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Reshaping the work-life balance directive with Covid-19 lessons in mind

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Reshaping the Work–Life Balance Directive with Covid-19 lessons in mind

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Working Paper 2022.01

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Abstract

The Covid-19 pandemic has disproportionately affected women, threatening to reverse progress towards gender equality. It has made the need to address long-standing structural disadvantages affecting women even more evident and pressing, including the fact that women continue to perform a greater share of unpaid care work. This paper argues that the Work–Life Balance Directive 2019 – the key EU legal instrument that seeks to address the labour market disadvantages of those with caring responsibilities, the majority of whom are women – should be revisited in the aftermath of the pandemic. The Directive provides for certain entitlements to leave and flexible working arrangements. The paper proposes how various aspects of the framework could be strengthened in order to promote its gender equality objectives in a more effective and transformative way, and to confer recognition on the social and economic value of unpaid care work. It also points to other key measures that must complement the Directive to ensure a cultural shift towards equal distribution of care work between men and women.

1. Introduction

The Covid-19 pandemic and its economic repercussions have profoundly affected people across the world, hitting some harder than others. The pandemic has both exposed and deepened existing inequalities along multiple axes, including gender. Women have been more adversely affected than men, with significant and potentially long-lasting negative consequences for gender equality (Wenham 2020; EIGE 2021b). Underlying these effects are various long-standing structural disadvantages impacting women, including the fact that they are still more likely to be the primary care-giver in the family. The effects of the pandemic have, however, also given renewed attention to demands to address the challenges facing women in society and on the labour market. Among other things, the pandemic has brought into sharp focus the role women play in paid and unpaid care work and the fundamental significance of this work for the functioning of societies and economies. There are important lessons to be drawn from the pandemic in this regard, and it is crucial that these feature prominently in policy- and law-making processes at EU and national levels in the years to come.

The ways in which the consequences of the pandemic for women could feed into such processes are numerous, potentially affecting a wide range of legal and policy frameworks and leading to the development of new ones. This paper focuses on how lessons from the pandemic could inform the implementation and future reform of one particular EU legal framework that seeks to promote gender equality, namely the Work–Life Balance Directive of 2019.¹ The Work–Life Balance Directive is the most recent piece of EU gender equality legislation, still in its implementation phase, and one of the first instruments to emerge from the European Pillar of Social Rights (EPSR).² It is a minimum harmonisation measure that provides for certain entitlements for parents and carers in respect of leave and flexible working arrangements. While these entitlements are framed in gender-neutral language, they are intended to address some of the labour market disadvantages that women face due to gender inequalities in the distribution of unpaid care work.

The paper argues that the reality revealed by the pandemic and the threat it poses to gender equality, including in respect of unpaid care work, call for a critical re-evaluation of the standards set by the Work–Life Balance Directive in the post-pandemic context. Against this background, it proposes various ways in which the

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1. Directive 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work–life balance for parents and carers and repealing Council Directive 2010/18/EU.
 2. In particular, Principles 2 (gender equality) and 9 (work–life balance for parents and carers).

framework could be reshaped in order to promote its aims more effectively. To this end, Section 2 provides some background to the Work–Life Balance Directive and the main measures contained in the instrument. Section 3 highlights some of the effects that the pandemic has had on women, as evidenced by various empirical studies, focusing on the increased burden of unpaid care work. It argues that the pandemic is likely to exacerbate existing issues arising from the unequal distribution of unpaid care work between men and women, and that it has underscored the importance of such work and brought it to the fore of policy debates, alongside other gender equality issues. This has shifted the context in which the Work–Life Balance Directive was concluded, providing a reason and occasion to revisit this framework.

Section 4 then considers how the Work–Life Balance Directive framework could be recast to promote gender equality objectives more effectively. It draws on the trends emerging during the pandemic discussed in Section 3, criticisms of work–life balance measures and the Directive advanced even before the pandemic, as well as arguments on the significance of recognising the real value of care work for achieving gender equality. The section argues that promoting appropriate recognition of the social and economic value of unpaid care work could be incorporated as one of the main aims of the Directive, with implications for its design. It also argues that a recast Work–Life Balance Directive could provide stronger incentives for fathers to take up leave; be more inclusive and sensitive to different needs and circumstances; leave less scope for employer discretion in relation to flexible arrangements; and include further provisions on telework and collective bargaining. Section 5 acknowledges that this Directive alone is not sufficient to tackle inequalities in care work and related issues, and must be complemented by other policy and legal measures. It points to some of the steps that are relevant to the work–life balance and gender equality discourse, but fall outside the scope of the Directive.

The first review of the Directive is planned to take place only in 2027, five years after the implementation of the framework by Member States, due by August 2022. In many Member States implementation is already well under way. The goal of this paper is to start a conversation about rethinking this particular framework and its ambitions, while the consequences of the pandemic are still very much present in our minds; to contribute to national-level debates on the design and revision of work–life balance measures, whether implemented in law or collective agreements, that may go beyond the Work–Life Balance Directive; and to point to other key measures that must complement this framework to ensure a cultural shift to a more gender-equal distribution of care work and substantial progress towards gender equality more generally.

2. The Work–Life Balance Directive of 2019

2.1 The objectives of the Directive

‘Work–life balance’ measures are, in brief, measures intended to enable workers to reconcile their professional and private lives, including family responsibilities. The Work–Life Balance Directive contains measures aimed at ensuring a better work–life balance specifically for parents and carers.³ It introduced changes to the existing EU minimum **parental leave** requirements and new provisions on **paternity leave, carers’ leave and flexible working arrangements**,⁴ set out in more detail in Table 1. Despite the neutral language of ‘parents and carers’, the Directive has clear gender-equality objectives. This is because, despite a shift away from a single, male-breadwinner model and increasing involvement of women in the labour market, women in general continue to perform a greater share of care responsibilities.

A recent report by the European Institute for Gender Equality (EIGE) on gender inequalities in care finds that a significantly higher proportion of women, at 93 per cent, than men, at 53 per cent, are involved in unpaid care work at least several times a week (EIGE 2021a: 16).⁵ Of those involved in unpaid care work on a daily basis, women spend 3.9 hours per day on care work, compared with 2.6 hours for men across the EU (EIGE 2021a: 17). These figures differ significantly between Member States, but women spend more time on such work than men in every Member State (Figure 1). The amount of time spent by employed people on unpaid care increases significantly where childcare is involved, and women who are parents are under an even higher load of family responsibilities (EIGE 2021a: 18).⁶ This ‘double burden’ of employment and unpaid care work affects women’s physical and psychological well-being (Artazcoz et al. 2011), as well as their participation in the labour market and their earnings (EIGE 2021a).

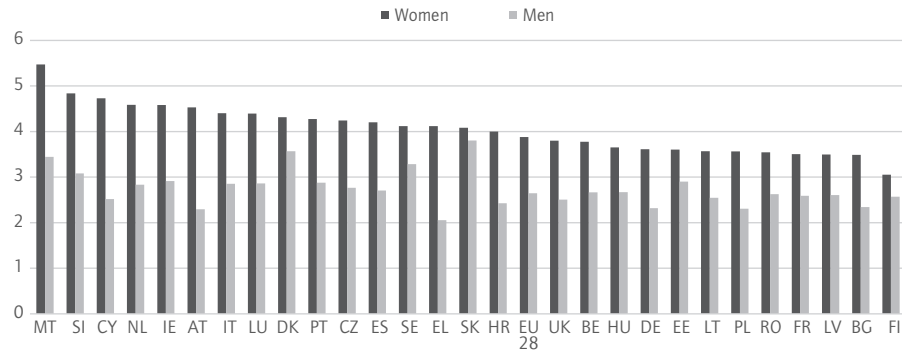
3. Maternity leave and other entitlements related to pregnancy are dealt with under the Pregnant Workers’ Directive 92/85/EEC.

4. A more limited right to flexible working arrangements was provided under Revised Framework Agreement on parental leave (Clause 6) put in place by the Parental Leave Directive 2010/18/EU.

5. The report relies on data from the Eurofound European Working Conditions Survey (EWCS) 2015, Eurostat and the EU Labour Force Survey.

6. The report finds that women in couples with children spend 5.3 hours per day on unpaid care work, compared with 2.4 hours for women living in couples without children (EIGE 2021a: 18).

Figure 1 Mean time spent on daily unpaid care work by employed women and men, by country (hours per day, 15+, EU28, 2015)



Note: Low data reliability for men in EL, CY, PL, SK.

Source: EIGE calculations based on EWCS 2015 (EIGE 2021a : 17)

In 2019, 53 per cent of women aged 25–49 indicated that looking after others or other personal and family responsibilities was the main reason for not seeking employment, compared with only 8 per cent of men (EIGE 2021b: 14). Unequal distribution of unpaid care work is one of the main drivers of the gender gap in employment, which stood at 11.8 percentage points in 2018 in the EU27 (Eurostat 2020a). In 2019, women who were inactive because of care responsibilities constituted around 17 per cent of the total population of the (then) EU28 (EIGE 2021a: 74).

Care responsibilities are also a significant factor in women taking up part-time employment.⁷ This has an effect on women's earnings, not only because it involves fewer hours, but also because part-time work is often less well-paid per hour than full-time work (EIGE 2021a: 20; Boll et al. 2017). Women are more likely to take up temporary employment or career breaks to accommodate care responsibilities, which affects pay and career progression (EIGE 2021a: 10, 27). They are more likely to work in precarious jobs, exposing them to higher risk of leaving employment at point of recession (Wenham 2020: 50; Karamessini and Rubery 2013). Engagement in part-time, temporary and low-paid work, among other things, contributes to the gender pay gap,⁸ the gap in overall annual earnings between men and women,⁹ and the gender pension gap.¹⁰ In some households, it makes financial sense for women, rather than their male partners, to shift to part-time work or leave the labour market to accommodate care responsibilities, because their earnings are lower (Kohlrausch and Zucco 2020: 8). This can in turn

7. In 2018, around 18 per cent of women and only 3 per cent of men aged 24–49 in the EU28 indicated that reduction of working time was an effect of childcare responsibilities (EIGE 2021a: 54). Some 29 per cent of part-time employed women and 6 per cent of men indicated that the main reason for this was looking after children or incapacitated adults (Eurostat 2019b).

8. 14.1 per cent across the EU27 in 2018 (Eurostat 2020b).

9. 39.6 per cent across the EU28 in 2014 (Eurostat 2020c).

10. 30.1 per cent across the EU28 in 2018 (Eurostat 2020d).

mean that they take on more unpaid care work, leading to a ‘vicious cycle’ between inequalities in pay and care responsibilities.

The ‘traditional’ role of women as primary caregivers in the household is deeply embedded in social structures and continues to be one of the most significant factors underlying gender inequalities on the labour market and beyond. It is clear from the Preamble to the Directive that the framework seeks to address some of the issues outlined above by providing possibilities for both men and women to take time off work to care for others or arrange their work in flexible ways. The intention is to enable women to participate in the labour market to a greater extent alongside their care responsibilities, but also to reduce these responsibilities by encouraging greater uptake of leave entitlements – and therefore of care responsibilities¹¹ – by men (European Commission 2017). The Directive should thus contribute to ‘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 It is, in that connection, also intended to contribute to closing gender gaps in pay, earnings and pensions.

Rationales other than gender equality are present in the Directive and Commission proposal, too. The Directive is also an expression of Principle 9 of the EPSR on work–life balance for parents and carers, and in that sense an expression also of certain basic social rights for all workers. While not explicitly mentioned in the Directive, the Commission proposal highlights the ‘business case’ for work–life balance measures, stating that the legislation will benefit companies in ensuring ‘a wider talent pool, a more motivated and productive labour force as well as less absenteeism’ (European Commission 2017: 3). This rationale does not always align with the gender equality/social rights case for work–life balance measures, which can lead to tensions within work–life balance agendas (Chieragato 2020: 63; Stratigaki 2004).

2.2 Main features of the Directive

Table 1 summarises the main provisions of the Directive and the provisions as originally proposed by the Commission.¹³ The proposal for this Directive emerged after the European Commission scrapped plans for a Maternity Leave Directive conferring more rights on mothers, which had stalled for a number of years.¹⁴ The shift to gender-neutral language and a specific right for fathers and second parents¹⁵ in the Work–Life Balance Directive initiative was very significant, because it signalled a more transformative approach aimed at challenging the traditional distribution of care responsibilities (Caracciolo di Torella 2017; Chieragato 2020: 70). It responded to criticisms that pre-existing EU frameworks on family-friendly

11. It has been found that fathers who take leave are more likely to be involved in childcare on a regular basis subsequently (Huerta et al. 2014; Oliveira et al. 2020).

12. Preamble 16.

13. The Work–Life Balance Directive also contains a provision on time off on grounds of force majeure (Article 7), which is not discussed here.

14. Pregnancy-related rights are still covered by the Pregnant Workers’ Directive 92/85/EEC.

15. Where recognised by national law, Article 3(1)(a) Work–Life Balance Directive.

measures did not sufficiently promote the role of fathers and perpetuated the idea that it is women who primarily take care of children (Weldon-Johns 2013; Caracciolo di Torella 2014; Foubert 2017). Depending on their particular design, family-related leave arrangements have ‘the potential either to reinforce gendered assumptions about care work, or conversely to eliminate any existing obstacles to a more egalitarian distribution of caring responsibilities between men and women’ (Chierigato 2020: 69).

Table 1 Overview of the main features of the European Commission proposal and the Work–Life Balance Directive

European Commission Proposal 2017	Work–Life Balance Directive 2019
Paternity leave of 10 working days, paid an adequate allowance at least at the level of sick pay	Paternity leave of 10 working days, paid at least at the level of sick pay, but eligibility requirements for pay are possible
Parental leave of 4 months, all non-transferrable and paid at least at the level of sick pay, until a certain age of the child that is not less than 12	Parental leave of 4 months, 2 months of which is non-transferrable and 2 months with payment set to facilitate take-up of parental leave by both parents, until the child reaches a specified age, up to the age of 8
Carers’ leave of 5 days per year, paid at least at the level of sick pay	Carers’ leave of 5 days per year, no provision on pay
Ability to request flexible working arrangements for parents with a child up to a given age that is not less than 12, and carers	Ability to request flexible working arrangements for parents with a child up to a given age that is not less than 8, and carers

The adoption of the Directive was preceded by much controversy and faced stark opposition in the Council, particularly by some Member States (Collombet and Math 2020: 6).¹⁶ The final text reflects a compromise over some of the most innovative design features of the measures proposed by the Commission, in particular with regard to pay.¹⁷ As Table 1 shows, the Directive is a somewhat watered-down version of the Commission proposal in various respects.

These features are analysed in more detail in Section 4. Suffice it to say here that some aspects of the framework had been criticised as problematic even before the pandemic (Chierigato 2020; Collombet and Math 2020; Franklin and Helfferich 2019). The remainder of this paper argues that the effects of the pandemic on women – set out in the next section – have made the need to address pervasive and deep-rooted inequalities in the distribution of care responsibilities between men and women even more evident and more pressing, if significant progress is to be made towards gender equality. Against this background, the provisions of the Directive fall short of the kinds of transformative measures necessary to achieve real change when it comes to the sharing of unpaid care work, and a more profound rethinking of the framework is required to this end.

¹⁶ The social partners did not reach agreement to enter into negotiations on this topic because of resistance from employers.

¹⁷ Notably, the report of the Committee on Employment and Social Affairs (EMPL) of the European Parliament had proposed even more ambitious measures than the Commission (European Parliament 2018).

Of course, the Work–Life Balance Directive sets only minimum common standards, and in some Member States – whether laid down in law or collective agreements – there are work–life balance measures that already go beyond some or all of its provisions (European Commission 2018: 3–4; Oliveira et al. 2020).¹⁸ Still, in other Member States the Directive will have a greater impact and determine workers’ entitlements to leave and flexible working arrangements to a greater extent (Oliveira et al. 2020: 314). For example, shortly before the Directive was concluded, 11 Member States did not provide for paternity leave of two weeks; and very few Member States provided for parental leave that is both paid and includes at least two non-transferable months¹⁹ (European Commission 2018; Oliveira et al. 314). At the very least, the floor of rights that the framework sets sends certain signals at the European level regarding the appropriate scope and design of work–life balance measures. Thus, this framework will remain significant for standard-setting in this area across Europe for the years to come, and merits a critical re-examination in the post-pandemic context.

18. For example, Sweden, Luxembourg and Belgium go beyond most of the relevant provisions, with many other Member States going beyond at least some of them.

19. In 2018: Belgium, Croatia, Italy, Luxembourg, Portugal, Sweden (European Commission 2018).

3. Covid-19, gender inequalities in unpaid care work and the Work–Life Balance Directive

It has been widely reported at the international, European and national levels that the Covid-19 pandemic has affected women disproportionately.²⁰ Some of the main findings are that women have been more affected by the pandemic because they constitute the majority of essential workers, exposed to particularly high physical and psychosocial risks; women have been affected by a significant increase in domestic violence related to lockdown measures, and their access to safe sexual and reproductive health services has been limited because of the diversion of resources within health systems; they have absorbed a greater share of increased unpaid care work performed in the household, and are more likely to have lost their job or had their hours reduced (Wenham 2020; EIGE 2021b; Azcona et al. 2020). These effects reflect existing vulnerabilities and inequalities between men and women, which the pandemic has exposed and exacerbated. This threatens to reverse some of the hard-won gains towards gender equality to date (Eurofound 2020c).

This section focuses on impacts on gender equality arising from the surge in unpaid care work during the pandemic, brought about by the closure of schools and other childcare facilities in many countries, precautions to protect vulnerable relatives, and an increase in telework arrangements, among other things (Eurofound 2020b). ‘Unpaid care work’ here includes care for children and adults, such as elderly family members, as well as household work.²¹ The section sets out some the findings of a variety of studies at the national and international level that identify similar trends regarding the effects of increased care responsibilities (2.1) and reflects, against the background of this experience, on reasons to revisit the Work–Life Balance Directive (2.2).

It should be noted that it is not only women who have been disproportionately affected by the pandemic. It has affected other vulnerable and marginalised groups, such as migrants, black and minority ethnic groups, disabled individuals and LGBTIQ+ individuals (Wenham 2020: 10–14; Azcona et al. 2020: 2). Some of these drivers of vulnerability intersect with the factor of gender. For example, migrant women tend to be overrepresented among personal care workers and

20. Among others, Azcona et al. 2020, Wenham 2020, EIGE 2021b, Adams-Prassl et al. 2020a, Farré et al. 2020, Del Boca et al. 2020.

21. This includes ‘direct’ care work (which involves face-to-face personal care, such as ‘feeding a baby, helping an older person take a bath or teaching young children’) and ‘indirect’ care work (which includes activities such as ‘cooking, cleaning, and other household maintenance tasks’) (ILO 2018: 6). These often overlap in practice and are not strictly separable.

other categories of health-care workers (Wenham 2020: 25; Foley and Piper 2020: 3). Many of the reports discussed here do not engage specifically with this intersectional perspective, at least in part because of the lack of available data. While not discussed in detail in this paper, it should be stressed that these issues also deserve attention and an appropriate policy response.

3.1 Effects of the pandemic related to the surge in unpaid care work

The Covid-19 pandemic has led to increases in unpaid care work, in particular childcare, for both men and women, but emerging research shows that this increase is taking a greater toll on women in various ways (EIGE 2021b: 35–36). A number of studies conducted in EU Member States and non-EU countries²² indicate that women have *continued to bear a much greater share of this increased amount of work*, exacerbating the existing ‘double burden’ (EIGE 2021b: 35–36). A Eurofound report based on the Eurofound Covid-19 e-Survey conducted in July 2020 identifies significant differences in the amounts spent on childcare and housework as between men and women (Eurofound 2020b). For example, the report indicates that employed women spent around 35 hours per week on childcare and 18 hours per week on housework, as opposed to 25 hours and 12 hours, respectively, for men (Eurofound 2020b: 23).²³ The overall workload is much greater for parents, with women with children under 12 spending an average of around 62 hours per week on childcare, as opposed to 36 hours for men.

Studies conducted at national level also show significant disparities in unpaid care work undertaken by men and women during the pandemic (Adams-Prassl et al. 2020a; Del Boca et al. 2020; Oreffice and Quintana-Domeque 2020; Farré et al. 2020; Kohlrausch and Zucco 2020). In Italy, around 68 per cent of women reported an increase in the amount of time spent on childcare and housework, as opposed to 40 per cent of men (Del Boca et al. 2020: 5). In one study in Germany, only 60 per cent of couples living with at least one child under the age of 14, who indicated that they shared care work with their partner equally before the pandemic, indicated that this continues to be the case during the pandemic (Kohlrausch and Zucco 2020: 7). This was even lower, at 48 per cent, for couples with a household income below 2,000 euros (€). This indicates a certain ‘re-traditionalisation,’ or regression to more traditional patterns of distribution of care work between men and women (Kohlrausch and Zucco 2020: 7). It should be noted, however, that there is also evidence from some studies that men became somewhat more involved in certain types of unpaid care work during the pandemic, as a share of the entire amount of

22. Unless otherwise specified, data is limited to the first Covid-19 wave and related restrictions. Some of these reports and studies have a different focus – for example, they only look at childcare rather than all unpaid care – and the indicated differences in the burden of unpaid care work vary between different countries and studies.

23. For *employed* women this figure is only marginally lower at around 34 hours, as opposed to 24 hours for men spent on childcare, and around 16 and 11 hours spend on housework, respectively.

work, particularly in relation to childcare (EIGE 2021b: 36; Farré et al. 2020: 17; Hupkau and Petrongolo 2020).²⁴

This increase in care responsibilities has had an impact on *women's work-life balance, mental health and productivity*. The Eurofound Covid-19 e-Survey indicated that women were somewhat more likely than men, at 41 per cent and 37 per cent respectively in April 2020, to report having started to work from home (Eurofound 2020c: 16). The survey showed an increase in work-life balance conflicts, especially for women (Eurofound 2020b: 21). Data also demonstrates that such conflicts are affecting the mental health of women more than men in the same category, with more women than men with children aged 0–17 years reporting feeling tense, lonely or depressed (Eurofound 2020c: 17). One UK study also indicated that women's health in mid-June was worse than men's, with sizeable gender gaps in certain mental health problems (Oreffice and Quintana-Domeque 2020: 8). In the United States, the existing gender gap in mental health had increased by 66 per cent by spring 2020 (Adams-Prassl et al. 2020b). A number of studies of workers in research and academia suggest that the productivity of female workers has been affected more than that of male workers (Unidad de Mujeres y Ciencia 2020; King and Frederickson 2020; Squazzoni et al. 2020).

It has also been reported that *more women than men have taken leave from work, paid or unpaid, or reduced their working hours* (Kohlrausch and Zucco 2020; Kalaylıoğlu et al. 2020; IFS 2020; EIGE 2021b: 37), and that women were more likely to drop out of the labour market to accommodate care responsibilities (Eurofound 2020c: 15; IFS 2020). For example, one study in Germany indicates that about a quarter of female respondents reduced their working hours to accommodate the increase in childcare needs, compared with a sixth of men (Kohlrausch and Zucco 2020: 8). It is likely that this, at least in part, reflects financial pressures on women to reduce their working hours rather than their male partner (Kohlrausch and Zucco 2020: 8). Women in households with a lower income were more likely to have reduced their hours than women in higher-income households (Kohlrausch and Zucco 2020: 9).

To this must be added the fact that *more women than men have lost their jobs or had their hours reduced* during the pandemic (Eurofound 2020c; EIGE 2021b). One of the main reasons for this is that many of the sectors hardest hit by the pandemic are female-dominated, such as accommodation, food services and tourism (Wenham 2020: 51; EIGE 2021b: 16). Women are also more likely to be in a precarious job than men, however, in part because of the greater burden of unpaid care work, and so are more vulnerable in case of economic recession. Women may also have been more affected by gaps in job-retention and short-time work schemes in some Member States, because they work in part-time or interrupted employment, or are among the lowest paid (Rubery and Tavora 2021: 79). Migrant women have been significantly more affected by job losses, along with young women and women with lower levels of education (EIGE 2021b: 9).

24. The report by EIGE compares data on the involvement of men in unpaid care work during the pandemic with data from the EQLS 2016, suggesting that the involvement of men in the total amount of childcare rose from 30 to 39 per cent (EIGE 2021b: 36).

Finally, the increase in childcare responsibilities as a result of the pandemic has impacted single-parent households more than dual-parent households (Wenham 2020: 34). For example, another study in Germany indicates that 30 per cent of single mothers had taken leave to care for their children, compared with 19 per cent of employees with children in general (IFO Institute and Forsa 2020). Around 14 per cent of single mothers reported that their income has decreased. According to the Eurofound e-Survey, single mothers spent around 52 hours per week on childcare and 19 hours on housework, as opposed to 36 and 13 hours for single fathers (Eurofound 2020c: 23). In 2016, women made up almost 85 per cent of single parent households in the EU (EIGE 2016). Single parents, and particularly single mothers, are already a vulnerable group, with 48 per cent of single mothers at risk of poverty, compared with 32 per cent of single fathers (EIGE 2016).

In 20 EU Member States, special parental leave of some kind was made available during the first pandemic wave in order to address the additional burden on families, but this has not been sufficient to mitigate the impact of the pandemic in this regard (Rubery and Tavora 2021: 87). There has been considerable variation in the conditions for such leave, including how it is paid. For example, in 11 of these 20 countries, parental leave was paid at a rate lower than job-retention schemes, and in Spain it was unpaid (Rubery and Tavora 2021: 87). Again, this means that the parent earning the lower income—more likely the woman—in a dual parent household would be more likely to take such leave. The lack of adequate pay for such leave has been even more problematic in the case of single parents (Rubery and Tavora 2021: 87).

3.2 A reason to revisit the Work–Life Balance Directive

The Covid-19 pandemic has not necessarily revealed anything we did not already know about the existing inequalities between women and men before the pandemic, at the time that the Work–Life Balance Directive was drafted and came into force. However, the trends emerging during the pandemic in respect of gender equality – as regards unpaid care work and in general – provide various reasons to re-evaluate and reshape this legal framework.

First, the increase in unpaid care work and related effects during the pandemic could have long-lasting negative implications for gender equality. Aside from impacts on mental and physical health, reports suggest that the pandemic could have repercussions for women's pay and economic security, and inequalities in unpaid care work. The fact that women have reduced their working hours or given up work will affect their earnings in the short term, but could also affect their ability to re-enter the labour market or go back to full-time work. This would not only affect earnings in the longer run, but could also reinforce the unequal distribution of care responsibilities (Kohlrausch and Zucco 2020: 9; Eurofound 2020c), and widen gender gaps in pay, pensions and employment. The effects on women's performance at work could mean that they might suffer when it comes to redundancies in the post-Covid crisis (Wenham 2020: 33), or it could affect their prospects for promotion. Single parents, in particular single mothers, and women

on lower incomes are likely to be even more vulnerable to these effects. On the other hand, the increase noted by some studies in the involvement of fathers in certain aspects of care work provides opportunities to challenge traditional roles, but long-lasting effects will require strong policies that promote the equal division of care responsibilities (Eurofound 2020c: 17; Hupkau and Petrongolo 2020: 12). All of this points to a need to further strengthen efforts to address gender inequalities in unpaid care and their consequences, including through robust work–life balance measures.

The pandemic is also likely to amplify challenges to gender equality and work–life balance arising from the proliferation of telework arrangements. The rise of telework has presented workers with new opportunities to reconcile professional life with family responsibilities (EIGE 2021b: 26, 41). This can have positive effects for women in terms of increased participation in the labour market and opportunities for equal sharing of care responsibilities (EESC 2021). With telework becoming an increasingly available option, it is likely that more women will start working from home, at least some of the time, not least because the share of women in teleworkable occupations, at 45 per cent, has been estimated to be higher than the share of men, at 30 per cent (Sostero et al. 2020).

Telework also hides risks that could affect women disproportionately, however. It is often associated with increased availability, longer working hours, intensification of work and blurring of boundaries between work and private life, which exacerbate work–life conflicts and pose risks to workers’ mental and physical health, particularly for workers experiencing a ‘double burden’ (Eurofound and ILO 2017). Increased use of telework arrangements by women to accommodate care responsibilities could contribute to entrenching gender stereotypes and inequalities in the distribution of care work, and even lead to an increased double workload for women (EIGE 2021b: 39). There are also other risks associated with telework that could affect women in particular, such as increased risks of violence and harassment, including domestic violence and online harassment; increased isolation; or reduced professional visibility and career prospects (EIGE 2021b: 26, 39–42). These challenges deserve greater attention on work–life balance and gender equality agendas, too.

Second, by amplifying existing inequalities in unpaid care, the Covid-19 pandemic has made them even more visible. It has been a stark reminder of the fact that care work – both paid and unpaid – is indispensable to the well-being and functioning of society and the economy; that this work continues to be performed predominantly by women; and that it is either not economically rewarded and socially recognised or, where it is paid, remains undervalued and poorly remunerated. The pandemic has also underscored the fact that women’s lives, health, careers and economic independence continue to be strongly influenced by the ‘double burden’ of paid and unpaid labour, and that this burden falls more heavily on some women, particularly those at the intersection of various axes of inequality. The fact that some regression to traditional roles can be observed suggests that societal perceptions and expectations when it comes to gender roles run deep; and that there are other pressures – such as financial ones – that continue to prompt women to take on a greater share of unpaid care work. Indeed, the pandemic has emphasised the

‘vicious cycle’ between the burden of unpaid care work and women’s involvement in the labour market, their income and job security. In other words, the pandemic has demonstrated that efforts to date to achieve equal involvement in unpaid care by men and women have been far from sufficient, creating renewed pressure on policy- and law-makers on this front.

Third, the pandemic is predicted to have negative repercussions for gender equality in general, and not just in relation to inequalities in unpaid care (Wenham 2020; Eurofound 2020x; EIGE 2021b). This gendered dimension has received prominence in debates on the consequences and lessons of the pandemic, with some authors even referring to the economic recession caused by the pandemic as a ‘shecession’ (Alon et al. 2021; Bonacini et al. 2021). It has drawn the attention of the public and policy-makers to other long-standing systemic issues as well, such as inequalities in pay, particularly in essential, female-dominated professions such as in the care sector (ILO 2020a; 2020b). It is clear that gender equality needs to become a greater policy priority in order to avoid compromising progress on this front to date – progress that is much more fragile than we had thought. Through its gendered impact and negative consequences on gender equality, the pandemic has brought these issues to the fore in policy debates and has created momentum behind demands for intensified efforts to address the numerous and often interconnected factors that underly structural disadvantage and discrimination against women.

The Covid-19 pandemic has therefore shifted the context, as compared with the time that the Work–Life Balance Directive was concluded, in two ways: (i) it is likely to exacerbate gender inequalities, including in relation to care, and (ii) it has underscored the need to take further steps to promote gender equality, with a sense of even greater urgency. This provides an occasion to rethink and give new impetus to gender equality strategies, including those related to inequalities in unpaid care work as a key factor underlying women’s disadvantage. The Work–Life Balance Directive, as the central EU legislative instrument in this regard, is one of the many existing frameworks that deserve renewed attention and reinforcement. It is by no means the only tool necessary to address the issues described above, but it is the focus of this paper because it is a relatively recent piece of legislation that is still in its implementation phase, and which has been the subject of intense debate even before the pandemic.

4. Reshaping the Work–Life Balance Directive

This section considers some of the ways in which the Work–Life Balance Directive could be reshaped in order to promote equality between men and women more effectively, though without departing radically from its current form and content. The intention is to suggest how national legislation, collective agreements, and/or a future reform of the instrument could build on the current structure of the framework. This is not, of course, to exclude the possibility of a more radical departure from the current framework or the development of an entirely new and different framework to achieve these aims in the future.

The section first argues that one of the stated aims of the Directive could be the recognition of the social and economic value of care work – essential to achieving equal distribution of care responsibilities – and its incorporation into workplace norms (4.1). Including this as one of the rationales of the legislation would have implications for its design and the balance struck with other interests. It then proposes how various features of the Directive could be reshaped, in light of this new rationale and concerns regarding the effectiveness of the current framework (4.2).

4.1 Recognising the value of unpaid care work

A starting point for a re-evaluation and reshaping of the Work–Life Balance Directive could be a certain rethinking of its role, or *function*, in promoting gender equality. As it stands at the moment, in respect of its gender equality aims, the Directive provides certain entitlements to parents and carers in order to *accommodate* the fact that certain workers with care responsibilities – predominantly women – need to take some time off or make particular arrangements in order to be able to perform these responsibilities alongside their job. This recognises the fact that these are important activities for workers, and seeks to ensure that family responsibilities do not become a reason for workers to leave the labour market or participate to a lesser extent, or suffer other disadvantages at work. At the same time, it seeks to encourage other workers to take up more care responsibilities and thus to redistribute unpaid care work.

The Directive could, however, be conceptualised in a somewhat different way, namely as a vehicle to ensure that unpaid care work is recognised as a socially and economically valuable activity, and that this is reflected in norms – legal, but also social – related to the workplace. Neither the Work–Life Balance Directive nor the Commission proposal make any mention of the need to ensure greater recognition

of the contribution of unpaid care work to society. Yet, feminists have argued for decades that ensuring the equal distribution of unpaid care work, essential to achieving gender equality, must entail ‘understanding how this work underpins all economies and valuing it accordingly’ – what Elson calls ‘recognising’ unpaid care work – as well as reducing and redistributing such work (Elson 2017: 54). To achieve real change, these elements must go hand-in-hand.

As argued above, the Covid-19 pandemic is a reminder of the fact that unpaid care work is essential to the operation of societies and economies. Such work is of immeasurable social value, as a cornerstone of community living and a healthy society. While people with care responsibilities in the home, predominantly women, do not do this work for wages, this does not mean that such work does not have an economic value, too. The ILO estimates the monetary value of unpaid care work globally to be around 11 trillion USD, if such services were to be valued on the basis of an hourly minimum wage, which constitutes around 9 per cent of global GDP (ILO 2018).²⁵ Unpaid care work can represent an even greater share of GDP in some countries (Ferrant and Thim 2019). This fact has gained renewed attention at the policy level in light of the pandemic, including in a recent study requested by the European Parliament’s Committee on Women’s Rights and Gender Equality that outlines the need and advantages – including economic – of valuing and investing in the care economy (Barry and Jennings 2021).

Feminist scholars trace back this focus on paid work to the post-Second World War gender contract, which rested on ‘a male-breadwinner and female housewife’ model (Fudge 2014: 1, 4). As domestic labour was performed almost exclusively by women in the private domain, ‘it was not treated as work and its contribution to the economy was rendered invisible’ (Fudge 2014: 4). The gradual shift to a dual breadwinner model has shown the extent to which employment norms and the organisation of work rest on an unpaid, full-time caregiver (Fudge 2014: 5). Current standard employment patterns (full-time, full-year, working patterns generally determined by the employer and so on) are not compatible with caring responsibilities and thus primary carers, predominantly women, are pushed towards atypical and precarious work (Crompton 2002: 550; Fudge 2014: 5). Outsourcing care work—typically to other women, often from a migrant background, and often significantly underpaid—is not a panacea for this problem.

Addressing the labour market disadvantages of those with caring responsibilities in a substantive way must entail a cultural shift away from this perception that only paid work is ‘work’. This requires profound structural changes to the organisation of work patterns and to employment norms, driven by the recognition that unpaid care work is a socially valuable activity in which *all* workers should be able to engage alongside paid work (Fudge 2014: 20). Radical measures are necessary that ‘transform men’s working lives to make them more like those of women, such as equalising “normal” hours of paid work’ (Elson 2014: 58).

²⁵ Though it should be noted that there are different methods of calculating the economic value of care work, see Barry and Jennings 2021: 46–48.

Alongside the regulation of working time, policies and legal norms relating to childcare, other care responsibilities and work–life balance have an important role to play in this shift. An enhanced system of leave entitlements, with appropriate resources, is one of measures identified as steps towards valuing and investing in the care economy (Barry and Jennings 2021: 11), and recognising that the care economy comprises both paid and unpaid labour. The design of such measures reflects the value attached to these activities; for example, when it comes to the resources dedicated to ensuring that workers are genuinely able to reconcile care responsibilities with professional life, the balance struck between this aim and the interests of businesses, the duration and other conditions of leave, and the availability of such entitlements to all workers. By the same token, such measures can be a vehicle for *driving forward* the necessary cultural change towards greater recognition of the value of care work, because they seek to disrupt and adjust existing structures to create more space for workers, regardless of gender, to undertake such work alongside their job. The function of a framework such as the Work–Life Balance Directive need not be only to redistribute unpaid care work and accommodate to some extent the needs of workers who perform such work, but also to ensure that workplace norms reflect the fact that this work is an activity of considerable social and economic importance. In other words, such a framework could be one of a range of tools necessary to correct for the fact that current workplace norms are founded on a single male-breadwinner model and the perception that unpaid domestic labour is not as valuable as paid work.

The pandemic provides an opportunity to explore ways of incorporating an understanding of unpaid care labour as a socially and economically valuable activity into social structures, including at the workplace. As it stands at the moment, the Work–Life Balance Directive recognises that care work is an activity that is valuable to individual workers, engaging to a much lesser extent with the ways in which this is important to society.²⁶ Adopting the recognition of the value of care work and corresponding adaptation of workplace norms as one of the stated aims of the Directive – alongside the existing ones – would be of significant symbolic value, but also have implications for its design and the balance struck between various interests. For example, provisions regarding the remuneration of leave entitlements would need to be reconsidered in light of the recognition that unpaid domestic labour has a significant economic value. It would also mean that the balance between business interests and the aims of the Directive may have to be struck differently, for example in relation to qualifying periods or ability to refuse requests for flexible working.

This could lead to a more or less radical departure from the current form of the Directive. A more radical reshaping of current norms could entail provisions for much lengthier, fully remunerated and flexible parental leave, combined with changes to other regulatory frameworks such as that on working time; or indeed a complete re-imagination of the way in which unpaid labour is rewarded and/or reconciled with professional responsibilities, and even the recognition of a

26. The Preamble mentions only the (social) challenge of demographic change and aging population, perhaps implying some recognition of the contribution that unpaid care work makes in this context.

‘right to care’ (Busby 2011). The next section considers some of the more modest changes to the current framework that could flow from this additional objective, or function, that could be the first steps towards a more radical transformation of the framework in due course. Of course, it should be said that this framework constitutes only one small part of the range of measures that could be taken to ensure that care work – paid and unpaid – is properly recognised and valued, including in economic terms (see, for example, Barry and Jennings 2021: 50–58).

4.2 Rethinking the design of work-life balance measures in the Work–Life Balance Directive

In light of this additional rationale, existing critiques of the Work–Life Balance Directive and the concerns highlighted by the pandemic, the remainder of this section suggests how the Directive could be strengthened. Because of space constraints, only some aspects of the Directive are discussed, namely incentives for uptake by fathers (4.2.1), the inclusiveness of the Directive (4.2.2), employer discretion in respect of flexible arrangements (4.2.3), the regulation of telework (4.2.4) and the role of collective bargaining (4.2.5). There are also other aspects that could be revised that are not discussed here, such as the duration of different types of leave and the time-frame for taking up certain entitlements determined by reference to the age of a child. The section considers how the EU legislative framework could be recast, but the arguments made here could apply also to national legislation and collective agreements that can go beyond the scope of the current framework. It should be noted, of course, that entitlements under national law in some Member States or in certain collective agreements already go beyond some aspects of the Work–Life Balance Directive (European Commission 2018; Franklin and Helfferich 2019; Oliveira et al. 2020).

4.2.1 Incentives for uptake by men

One of the central issues highlighted by the pandemic is that there are still significant pressures on women to take up unpaid care work and, conversely, disincentives for men to do so. Some of these pressures are cultural, arising from gender roles and expectations related to care, and some of them are financial. These pressures are reflected in the uptake of family-related leave entitlements by men and women respectively. Low uptake by men has been a persistent problem in the context of paternity and parental leave (European Commission 2018; Eurofound 2019). According to a Eurofound report from 2019, the share of fathers taking parental leave as a percentage of all eligible parents taking such leave was less than 10 per cent in Bulgaria, Croatia, the Czech Republic, Hungary, Slovakia and Spain; only in Sweden was this figure above 40 per cent (Eurofound 2019: 13–14).

There is a risk that family and care-related leave entitlements, if taken up mainly by women, could serve to perpetuate rather than to eliminate gender stereotypes and inequalities in unpaid care (Caracciolo di Torella 2014; Oliveira et al. 2020; Chiericato 2020). Strong incentives for men to take leave are required to ensure real progress towards gender equality (Fredman 2014; Caracciolo

di Torella 2014). The Work–Life Balance Directive is an attempt to introduce such incentives, primarily through provisions on pay and non-transferability of parental leave, meaning that leave entitlements cannot be transferred from one parent to the other. Studies show that financial incentives and non-transferability play a significant role in the uptake of leave by men (Eurofound 2019: 19; OECD 2016; O’Brien 2009). The Directive has been criticised for falling short of what is necessary to increase uptake significantly, however (Chieragato 2020).

First, as Table 1 in section 2.2 sets out, there are no provisions in the Directive on pay for carers’ leave. There are provisions for pay for paternity leave at least at the level of sick pay, possibly subject to periods of previous employment not exceeding six months.²⁷ However, the level of sick pay varies greatly between Member States, from as little as 20 per cent of previous earnings in Malta to 100 per cent in Lithuania in 2018 (European Commission 2018: 5). Only 14 Member States offer sick pay that is considered to be ‘well-paid’, that is at least 66 per cent of previous earnings (European Commission 2018: 5). Only *two* of the four months of parental leave need to be remunerated, whereby the amount of pay ‘shall be set in such a way as to facilitate the take-up of parental leave by both parents’. That is, setting the level of pay is left to the national level, but it is unclear exactly what this formulation requires and the provision may well need to be interpreted by the courts.²⁸ This amount may fall short of being considered as well-paid. The Commission had proposed, by contrast, pay at least at the level of sick pay for the whole duration of all types of leave.

Thus, the Directive either makes no provisions for pay, or the provisions it makes could fall short of providing sufficiently strong financial incentives for fathers. Of course, it still provides very important basic rights to take some time off to care for others without threat of dismissal, with provisions for some payment. This does go some way towards ensuring the protection of basic social rights for all workers and accommodating the needs of those with a ‘double burden’. The lack of adequate pay, however, means that women may take up care entitlements available to both parents, entrenching the existing division of unpaid care work and leading to a loss of earnings and other labour market disadvantages (Caracciolo di Torella 2014: 98; OECD 2007, 2016). It also means that parents and carers on a lower income may not be able to enjoy their rights in practice (Weldon-Johns 2013: 669). This might disproportionately affect workers from certain marginalised communities. It could also be a particular issue for single parents, the great majority of whom are women, and many of whom are at risk of poverty (Weldon-Johns 2013: 669; EIGE 2016). Single parents are likely to be some of the workers most in need of basic leave entitlements in order to be able to reconcile work and care responsibilities.

Sufficiently high levels of pay during leave are necessary if this framework is to make a more significant contribution towards its current gender equality objectives. Incorporating recognition of the value of care work as one of the aims of the Directive would give further force to this claim, because a high level of

²⁷ Article 8(2) Work–Life Balance Directive.

²⁸ As has been the case for certain provisions of an ‘adequate’ allowance under the Pregnant Workers’ Directive 92/85/EEC (see Oliveira et al. 2021: 305).

compensation would effectively reward at least some amount of otherwise unpaid care work and signal strongly that such work is of economic and social value. In light of these aims, provisions on pay for leave under a reformed Directive, or national legislation and collective agreements implementing the current Directive, would ideally constitute 100 per cent of previous earnings.²⁹ Ensuring that leave is at least well-paid – at 66 per cent of previous earnings – would already be a significant step forward, although this still leaves scope for financial disincentives for men.³⁰ In 2018, only 13 Member States offered two-week paternity leave that is well-paid, and 13 offered parental leave that is actually well-paid (European Commission 2018: 3–4). Eighteen Member States offer some form of carers' leave that is paid at least at the level of sick pay,³¹ but sometimes not well-paid (OSE 2018: 5).

A significant question here, of course, is how leave should be paid and by whom. There are variations across Member States, but payments usually come from contributory insurance schemes, financed by employers and sometimes employees, or general taxation (Kosłowski et al. 2020). There is no space here to analyse the variety of schemes, but suffice to say that dedicating resources to financing care-related leave is a question of politics and policy priorities. A strong commitment to achieving gender equality and to recognising the real value of unpaid care work by states and other actors entails significant investment in care-related policies, including leave. Member States and social partners should seek effective funding solutions to ensure that care-related leave measures have genuinely transformative effects, even before the revision of the Directive itself in 2027. Collective agreements are, in particular, a crucial tool for ensuring more generous benefits for workers, with many examples of agreements across European countries and sectors that ensure higher pay across different types of leave (Franklin and Helfferich 2019).³²

Second, the Directive provides that only two of the four months of parental leave must be non-transferrable – that is, each parent must take at least two months of leave or lose their entitlement – in order to encourage uptake by fathers. This means that, possibly as a result of the kinds of cultural and financial pressures outlined above, a father could transfer two months of this entitlement to his female partner. The possibility of transferrable leave allows for a disparity in the duration of parental leave as between men and women,³³ and has been identified as a key factor undermining fathers' participation in family care (Weldon-Johns 2013: 672). To minimise the pressure that many women might feel to take up their

29. Caps on payments could be permitted in respect of high-earning workers.

30. The EMPL Committee had suggested a compensation level of at least 78 per cent of previous earnings across all types of leave (European Parliament 2018).

31. In Belgium there is paid carers' leave only for the public sector; another four Member States offer paid leave in narrow circumstances (European Social Observatory 2018: 5, 25).

32. The report by Franklin and Helfferich (2019) refers to examples of good practices in collective agreements in Finland, France, Germany, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Spain and Sweden.

33. There are also significant disparities in EU standards on paternity leave (two weeks) and maternity leave (14 weeks), and an extension of paternity leave would be desirable to encourage greater involvement by fathers. For example, Spain has increased the duration of paternity and maternity leave to 16 weeks each (Oliveira et al. 2020: 316).

male partner's share of transferrable leave, it is desirable that both women and men have equal entitlements that are non-transferable and that these should be as large as possible (Foubert 2017: 260). As things stood in most Member States before the Directive, parental leave entitlements were generally already longer than four months, but could be fully transferred between parents (European Commission 2018). The Commission proposal would have at least ensured that all four months of leave be non-transferrable, though disparities at Member State level would still be possible, given that the Directive sets minimum standards.

One of the objections to non-transferability of leave is that it interferes with choice within the family, and that the family as a whole might not be able to benefit from the full amount of leave. Non-transferability could be an issue where leave is not (adequately) remunerated, and where one parent earns significantly more than the other. In this case, the household might not be able to afford the loss of income which would result if the higher-earning parent – more likely a man – were to take parental leave. This could be particularly problematic for lower-income households. However, this is all the more reason to ensure that leave is adequately remunerated: non-transferability and adequate pay must go hand in hand (Oliveira et al. 2021: 305).

Furthermore, family 'choice' over which parent takes more or most of the leave can be strongly influenced by cultural norms and gender stereotypes. The results of the Covid-19 pandemic surveys discussed above, some of which indicate regressive tendencies regarding the distribution of care work, suggest that assumptions about who will take up the bulk of care responsibilities run deep. Ensuring greater involvement by men must *necessarily* reduce the scope for choices driven by current assumptions. That is, interference with choice is inevitable to some extent if the measures are to have significant transformative effects. By the same token, non-transferability can increase (free) choice for some parents who feel under pressure to take more leave – for mothers – or not to take any or less leave (for fathers) because of gendered stereotypes and expectations within society, the workplace and the family.

There is some tension with regard to the question of transferability between the aim of ensuring that workers who *now* bear a greater share of care responsibilities, generally women, are able to take the greatest amount of time possible off work to fulfil them, and the more transformative aim of ensuring an equal distribution of care work between men and women *in the future*. This tension is difficult to resolve, but if the goal is to eliminate women's labour market disadvantages in the longer term, a transformative approach is essential. Ensuring that all parental leave provided for under the Directive is non-transferrable and (at a minimum) well-paid would be a first step, and could be accompanied by encouragement for Member States to consider whether any additional leave arrangements entrench the existing distribution of care work and to shift to an approach focused on increasing involvement by fathers through a larger share of non-transferrable entitlements.

Pay and transferability of leave are not the only measures that can be taken to increase uptake by men. Others include, for example, the possibility of taking leave in flexible ways (Eurofound 2019: 20), which workers can request under the Directive.³⁴ The full range of measures is not discussed here for reasons of space. The general argument, however, is that – particularly against the background of the pandemic and its impacts on women – the framework must put much greater emphasis on such incentives, backed by the necessary resources, to signal more clearly that care work is an important and valuable activity in which all workers should genuinely be able to engage, and which is not primarily the responsibility of women.

4.2.2 Inclusiveness and intersectionality

The Directive’s aim of promoting gender equality, guaranteeing certain basic social rights and, as suggested above, ensuring that the value of unpaid care work is reflected in legal norms related to the workplace imply that in principle *all* workers with care responsibilities should be able to benefit. That is, the framework should be as inclusive as possible. However, another criticism advanced in respect of the Work–Life Balance Directive is that it does not pay sufficient regard to the different needs and positions of workers across family types and occupational statuses, meaning that certain workers are not covered by the Directive, or do not benefit from it to the extent that they need (Chiericato 2020: 68). In this connection, the pandemic has underscored the fact that certain workers with care responsibilities, and certain women workers, have a much greater workload in the home than others; and that workers in precarious working arrangements tend to fall between the cracks of important worker protections.

There are some attempts in the Work–Life Balance Directive to accommodate different situations and family structures, though these are limited (Chiericato 2020: 71).³⁵ For example, paternity leave extends to an ‘equivalent second parent’, recognising the entitlements of adoptive parents. This could be the same-sex partner of the mother, though only if they are recognised as a second parent under national law. Recital 37 of the Preamble encourages Member States to assess whether arrangements should ‘be adapted to special needs, such as those of single parents, parents with a disability or parents of children with a disability or long-term illness, adoptive parents’. Article 5(8) imposes an obligation on Member States to assess this in respect of the latter three categories, but not in respect of single parents.

In general, however, the entitlements under the Directive assume a traditional two-parent family, not recognising special needs that may arise from different family structures, such as reconstituted or rainbow families (Foubert 2017: 250; Chiericato 2020: 71). Notable is the absence of special provisions for single parents, the majority of whom are women, who are mentioned only in

34. Article 5(6).

35. The EU legal frameworks on work–life balance pre-dating the Work–Life Balance Directive have been criticised for the same reason (Foubert 2017).

the Recital cited above (Chieragato 2020: 72). Single parents could benefit, for example, from a longer period of leave that is adequately remunerated; or a possibility to transfer leave to another person, such as a partner who is not an adoptive parent, another family member or friend who takes care of the child, and/or separate additional leave entitlements for this person. Such measures would recognise that care for children and other dependants is a social good that need not be the sole responsibility of what is traditionally understood as the ‘core’ family, and could have positive effects on the well-being of single parents and their participation in the labour market. Of course, such measures should not be confined to single parents where they can benefit workers in other ‘non-traditional’ family structures, too.

Furthermore, while it shows some regard for the special needs of parents with disabilities and parents of children with disabilities or long-term illness, it does not *guarantee* special entitlements for these groups. In this respect also the Directive itself falls short of ensuring that certain groups of workers are able to reconcile paid work with a particularly high demand for domestic labour, and potentially the need for additional time and support to perform this labour. It is also the case that for some workers, such as those in non-standard and flexible employment, ensuring a better work–life balance and ability to engage in unpaid care work might require improving the predictability of working time, rather than further flexibility (Chieragato 2020: 79). Another issue that has been highlighted is the fact that workers with care responsibilities towards adults may have different needs from those caring for children, and that on the whole much less emphasis has been placed on this type of care (Caracciolo di Torella 2017: 194; Hiessl 2020). The pandemic has underscored also the importance and extent of unpaid care for adults, the demand for which is likely to increase in Europe in the context of demographic ageing.

Eligibility criteria represent a second issue touching on the inclusiveness of the legislation (Chieragato 2020: 72). The Directive applies to workers who have an employment contract or employment relationship ‘as defined by law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice’ (Article 2). This may exclude certain types non-standard workers, such as platform workers, who may not be considered to have an employment contract or relationship for the purposes of national and EU law (Chieragato 2020; Freedland and Kountouris 2011; Risak and Dullinger 2018; De Stefano et al. 2021).³⁶ Furthermore, the Directive allows Member States to determine that entitlements to parental leave and flexible working arrangements are available only until a child is eight years old (although Member States can set this at a higher level). This excludes a wide group of workers with still significant care responsibilities.

36. Although in many Member States there are some entitlements to parental leave financial benefits for self-employed workers (EIGE 2020: 13).

It also allows for Member States to set qualifying periods. Member States may make the right to a payment for paternity leave subject to periods of previous employment not exceeding six months;³⁷ the right to request flexible working arrangements subject to a period of work or length of service not exceeding six months,³⁸ and a period not exceeding one year for parental leave.³⁹ Such qualifying periods, particularly in the case of parental leave, may exclude a large number of workers from accessing rights, either because they have not yet worked for long enough, or because they work on temporary contracts, take breaks between temporary contracts, or are engaged in temporary employment for multiple employers (EIGE 2020; EIGE 2021a; Chiericato 2020: 74). Qualifying periods are in place in many Member States already, and many of those will not be affected by the provisions of the Directive. For example, in 2016 most Member States had qualifying periods for parental leave, and in at least 11 states this period was twelve months or more (EIGE 2020: 13–15). EIGE estimates that in 2016, 10 per cent of employed women and 12 per cent of employed men were not eligible for parental leave across the (then) EU28, owing to requirements regarding type of employment, length of employment and type of relationship, with significant differences across Member States and across different ages, levels of education and sectors of employment (EIGE 2020: 21).⁴⁰ Because it leaves a certain discretion to Member States in respect of eligibility criteria, it is unclear to what extent the Work–Life Balance Directive will ensure that more workers are able to access the relevant entitlements.

Access to the measures provided for under the Work–Life Balance Directive may be particularly difficult for workers ‘at the intersection of various axes of inequality’ (Chiericato 2020: 76). As discussed above, women make up a majority of precarious and atypical jobs, including temporary jobs, that may not meet eligibility criteria set by Member States. Other groups, such as migrant workers and young workers, also tend to be overrepresented among non-standard jobs (ILO 2016: 117). In this respect also, the pandemic has served as a reminder of the ways in which inequalities intersect to deepen existing vulnerabilities. Overall, the lack of accommodation of special needs, different family structures and eligibility criteria could particularly disadvantage certain workers because of their gender, age, sexual orientation, ethnicity, single parent or migrant status, as well as other axes of inequality.

37. Article 8(2).

38. Article 9(4).

39. Article 5(4). In the case of successive fixed-term contracts, the sum of those contracts are taken into account in calculating the qualifying period.

40. For example, in nine of the studied countries, ineligibility rates were highest for the lowest-educated (EIGE 2020: 22). In Greece, over 90 per cent of employed men and over 70 per cent of employed women were ineligible for parental leave according to figures for 2015–2017, where the gender gap in mean time spent on unpaid care work is almost 40 percentage points, one of the highest in Europe (EIGE 2021a: 36).

The implementation and future reform of the Directive provide an opportunity to take an inclusive, intersectional approach to work–life balance measures, which has been notably absent from the work–life balance discourse (Chiericato 2020: 78; Özbilgin et al. 2011). This might involve a reconsideration of the scope of the Directive and eligibility requirements to ensure that a wider pool of parents and carers are able to access much-needed rights, including non-standard workers; that extended or additional entitlements are available for groups of workers with particular needs⁴¹ and those with childcare responsibilities who are currently not recognised as parents; and that workers can also ensure greater predictability of working hours (Chiericato 2020: 79). Such changes would better reflect the objective of ensuring gender equality and basic social rights for all workers, and the fact that care is a socially valuable activity in which all workers should be able to engage.

4.2.3 Requests for flexible arrangements

Another issue is that the Directive leaves scope for employers to determine whether workers are able to take advantage of its provisions on flexible working arrangements and flexible leave. Carers and parents can *request* flexible working arrangements, which include remote working arrangements, flexible working schedules or reduced working hours.⁴² These elements – duration, location and scheduling of work – play a significant role in achieving work–life balance (Eurofound 2017). Particularly in the post-pandemic world, this provision could serve as an important tool enabling parents and carers, who have found that telework contributes to a better work–life balance for them, to continue working remotely in some form (Waddington and Bell 2021). However, employers are obliged only to consider such requests, taking into account their own interests, as well as those of the worker, and to provide reasons for any refusal. There is no obligation to grant a request (Waddington and Bell 2021: 4).⁴³ In other words, the legislation does not create a strong and enforceable legal entitlement (Caracciolo di Torella 2017: 193). The same applies to the right of workers to request to take parental leave in flexible ways, which can increase uptake by fathers (OECD 2007; 2016).⁴⁴

The Directive does not specify what reasons employers can legitimately advance in cases of refusal. It is unclear whether *any* justification could be regarded as insufficient under the Directive (Waddington and Bell 2021: 11), and to what extent the obligation to ‘take into account’ employees’ interests can limit employers’ discretion to refuse a request. It may constitute only a fairly minimal threshold.

41. These need not be limited to the ones identified here.

42. Article 9(1), Article 3(1)(f).

43. Article 9(2).

44. Article 5(6); aside from this, Article 5(5) provides for a possibility for Member States to allow employers to postpone leave where taking leave at the requested time would seriously disrupt the good functioning of the employer.

Depending on how certain aspects of this provision are interpreted,⁴⁵ workers may struggle to enforce this right in the face of an unwilling employer. The Directive, furthermore, does not prescribe a particular procedure that an employer should follow (Waddington and Bell 2021: 5). Overall, employers have significant control over whether a worker can take advantage of these provisions, which weakens these rights from a worker perspective (Anderson 2003: 41; Caracciolo di Torella 2017: 193). Flexible working arrangements are considered most supportive to work–life balance when *workers* can exercise autonomy and control (EIGE 2019: 19).

This formulation of the right seeks to address the concern that the legislation would impose additional burdens on employers (see, for example, BusinessEurope 2017).⁴⁶ It is arguable that such interests should be taken into account in the design of the legislation, especially if the ‘business case’ is taken as one justification of work–life balance measures. Such broad discretion, however, puts significant emphasis on employer interests at the expense of the framework’s gender equality goals. A more balanced approach would at least ensure that requests can be refused only for a sufficiently weighty reason (Waddington and Bell 2021: 20). For example, the EMPL Committee suggested that employers should be able to refuse such a request only if it would ‘seriously disrupt the proper functioning of the establishment, or seriously and negatively impact on the business of the employer’ (European Parliament 2018). That is, employer interests can take precedence only in limited circumstances, for serious business reasons. Additional procedural requirements could ensure that a decision is properly justified and reviewable.⁴⁷ On the other hand, formulating the provision as a right *to* flexible working arrangements or flexible parental leave, subject to certain weighty employer interests, would more strongly emphasise the social rights rationale of the Directive and the importance attached to the ability of parents and carers to engage in care work. The latter option, in particular, would be in line with the goal of promoting recognition of the value of unpaid care work.

It should be noted, however, that the availability of flexible working also harbours risks for gender equality. Women are more likely to take advantage of this right, with resulting loss of income from reduced working hours or challenges arising from remote work, as outlined in section 3. These negative aspects deserve attention too, as argued below in relation to telework. Furthermore, the ability to request flexible working arrangements is a way of accommodating, to some extent, care responsibilities around existing structures founded on a male-breadwinner model, rather than to change this paradigm (Waddington and Bell 2021: 12). In the longer run, shifting away from this model will require more profound changes, such as the reduction of working time, as highlighted in section 5.

45. Waddington and Bell argue that the CJEU may construe restrictions on the right narrowly if it considers it to be an articulation of a right under the EU Charter of Fundamental Rights (Waddington and Bell 2021: 14).

46. Like other features of the Directive, such as the possibility for qualifying periods.

47. For example, in the Netherlands both procedural requirements and reasons for refusal are more circumscribed (Waddington and Bell 2021: 15).

4.2.4 Telework and the Work–Life Balance Directive

The use of telework arrangements is likely to increase in the future, and the work–life balance discourse and related measures need to engage more deeply with both their positive and negative implications. A future revision of the Work–Life Balance Directive should therefore also consider whether and how this framework can be used to promote the positive aspects of telework for workers and to protect them against negative repercussions. Currently, the only relevant provision is the right to request flexible working arrangements, including remote working arrangements.

The topic is a complex one, however, and reaches beyond questions related to the work–life balance of parents and carers and gender equality. These questions are part of a broader, more general discourse on telework. The 2002 Framework Agreement on Telework between the European social partners ‘aims at establishing a general framework at the European level to be implemented by the members of the signatory parties’. It addresses issues such as the voluntary character of telework, privacy, health and safety, and collective rights. The pandemic has prompted renewed discussion among social partners and law-makers regarding the conditions under which telework should be available, and how to protect workers from negative effects. Steps have been taken to address both of these issues through collective agreements at different levels, and legislative action (Eurofound 2020a; Eurofound 2021). Existing EU legal instruments such as the Framework Directive on Safety and Health at Work, the Working Time Directive, the Directive on Transparent and Predictable Working Conditions, as well as the Work–Life Balance Directive have been identified as relevant to telework and other ICT-based work, though none of them deal specifically with this topic (Eurofound 2020a).

A prominent feature of this discussion has been the ‘right to disconnect’. This can be described as ‘the right for workers to switch off their technological devices after work without facing consequences for not replying to e-mails, phone calls or text messages’ (Eurofound 2020a). Such a right exists in some Member States already, such as France. In January 2021 the European Parliament adopted a resolution calling on the Commission ‘to present a legislative framework with a view to establishing minimum requirements for remote work’,⁴⁸ and recommending a text for a proposal on a Directive on the right to disconnect (European Parliament 2021). This text states that the proposed Directive is intended to particularise and complement the abovementioned EU instruments, including the Work–Life Balance Directive (proposed Article 1(2)). The Commission’s Action Plan on the EPSR from March 2021 envisages a follow-up of this legislative initiative (European Commission 2021a), but no concrete measures have emerged so far.

Given its scope and aims, the Work–Life Balance Directive itself is not the most appropriate instrument to regulate the complex issue of telework in general, and this issue is better dealt with in a comprehensive way by specific measures designed

48. Paragraph 14.

for this purpose. These should pay specific attention to gender equality concerns, the specific needs of workers with care responsibilities, as well as other equality-related concerns and issues raised by intersecting inequalities (EESC 2021).⁴⁹ However, the Work–Life Balance Directive could still have a role to play in the context of ‘parents and carers’. Particularly if no specific legislative instrument emerges at EU level, a recast Work–Life Balance Directive could make provision for additional rights, such as a right to disconnect. It could also introduce certain obligations on employers related to the use of telework arrangements in order to protect workers from adverse effects, such as the provision of equipment, measures to prevent workers from feeling isolated and ensuring equal access to training opportunities, and other provisions included in the 2002 Framework Agreement. This must be combined with a more strongly formulated right to (request) flexible working arrangements, because otherwise additional obligations could discourage employers from granting requests. If an EU-legislative framework on telework and/or the right to disconnect does emerge, a revised Work–Life Balance Directive could reinforce and, if necessary, supplement this framework, with the particular needs of parents and carers in mind. In any event, the Work–Life Balance Directive can act as a tool to address some aspects of the challenges posed by telework, as a part of a broader framework.

4.2.5 The role of collective bargaining

Even in the amended form proposed, the Work–Life Balance Directive sets only minimum EU standards, which Member States and social partners are free to build upon. The role of trade unions and collective bargaining is crucial to promoting gender equality, including through work–life balance measures (Pillinger 2014; Rubery and Koukidiaki 2016; Pillinger and Wintour 2018; Franklin and Helfferich 2019). There is evidence of good union practices at sectoral and company level regarding work–life balance measures in many EU Member States, spanning flexible working arrangements, paternity leave, childcare, long-term care and parental leave, including measures to increase uptake by fathers (Pillinger 2014; Franklin and Helfferich 2019). Collective agreements are key to providing additional rights that take into account the specific conditions in a sector or workplace, and ensuring that existing rights are properly implemented (Franklin and Helfferich 2019). Among the key preconditions for collective bargaining to promote gender equality are strong trade unions, broad collective bargaining coverage and centralised collective bargaining, but also government support for collective bargaining and awareness of gender equality issues by the social partners (Pillinger 2014; Rubery and Koukidiaki 2016; Pillinger and Wintour 2018).

The Work–Life Balance Directive currently recognises the role of collective agreements in implementing aspects of the Directive and laying down conditions for leave and flexible working arrangements,⁵⁰ but does not oblige Member States to *promote* collective bargaining on work–life balance measures as such. This

49. Indeed, gender mainstreaming could be required of an EU instrument on telework, in accordance with Articles 8 and 10 of the Treaty on the Functioning of the EU.

50. For example, Article 5, Article 8.

would entail active steps by Member States to encourage collective bargaining, including capacity-building and awareness-raising among social partners. Such an obligation, or even a *right* of trade unions to engage in collective bargaining, could strengthen the potential of collective agreements as a means to promoting gender equality beyond the statutory floor of rights, in a way that is better adapted to diverse workplaces. This is would be particularly important in states where collective bargaining is weak.

Discussions have recently commenced on a provision to promote collective bargaining in the context of gender equality in relation to equal pay and the European Commission proposal for a Directive on pay transparency and enforcement mechanisms from March 2021 (European Commission 2021b). The Commission Recommendation on pay transparency from 2014 suggests that Member States ensure that equal pay is discussed at the appropriate level of collective bargaining (European Commission 2014). This has, notably, not made it into the Commission's proposal, but it has been argued that stronger provisions on promoting collective bargaining are necessary, including a right to bargain collectively on equal pay (ETUC 2021; Arabadjieva 2021). The Commission proposal for a Directive on adequate minimum wages, on the other hand, does include provisions on promoting collective bargaining on wage setting (European Commission 2020b).⁵¹ Both of these proposals are still making their way through the legislative process at the time of writing. In any event, discussions on including an obligation to promote collective bargaining under these initiatives could pave the way also to including such an obligation under a recast Work–Life Balance Directive. This could be a springboard for trade unions to secure more extensive rights for workers.

51. Proposed Article 4.

5. Looking beyond the scope of the Work–Life Balance Directive

These are only some of the changes necessary to improve the effectiveness of the Work–Life Balance Directive in promoting gender equality and equal distribution of care work. Much more will be needed to achieve these goals, and efforts must extend far beyond the scope of this Directive. Gender inequalities, including in respect of unpaid care work, are underpinned by many different factors, and an appropriate policy response requires a comprehensive set of legal and policy measures. Here I set out some of the main measures beyond the Work–Life Balance Directive necessary to promote an equal uptake of care responsibilities, which should be seen as related and complementary to the Directive. The pandemic is an occasion to revisit and strengthen policy and legal frameworks in these fields, too.

First, the provision of adequate and accessible care services is key to ensuring that workers with care responsibilities are able to participate in the labour market,⁵² and its contribution to ensuring gender equality cannot be emphasised enough (EIGE 2019; European Commission 2020a; EIGE 2021a). Investment in care and social infrastructure, including the improvement of pay and other conditions of care workers is essential to this end. More generally, care systems are indispensable to a resilient society and economy, and care work – and care workers – will become even more crucial in the future, in the context of an aging population and a changing climate. The care economy is one of the key topics for reflection post-pandemic, with calls to place this economy centrally within the strategic planning process by the EU and Member States and to ensure that related funding constitutes 30 per cent of expenditure under the EU Recovery Plan for Europe (Barry and Jennings 2021). A ‘European care strategy’ has appeared as an item on the European Commission’s agenda for the third quarter of 2022.

Second, equal distribution of unpaid care work between men and women requires a more profound reorganisation of working time in general. Working time regulation, such as the EU Working Time Directive, is an essential part of work–life balance and gender equality strategies (Zbyszewska 2016: 334). A shift away from the male-breadwinner model, which relies on the unpaid work of women, and the recognition that unpaid care work is as valuable as paid work would require that working time norms be designed on the assumption that *all* workers engage in domestic labour (Fudge 2014: 20). This could imply a ‘wide-ranging restructuring of the working day to permit more flexible balancing of paid and unpaid work for both men and women’ (Fredman 2014: 458), as well

⁵² See Recital 12 Work–Life Balance Directive.

as reduced working time limits. Aside from gender equality, such changes would contribute to creating more socially and ecologically sustainable working patterns (Zbyszewska 2016; Knight et al. 2013). Indeed, a growing number of scholars are arguing that working time reduction is an essential part of ensuring sustainable consumption patterns and decarbonisation (Knight et al. 2013; Pullinger 2014; Fitzgerald et al. 2018). A future revision of the Working Time Directive, which has remained unamended since 2003, would offer an opportunity to strengthen efforts to promote gender equality and sustainability objectives.

Third, a comprehensive set of measures to promote equal pay between men and women must accompany work–life balance policies, given the role of pay inequalities in incentivising women to take up a greater share of care work. The Commission has set out a number of measures in this regard in its Gender Equality Strategy 2020–2025 – aimed at tackling horizontal and vertical gender segregation, pay discrimination, availability of childcare, among other things – as part of a holistic approach to gender equality (European Commission 2020a). The proposal for a Directive on pay transparency is a key legislative initiative in this context, intended to address long-standing issues of implementation and enforcement of the EU equal pay framework, set out in the Gender Equality Directive 2006/54/EC (European Commission 2021b). Among other things, the proposal contains obligations on employers to provide workers with information on pay levels, broken down by gender, which may enable them to identify pay discrimination; to report on pay gaps across the organisation and categories of workers and conduct joint pay assessments, for employers with more than 250 workers; and provisions on enforcement – such as on compensation, legal costs and limitation periods – aimed at reducing obstacles to bringing an equal pay claim. While an important step in the right direction, however, the proposal has been criticised for leaving out a large number of employers from the scope of some obligations and focusing much more on individual pay claims rather than collective solutions to pay inequalities (Arabadjieva 2021; ETUC 2021; European Women’s Lobby 2021). It remains to be seen whether some of these concerns will be addressed in the legislative process.

6. Conclusion

It is clear that the pandemic and the resulting economic recession will have negative repercussions on women and gender equality, some of them lasting for many years to come. The pandemic has brought into the spotlight pre-existing systemic inequalities, including the fact that women perform a greater share of unpaid care work in the home, leading to lower participation in the labour market, employment in precarious jobs, lower pay and pensions. All of these pervasive issues are already well-documented, just like many other issues that have been much talked about during the pandemic, such as environmental degradation, underfunded and dysfunctional public services, lack of welfare provision for the most vulnerable, proliferation of precarious forms of work and staggering social inequalities, to name only a few. The pandemic has acted as a magnifying glass, making the cracks in current economic and social models so obvious that they can no longer be ignored. This presents an opportunity for a real paradigm shift to a society that values welfare, equality and sustainability above economic growth.

Against this background, this paper has proposed how certain aspects of the Work–Life Balance Directive could be reshaped in the future – or how they could be developed by Member States and social partners – in order to make a more significant contribution to the Directive’s gender equality aims. These proposals are by no means radical. On the contrary, they should be seen as only small steps towards a more profound rethinking of the organisation of paid work around unpaid care responsibilities, and a cultural shift towards greater recognition of the value of care work and away from the perception that such work is primarily the responsibility of women. Given the current state of affairs, however, even changes such as ensuring that leave is at least well-paid, that a larger proportion of leave is non-transferrable, or that the legislation is broad in coverage could go a long way towards ensuring that workers can genuinely enjoy their rights, and that there are greater incentives for men to take up leave entitlements. Such changes should only be the beginning of an on-going process of reshaping legal and social norms relating to the workplace to reflect the fact that all workers, regardless of gender, can participate in care.

The Work–Life Balance Directive is just one part of the broader EU gender equality policy framework. As emphasised throughout the paper, other measures are necessary to promote gender equality effectively at the same time, including investment in care services, tackling inequalities in pay, gender stereotypes and discrimination, fighting gender-based violence and so on. The regulation of telework and working time has important gender equality dimensions, too. There is currently significant momentum behind demands to accelerate progress

towards gender equality, and the topic has gained the attention of policymakers. The recovery process is an opportunity for governments and social partners to translate this into concrete actions and to make a deeper commitment to addressing structural disadvantages facing women and other vulnerable groups.

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