an EU paternity leave directive, of two weeks to be taken in the first month of birth of baby or adoption of a child under 12 months. Paternity leave must not be transferable. In the event of stillbirth, fathers or mothers' partners should be entitled to the same amount of leave. In cases where the father or the mother's partner is not present (e.g. single mothers, transnational families, father not living with the mother..), this provision should be transferred to another relative chosen by the mother. COFACE Families Europe believes that paternity leave should be paid from a minimum of the equivalent of maternity leave to 100% of previous income.

## **Commission Proposal**

## **Council Position**

EC introduces a European paternity leave scheme	Council confirms the introduction of a European paternity leave scheme
Duration: at least 10 working days on the occasion of the birth of a child	Duration: ten working days to be taken around the time of the birth of the child
Eligibility: right to paternity leave to be granted to fathers irrespective of marital or family status	Eligibility: right to paternity leave to be granted to fathers irrespective of marital or family status
Payment: at least equivalent to what the worker concerned would receive in case of sick leave (art. 8).	Payment: to be determined at national level (Art.8). Any reference to the level or at least adequateness of payment has been deleted.

## **Analysis of Council Position**

The General Approach has considerably lowered the standards proposed by the Commission, by eliminating any reference to the level of remuneration. Council has gone even further, by eliminating even the reference to a minimum standard (at least 10 days) as in the proposed Directive. Member States could go further in granting rights to parents. This shows the resistance and the lack of interest of Member States to even consider moving towards common and higher social standards.

## **Recommendations to the European Parliament**

- Confirm the introduction of a paternity leave scheme of at least 10 working days, including in case of stillbirth;
- Open the eligibility to the mother's partner and do not limit the eligibility to fathers only. This would ensure the right to paternity leave to rainbow and recomposed families. Allow single mothers to transfer paternity leave to a person of their choice;
- Set a payment level in the text and refuse to leave this crucial element to be decided at national level, to ensure that all families across the EU have the same rights. The payment level must be adequate and be from a minimum of the equivalent of maternity leave to 100% of previous income.

# Parental leave (art. 5 and art. 8)

## ***COFACE Position***

The Commission’s proposal for a Work-Life Balance Directive would amend, and ultimately repeal, the current Parental Leave Directive (2010/18/EU). COFACE Families Europe believes that parental leave should be for a period of at least 6 months per parent per child, to be taken full time, part time, or needs based for parents to take for each child up to the age of 12 years old. An extra prolongation should be granted to those families with children with disabilities or long-term illnesses. In these cases, parents should be allowed to use parental leave provision also for their children above 12 years old. In case of adoption the same rights should apply. If the child lives with a non-biological parent, may it be a foster parent, the mother’s/father’s (new) partner, he/she should be entitled to enjoy parental leave provisions. Parental leave provision must be remunerated at minimum 75% of previous income or at sick leave level. Parental leave is an individual right and to support fathers in taking their leave period, the principle of “take it or lose it” must be applied. Adequate income replacement has a positive correlation with take-up rates (OECD, 2016). With an average gender pay-gap at 16% in the EU, an adequate paid leave will also increase the chances of men to take up their leave period without fearing an excessively high impact on the family economy.

## ***Commission Proposal***

## ***Council Position***

Extending from 8 to 12 years of age of the child;	The age of the child shall be determined by Member States and/or the social partners
Recognising parental leave as an individual and non-transferable right of 4 months per parent per child. In current legislation only 1 month is non-transferable	Individual right to four months of which 2 months non-transferable, and at least 1,5 months paid
Introducing a minimum standard of payment (art.8) at sick leave level;	Level of payment to be defined at national level
Providing clear indications that parents have the right to take parental leave also “on a part-time basis, in blocks separated by periods of work or in other flexible forms”;	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.
Length of service: the parent must have worked for one year to access the right to parental leave	Length of service: the parent must have worked for one year to access the right to parental leave

## ***Analysis of Council Position***

COFACE regrets that both the European Commission and the Council of Ministers did not extend the length of the period of leave but acknowledges that the Commission's proposal has moved in the right direction, by extending the age of the child and responding to the major challenges and needs parents are facing in relation to parental leave: income replacement and being an individual and fully non-transferable right.

The introduction of adequate minimum standards of income replacement and non-transferability are essential measures to promote men's uptake of leaves. The number of fathers taking a leave period is very low and two key reasons for this low involvement of fathers are social and economic.

On the one hand, the culture of presence/availability at the workplace for men and stereotypical division of roles, where men are breadwinners and women carers, are elements that work as disincentives for men's involvement in family and care responsibilities. On the other hand, with a gender pay gap at 16% and a labour market where women are still suffering horizontal and vertical segregation, it is cheaper for a family to renounce a woman's income instead of the man's.

The decision of the European Commission to introduce a decent income replacement rate (sick leave level) and full non-transferability is a clear choice to promote a gender equal legislation. Moreover, it will not only support men's uptake, but also genuinely allow families with lower incomes to use their right to parental leave (which is currently not the case where parental leave is unpaid or paid at very low rates).

However, the Council has emptied the proposal by reducing the number of non-transferable months to 2 months, and by eliminating any reference to a level of payment. It is particularly saddening that in over one year of technical discussions, these very two points have been lowered significantly showing a clear resistance to put forward a gender sensitive piece of legislation. Only at the Ministerial level on 21 June 2018, was it agreed that 2 months will be non-transferable of which only 1,5 will be paid.

The Council has also reduced clarity in the possibility to take parental leave in flexible forms and, despite its continuous calls in favour of youth, has not deleted the measure that will have a strong negative impact on young families: the length of service of one year. Young people are among those who are most likely to be employed with temporary and atypical contracts, with a very low job stability. Asking a length of service of one year, even if the one year can be the sum of shorter contracts with the same employer, means not recognising the changes of the labour market in the past couple of decades and, de facto, reducing the chances for young parents to enjoy their rights.

## ***Recommendations to the European Parliament***

- Introduce an exception to non-transferability for single parents, giving them the possibility to transfer (parts of) the parental leave to a person of choice;
- Set the age of children at 12 years of age;
- Ensure that all four months are non-transferable;
- Include a clear reference for payment to a sick leave level and in any case not lower than 75% of gross wage;
- Delete the length of service/qualification period;
- Explicitly mention the possibility to take parental leave full-time or on a part-time basis, in blocks separated by periods of work or in other flexible forms.

# Carers' leave (art. 6 and art. 8)

## ***COFACE Position***

COFACE Families Europe calls for the introduction of a EU Directive on carers' leave based on some key principles: it should be paid at least at the level of sick leave and carers should have the choice to take the leave full-time, part-time or based on specific needs. Short-term and long-term leaves should be provided, to fulfill the needs of the person cared for. The person in need of care should be allowed to choose his/her carer, and this person should be entitled, even if he/she is not a first degree relative or family member at all to access the carers' leave scheme. Carers leave should not be categorised with other career breaks, such as leaves for further education, personal development, etc. Special awareness-raising actions should be initiated to promote men's take up of carers' leave.

## ***Commission Proposal***

## ***Council Position***

Introduced a carers' leave of 5 days per year per worker	Member States to decide how carers' leave has to be shaped. Reference to a number of days is removed
The leave will be paid at sick leave level	Member States to decide. Reference to any payment has been deleted, including if carers' leave has to be paid at all

## ***Analysis of Council Position***

The Council position merely maintains the reference to a carers' leave scheme but has deleted all mandatory features, creating an empty shell where Member States can fit any type of leave scheme they already have in place.

## ***Recommendations to the European Parliament***

- Specify the minimum number of days that a worker is entitled, per year, for carers' leave (minimum 5);
- Include a clear reference for payment to a sick leave level and in any case not lower than 75% of gross wage;
- Enlarge the scope up to second degree relatives, explicitly mentioning first-degree relatives (son, daughter, mother, father, sibling), and second-degree relatives (uncles, aunts, nephews, nieces, grandparents, grandchildren, half-siblings), as well as spouse or partner in civil partnership, where such partnerships are envisaged by national law, step- and foster children, both in the own and in the spouse's or partner's family. It should also include disability, mental health and age related impairments to the justification for the leave.



# Flexible working arrangements (art. 9)

## **COFACE Position**

Together with leave schemes for temporary absence from work, having flexible working arrangements are a fundamental support to workers in reconciling work and family life. Flexibility of working patterns and working hours can take many forms and it is important to explicit mention the different forms it can take, including a temporary reduction of working time. Part-time work is still a very gendered practice and one of the main challenges that women part-timers face is the return to full-time. Therefore, this form of “temporary part-time” where workers will have the right to return to the original working patterns at the end of the agreed period, could positively affect a high number of families.

Moreover, COFACE also consider important to include the possibility of remote working, or smart work (see also [COFACE policy brief on Smart Work](#)) into the possible flexible working arrangements. However, there is a risk that needs to be taken into account in the transposition of the directive on this point, and more in general on smart and flexible working: avoid the shift from a culture of presence at work to a culture of full availability. Having access to devices that allow workers to be connected at all times may further blur the boundaries between work and private life. Some companies and countries are introducing measures for the “right to disconnect” and practices to avoid 24/7 availability should be considered by Member States and in collective agreements.

## **Commission Proposal**

## **Council Position**

Right to flexible working arrangements for parents of children of an age of at least 12 years old AND carers	Right to flexible working arrangement for parents of children of an age of at least 8 years old AND carers
Explicit mention of remote working arrangements, flexible working schedules and reduction of working hours	Explicit mention of remote working arrangements, flexible working schedules and reduction of working hours

## **Analysis of Council position**

The Council did not amend the key points concerning flexible working arrangements. therefore, COFACE would like to state once more the support for this measure and in particular the extension of flexible working arrangements to carers, which demonstrates the understanding and willingness to move towards a more comprehensive and life –cycle approach of Work-Life Balance.

## **Recommendations to the European Parliament**

- Maintain the key features proposed by the European Commission and endorsed by the Council;
- Include the obligation for employers to respond timely and in writing to the employee, and avoid any exception to be made based on the size of the company.

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