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**European Women's Lobby's contribution on measures relating to  
reconciliation of work, private and family life in light of the current  
consultation process between the Commission and the Social Partners with  
regards to future legislative proposals**

**Introduction**

The European Women's Lobby (EWL) welcomes the consultation of the Social Partners on reconciliation issues initiated by the EC in 2006. Taking note of, and supporting the contribution of the European Trade Union Confederation (ETUC) in this process, EWL hereby wishes to emphasize aspects that are specifically important for women's organisations throughout Europe, in the hope that the consulting parties will take these aspects on board. We understand that the Commission's stated aim for the consultation is to evaluate if legislative and/or other measures are needed in order to guarantee "a better work-life balance in order to achieve economic growth, prosperity and competitiveness". As the launching document of the consultation process makes it clear, the Commission sees this policy area very closely linked to equality between women and men. EWL very much welcomes this approach and, as the major representative of women's NGOs throughout Europe, believes that women's experiences, concerns and needs must be at the core of any suggested solution to challenges posed by the apparent collision between goals related to equality between women and men (and, as such, social cohesion) and competitiveness. All the more so, since policies and laws in this field effect women in a proportionally higher number than men.

Based on these considerations, **EWL supports both the improvement of the existing European legislation and the creation of new legal tools** to ensure both a better provision to reconcile work and private life for women and men, and an enhanced participation of men in the private sphere. **We also call for consistency and coherence both between different pieces of legislation and between legal and policy tools**, to ensure that, instead of contradicting and weakening each other, the different measures taken in different fields<sup>1</sup> enhance the goal of promoting equality between women and men. This coherence is the only way to reach the Commission's stated aim to tackle reconciliation in a way that takes into account and furthers **equality between women and men**.

**Background**

As EWL has stated in many previous documents, care policies and services for older people, dependents and children, including maternity, paternity and parental leave provisions, are fundamental elements to achieve equality between women and men. Alongside aspirations for a decent work-perspective, opportunities to reconcile work and private life are the single most important determinants of women's and men's decisions about the number and spacing of their children and the type and length of both their paid and unpaid work. Analysis clearly shows that equality between women and men in employment and in the public sphere depends very much on

<sup>1</sup> The legal tools and policies that are most strongly related to the issue of reconciliation of work and private life are those in the fields of care, flexicurity and working time in general, taxation, insurance, labour, poverty, demography and services of general interest.

equality in the private sphere, especially on the equal sharing of care-work between women and men.

There is now evidence that **good reconciliation policies targeting both women and men result in a rise of both the birth rates and the number of women in employment**. Yet, in most countries and at EU level, policies to reconcile work and private life are either non-existent, or are still usually directed only towards women. This perpetuates inequalities on the labour market and the gender stereotypes that relegate women to the private sphere. Strong policies and legislation are therefore necessary to create obligations, incentives and encouragement for giving women and men a real choice and for men's equal participation in care-work and in other non-paid work.

It has also become clear in the recent years that an integrated approach to reconciliation issues is needed, adapting working and learning conditions to the **life-course approach** with respect to both women and men, promoting a culture where women and men are equally considered as carers **and** as actors in the paid economy throughout their lives. The core of such an integrated approach must be the goal to eliminate gender stereotypes perpetuating the traditional division of labour and the resulting inequality detrimental to women in relation to work and care work. Thus, besides guarantees that women are protected from the detrimental effects of discrimination and stereotypes, policies to promote the role of men in care and family responsibilities and encouraging men to take parental and paternity leave are also needed.

The revision of existing directives and/or any proposal of new legislation should take into account the ETUC recommendations<sup>2</sup> expressed during the Social Partners' consultation process<sup>3</sup> as well as incorporate developments as expressed in the 2000 ILO Convention C183 on Maternity Protection<sup>4</sup>. Besides these, EWL sees the following **guiding principles** as priorities to be taken into account in relation to revised/new European legislation:

1. The revision and new legislation must **guarantee women's and men's financial security and independence** while they care for someone else. *Guarantee* means legal provisions protecting against any form of discrimination based on maternity/paternity, and complementary financial policy measures that deter employers from considering women a risky and expensive employee-pool and for men to consider parental leave as a career-threatening and financially risky undertaking. *Security* means guarantees for women's/men's right to time out without losing job/promotion possibilities/income. *Care* means caring for child(ren), elderly relatives, or any other dependant family member.
2. Changes must aim to **radically increase men's participation in care-work and to make their equal participation socially accepted**, with the goal of achieving equal sharing of care-work and other non-paid work between women and men. Legal provisions must protect men against discrimination if they take leave by introducing mandatory leave provisions. Those measures must be accompanied by other policy measures such as education and awareness raising, so that men are encouraged to take up paternity and parental leave.

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<sup>2</sup> See at: [http://www.etuc.org/IMG/pdf\\_ETUC\\_position\\_second\\_stage\\_-\\_reconc.\\_work\\_family\\_life-2.pdf](http://www.etuc.org/IMG/pdf_ETUC_position_second_stage_-_reconc._work_family_life-2.pdf)

<sup>3</sup> In particular the recommendations regarding policy coherence, care services as services of general public interest, the promotion by legal measures of a general life-course approach for both women *and* men, the recognition of the diverse forms of families, and the concrete recommendations regarding the relevant directives and the recognition of new types of leave.

<sup>4</sup> Notably: atypical forms of work, length of maternity leave with guarantees against reduction in case of unforeseen delay of birth, provisions related to complications during pregnancy or birth, the safeguarding of the job position during the leave, and provisions regarding the arrangements for breast-feeding

3. New regulations must **take account of the different forms of families** existing in European societies, with the clear goal to remove any form of discrimination or discriminatory treatment of, for example, same-sex, non-married, or single parent families, or underage mothers. Anti-discrimination measures in these cases must include the removal of any obstacle faced by partners, or other appointed family members to care for the dependants in the family and to take the necessary leave for such care-work.
4. Based on actual needs of women and men in the EU, **types of leave other than maternal and parental** leave must be recognized. Thus, care for other dependants, or sick family members, education-leave, paternity leave<sup>5</sup>, adoption-leave, and leave during artificial insemination processes<sup>6</sup> must be acknowledged
5. Legislation and policies regulating maternity, parental, or paternity leave must be in line with the **absolute requirement of protection against violence in the family**. Taking into account that on average every 5<sup>th</sup> woman in the EU faces partner-violence in her lifetime, laws and policies must make sure that violent family members can not be obliged to stay at home under any type of care-related leave if mandatory leaves are introduced.
6. The **protection and rights** in relation to reconciling work and private life **must be extended to all workers**, including **workers in atypical forms of employment**.
7. Member States must ensure the provision of **accessible, affordable and good quality care services for all dependants**.
8. Taking into account the growing number of migrant women employed in the care sector, legislation must **make sure that migrant women's rights are protected** and care work needs are not covered through the exploitation of migrant female labour.
9. **Coherence between laws/policies in different fields** is a pre-condition for the revision process to be effective and successful. Thus, for example, policies on flexicurity must make sure that the concept of flexicurity does not get translated into exploitative working conditions (e.g. part time, non-secure, under-paid, short-contract work primarily offered to women) undermining any potentially positive development in the field of reconciliation.

Based on the above outlined guiding principles, EWL would like to propose the following **specific recommendations**:

- A. Review and improve the **Pregnant Workers Directive**<sup>7</sup>: **(1)** guarantee an **income** equivalent to **full salary** during maternity leave as opposed to either only a percentage of the salary or a fixed amount<sup>8</sup>; **(2)** extension of the **duration** of the maternity leave **from 14 to 24 weeks**, and

<sup>5</sup> Paternity leave at the moment is not acknowledged on the EU level, in some cases it is provided for under parental leave legislation which makes men's participation in care mandatory (see, for example the Swedish legislation).

<sup>6</sup> The ETUC paper argues that adoption has its own specific circumstances, requiring more time of the adoptive parents before the adoption itself. These are, e.g. getting to know the child, visits, courses, administrative burdens, that occur before the child is actually placed with the adoptive parents. Similar burdens (physical and administrative) apply to women/couples undergoing artificial insemination, since the process is often very time consuming.

<sup>7</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>8</sup> In approximately half of the Member States it is a percentage of the salary, in the rest it's 100%. A fixed amount solution could lead to a "stay-at-home salary" trap; therefore it should be made clear in the directive that this solution is not a possibility. On the other hand, if the woman was unemployed, or a student, or underage before/at the time of the birth, the maternity leave income should be the equivalent to the minimal wage.

the compulsory period of the leave from **2 to 6 weeks**<sup>9</sup>; **(3)** strengthen the right to breastfeeding breaks and facilities; **(4)** guarantee the right of the woman to return to the **same position** or an equivalent position paid at the same rate at the end of her maternity leave; **(5)** guarantee that the prenatal portion of maternity leave be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory or otherwise provided portion of postnatal leave; **(6)** guarantee that upon production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth without shortening the period of maternity leave; **(7)** extend the protection to all workers in atypical forms of employment including domestic workers.<sup>10</sup>

- B. Improve the **Parental Leave Directive**<sup>11</sup>: **(1)** guarantee a decent **income** during parental leave which is at least equivalent to the average national wage, or introduce such other measure that eliminates the currently unequal uptake of leave between women and men, and especially encourages men to take up parental leave (such measure should take account of the pay gap between women and men, and should pay special attention to not perpetuate or reinforce it), **(2)** make a **certain period**<sup>12</sup> of the parental leave **non-transferable** between parents with the stated aim of improving men's participation in caring for children<sup>13</sup>; **(3)** improve employment rights and the **prohibition of discrimination** based on maternity/paternity status; **(4)** extend the **duration** of the paid parental leave to **24 weeks**; **(5)** extend the age of the child in respect of which parental leave can be taken<sup>14</sup> and **(6)** the Parental Leave directive should contain specific measures regarding adoption leave taking account of the specific time-needs of adoptive parents; **(7)** guarantee equal rights based on the above to partners in same sex families, and to partners in non-married relationships.
- C. A **directive on paternity leave** should be introduced into the EU legislation ensuring **(1)** a mandatory fully paid leave of at least 18 days<sup>15</sup> for fathers to be taken around the time of the birth/adoption<sup>16</sup>; **(2)** strong protection of men against discrimination in employment based on their taking the leave; **(3)** these rights to same-sex partners regardless of their marital status.
- D. **Other types of leave** should be introduced by European legislation, such as: **(1)** leave for care for an **elderly** parent, and/or **other dependants** such as a family member with a disability or terminal illness for example should be recognized; **(2)** **education leave** should be recognized; **(3)** specific measures regarding **adoption** should be introduced into the Parental Leave

<sup>9</sup> The legal obligation is both on the mother and the employer, but there seem to be no sanctions in case the woman does not want to take the leave.

<sup>10</sup> Most of the recommendations in point A. are in line with the 2000 ILO Convention C183 on Maternity Protection.

<sup>11</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>12</sup> There are examples of 2 weeks (Denmark) to 2 months (Sweden) paternity leave reserved (i.e. non-transferable) for the father in different legislations. (See at <http://www2.ilo.org/public/english/protection/condtrav/family/reconcilwf/specialleave.htm>). In Sweden, parents that have joint custody are entitled to share the total parental leave available to parents.

<sup>13</sup> Except in cases of domestic violence as defined in CoE and UN instruments, including, *inter alia*, physical, emotional, verbal and sexual violence against women.

<sup>14</sup> It is important to cover the full span of childhood/adolescence; in general parental responsibility is up to age 18 years of age. With reference to children with special needs/disabilities these may not be detected in the early phases of childhood and can also require long term ongoing care throughout childhood/adolescence.

<sup>15</sup> Currently, paternity leave on the birth/adoption of a child is not guaranteed in all Member States. On the basis that Finland provides for 18 days fully paid paternity leave, the Directive should not go below this standard.

<sup>16</sup> Again, except in cases of domestic violence as defined in CoE and UN instruments, including, *inter alia*, physical, emotional, verbal and sexual violence against women.

directive in line with the specificities of adoption; **(4)** the specific time-needs of parents undergoing **artificial insemination** should be incorporated in the Parental Leave Directive<sup>17</sup>.

- E. The **Working Time Directive<sup>18</sup>** and **Part Time Work Directive<sup>19</sup>** **should also be updated** to ensure the introduction of the right for workers to request adaptation of hours and patterns of work and the right to request a – reversible – reduction or extension of working hours in order to eliminate gender segregation resulting from traditional working/care-time patterns<sup>20</sup>.
- F. **The revised and/or new legislation must contain guarantees for raising the value (both economically and socially) and the security of care work both within the labour market and as unpaid work**, with a special attention on acknowledging the contribution of migrant domestic workers in this area, and the protection of migrant domestic workers from exploitation. Legislation must also take account of the diverse forms of families, including same-sex, non-married, single parent families, and underage mothers.
- G. **Taxation policies ensuring that women are not considered more risky and expensive employees than men** must be developed.
- H. **The individualisation of rights in the field of social security.**
- I. **A process of open method of coordination should be introduced in the field of care services for all dependants**, including setting precise targets and indicators.<sup>21</sup>
- J. **In order for the measures to be effective and successful, financial resources should be allocated for these goals and for the sharing of good practices** among Member States, along with the setting up of **monitoring mechanisms** in general **to ensure consistency** between different pieces of legislation and policy, **and ways to monitor the allocation of budgets by Member States in particular**. The financial resources should be viewed upon as investment instead of as cost.

**The above recommendations serve to direct the Commission's and the consulting parties' attention to insofar unsolved shortcomings of the legislation in force, hindering the realisation of equality between women and men in the field of reconciling work, private and personal life, and men's participation in the area of care for dependants. EWL very much hopes that the Commission and the Social Partners will take these considerations into account.**

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<sup>17</sup> See European Court of Justice decision of 28 February 2008 on protection from dismissal for in vitro fertilisation: Sabine Mayr v. Bäckerei und Konditorei Gerhard Flöckner OHG

<sup>18</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time

<sup>19</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

<sup>20</sup> ETUC Recommendations Section 5.b). p. 25.

<sup>21</sup> In line with the ETUC recommendation regarding the availability of care services (ETUC's Position on the Second Stage Consultation of the Social Partners at Community level on the Reconciliation of Professional, Private and Family Life. July 2007. p. 5.)