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Balancing Work and Life: New Developments in the Field of Legal Protection of Workers

A munka és a magánélet egyensúlya: Új fejlemények a munkavállalók jogvédelme terén

ABSTRACT

The present study deals with the current labour law questions of balancing work and private life. The topicality of the study is supported by Directive (EU) 2019/1158 which, built on the existing legislative basis, brings several novelties in this regulative area refreshing the key elements of the criteria of equal employment referring to the employees raising children. The researched regulation fits into the high level, socially motivated; worker-protection Directive designated by the European Pillar of Social Rights, consequently, this aspect also plays a role in elaboration. In my analysis, I concentrate on the regulative background, subject of the new Directive, as well as its connection to fundamental social rights and the new norms describing the potentially strengthening legal protection of workers. I draw conclusions based on their synthesis about the predictable future effects of the new regulation.

Keywords: equal employment, fundamental labour rights, labour market, parental leave, EU social policy, work-life balance

ABSZTRAKT

Jelen tanulmány a munka és a magánélet összehangolásának időszerű munkajogi kérdéseivel foglalkozik. A vizsgálat aktualitását az (EU) 2019/1158 irányelv adja, amely meglévő jogalkotási alapokra építkezve számos kérdésben jelentős újdonságot hoz e szabályozási területen, felfrissítve a gyermeket nevelő munkavállalókat érintő egyenlő foglalkoztatási kritériumrendszer kulcselemeit. A feldolgozott szabályozás illeszkedik a Szociális Jogok Európai Pillére által kijelölt magas szintű szociális, munkavállalói jogvédelmi irányvonalba, így a kidolgozásban e szempont is szerepet kap. Elemzésemben az új irányelv szabályozási hátterére, tárgyára, alapjogi kötéssére és a potenciálisan megerősödő munkavállalói jogvédelmet körülíró újabb irányelvi normákra koncentrálok. Ezek szintézise alapján pedig következtetéseket vonok le az új szabályozás prognosztizálható jövőbeli hatásaira nézve.

Kulcsszavak: uniós szociálpolitika, egyenlő foglalkoztatás, munka és magánélet egyensúlya, munkaerőpiac, munkavállalók alapvető jogai, szülői szabadság

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The social policy or more specifically, the labour law of the European Union (hereinafter: EU) is going through numerous changes these days, and there are further new developments expected in the next several years. Both the issues regulated and those reviewed include several recent and older dilemmas from the field of labour law, since the reform processes can be organized around the European Pillar of Social Rights (Interinstitutional Proclamation on the European Pillar of Social Rights [2017] OJ C/428, hereinafter: EPSR)¹. From among the rules modernising labour law and elevating the protection of workers' rights to a higher level, we must highlight Directive (EU) 2019/1158 of the Parliament and of the Council (hereinafter: Directive),² forming as the basis of the present analysis, which brings substantive novelty in terms of the establishment and maintenance of the balance between work and family (private) life, both on the level of fundamental rights and specific labour law standards.³ Although the Directive itself, based solely on legislative methodology, may not have a sufficient impact in the future on the reform processes of EU's social policy and, through them, on raising the level of protection provided by labour and social law in the Member States, I consider it important that this Directive should be the subject of independent research and analysis. The explanation of this duality lies in the fact that the Directive itself is based on the "regular" equal treatment rules,⁴ which have many precedents,⁵ at least to the extent that its starting point is the prohibition of gender-based discrimination in the labour market,⁶ as well as the promotion of parental status as a protected characteristic.⁷ In other words, the new legislation, in fact, seems to be "old-new" not only because we can detect an actual foreshadowing of the Directive, but also because the subject of the legislation is also reflected in other areas of anti-discrimination law in the EU and the Member States as a fundamental legal value in EU law.⁸

In the next few pages, I will attempt to analyse the fundamental context of the new Directive with the already existing forms of legal protection of workers. It is important to outline novelties, and to draw conclusions on the extent to which this legislative solution can really be one of the cornerstones of the social protection of workers in

¹ The European Pillar of Social Rights <https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-epsr-social-rights/european-epsr-social-rights-20-principles_hu> accessed 06 September 2020.

² European Parliament and Council Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79.

³ The new legislation also implements a comprehensive reform of Council Directive (EU) 2010/18 on implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, on certain areas of the prohibition of discrimination based on gender [2010] OJ L68/13.

⁴ See the fundamental connections regarding equal treatment based on sex: Mark Bell, 'Equality and the European Constitution' (2004) *Industrial Law Journal* 242–245.

⁵ Recs 11 and 44 in the preamble to Directive (EU) 2019/1158.

⁶ Róbert Román, 'A szabadság szabályozása a magyar individuális munkajogban és Európában' (2021) *Erdélyi Jogélet* 153–154. (doi.org/10.47745/ERJOG.2020.04.11)

⁷ Arts 1 and 11 in the preamble to Directive (EU) 2019/1158.

⁸ Stefan Kadelbach, 'Are Equality and Non-Discrimination Part of the EU's Constitutional Identity?' in Thomas Giegerich (ed.) *The European Union as Protector of and Promoter of Equality* (Springer 2020) 13–15.

European and national laws in the coming years. Although, this reform introduced by the Directive essentially affects only a specific group of workers – those with families – I believe that the issues covered therein can have a major impact not only on the requirement of equal treatment, but also on a number of other areas that generally determine the status of workers. Therefore, in this analysis, certain fundamental rights of a social nature confirming the legal status of workers are also included. Overall, the aim of the study is primarily to place the new Directive in the EPSR and CFREU's fundamental rights-social policy coordinate system and in the scientific discourse on work-life balance in general. In this respect, the processing mainly deals with regulation, its background and its legal policy objectives, complemented by the secondary purpose of the paper. The latter is based on an outline of the new provisions and on the hypothesis that work-life balance and the improvement of the employment and labour market situation of parents in general, and fathers in particular, and parents and carers are the most unequal with regards to treatment through the further development of standards based on the most basic terms of employment (flexibility of working conditions, probationary period, system of paid leaves, etc.). In view of this, the research merely shows fragments of the general criteria for equal employment, since I presume that it does not seem useful to regard the new legislation as a simple step of development of the prohibition of gender discrimination. In addition, the central idea of the research is to capture the true novelty of the new legislation and to parallel it with the “now or never” spirit of the EPSR⁹ in the scope of the timely and meaningful reforms in EU social policy.

1. Legislative context – For the protection of workers?

The legislation's purpose and its connections with fundamental rights ultimately indicates such legislative intention that, taking advantage of its unique and novel nature, wishes to put some of the underlying questions of non-discrimination and equal opportunities in the labour market on new foundations. In the following, I will briefly review the regulatory basis and objectives of the new worker-focused legislation.

1.1. *The power of novelty (?)*

Naturally, the new foundations are only partially new.¹⁰ However, the fact itself that parental status – especially with regard to fathers' status under labour law – is brought by the new legislative package into the foreground is certainly indicative. In other words, the novelty and autonomy of the legislation – using a specific analogy, similarly to the EPSR itself – can best be captured by the fact that it deals with such

⁹ Frank Hendrickx, 'Editorial: The European pillar of social rights – Interesting times ahead' (2017) *European Labour Law Journal* 191, 192. (doi.org/10.1177/2031952517725595)

¹⁰ Sára Hungler and Ágnes Kende, 'Nők a család- és foglalkoztatáspolitikai keresztútján' (2019) 2 *Pro Futuro* 100, 109–110. (doi.org/10.26521/Profuturo/1/2019/3881)

issues from a new point of view that protects workers' rights more firmly than had been the case before 2017-2020 in the concepts of EU law and in national legislation as well. At the same time, the new norms also show a change in grades and methodologies. The legislature wants to create a new ground for these labour law norms, thereby strengthen the rights that can be granted to workers in this way. The need for a higher level of protection of workers' rights and a strong consideration of social aspects, which are formulated in the EPSR, play a crucial role in this.¹¹

Furthermore, it is difficult to answer the question as to what extent the present Directive can substantially bring anything new regarding the criteria of equal employment, particularly if we take into account the highly extensive subject of the legislation. However, in my view, in addition to the symbolic importance of the Directive, it can also encourage Member States to take new approaches to equal opportunity in the labour market on a number of issues, but it can do so in the coming years without predominantly approaching from the direction of the already established system of equal treatment. Conversely, by focusing specifically on the gender-neutral situation in which equal treatment appears axiomatically, in the background only, we can expect significant development in the protection of workers' rights. Therefore, some of the newly safeguarded rights may (also) affect traditional labour law issues, and what is more, by way of strengthening the paradigm of the protection of social rights. The new norms rather seem much more promising in the respect that, in line with the spirit of the EPSR, the legislature not only seeks to strengthen a given area with a labour law focus, but also generally seeks to strengthen social security expectations in line with the holistic approach provided by the EPSR and the CFREU in this area.

1.2. Prohibition of labour market discrimination based on sex and parenthood as a guiding principle

It is necessary to mention that although, in the field of non-discrimination on the basis of gender and equal opportunities for women in the labour market, Directive 2006/54/EC^{12,13} already regulate the labour law and social aspects of the field in an expansive way,¹⁴ yet the creation of the 2019 Directive concluded a long process in the focus of which there are still the labour market and employment related aspects

¹¹ Björn Hacker, 'A European Social Semester? The European Pillar of Social Rights in Practice' (2019) 5–6, 14–15. European Trade Union Institute, Working Paper, Brussels (doi.org/10.2139/ssrn.3402869) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3402869> accessed 9 December 2020.

¹² European Parliament and Council Directive (EC) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, as well as subsequent legislative acts supplementing it [2006] OJ L204/23.

¹³ With reference to European Parliament and Council Directive (EU) 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1 and to Council Directive (EU) 2010/18.

¹⁴ This legislation is complemented by the European social security coordination regulation, which provides, *inter alia*, for social benefits related to maternity and marital status in the event of the movement of workers between Member States. In more detail, see Frans Pennings, *European Social Security Law* (6th edn, Intersentia 2015) 253–263.

of equal opportunities on the basis of gender. At the same time, it does not explicitly focus on differences between genders and potential discrimination, but on equality that can actually be accomplished between men and women. A reinforced regulation of work-life balance and its handling as a social priority are the result of a process taking nearly two years,¹⁵ but if we take into account previous legislative results, we can talk about a decade-long development.¹⁶ However, the relevant norms and laws still seem to be “scattered across” primary and secondary EU law (CFREU, previous directives, etc.).¹⁷ In addition, the EU norms on work-life balance, regarding especially the fundamental rights of workers is becoming clearer and more transparent thanks to the EPSR and the new Directive itself.¹⁸ This is possible because of the work-life balance issue coming to the “forefront” as a new labour law regulation under the EPSR.¹⁹ In this sense, I agree with Hiessl²⁰ because the general reforms in social policy and labour are a stable basis for such new ideas and norms in this area of equal employment.

This also presupposes that the essence of the Directive suggests gender neutrality, which is not necessarily to be interpreted within the classical framework of the regulation of equal treatment, but is based on the assumption that a parent can be a worker of either sex, and since there are many disadvantages in the labour market that typically affect parents,²¹ labour law protection against such situations is the focus of the legislation. Nevertheless, we also need to pay particular attention to the protection of female parents, but since this concerns the issue of the prohibition of discrimination because of gender in the narrower sense we must consider a different type of legislation, which is not to be detailed here.²² In fact, the Directive is about men, or, more specifically, strengthening the rights of fathers,²³ which, in my view, further reinforces the gender-neutrality of the new legislation. I believe that standards of a social nature that strengthen parents’ employment status are essential for creating a balance between work and family, which is equally important. At the end of the day, this phenomenon can have a positive effect on the functioning of the labour market. The Directive takes the issue of equal employment further and strives

¹⁵ Social Priorities under the Juncker Commission. European Commission, 2019, 7. <https://ec.europa.eu/commission/sites/beta-political/files/social_priorities_juncker_commission_en.pdf> accessed 11 January 2020.

¹⁶ See for example the already mentioned Directive 2006/54/EC and 2010/18/EU. In more detail, see Péter Sipka and Márton Leó Zaccaria, ‘A munka és magánélet közötti egyensúly kialakításának alapvető követelményeiről a 2019/1158. irányelvre figyelemmel’ (2020) *Munkajog* 24, 25.

¹⁷ Susanne Burri, ‘Miguel De La Corte-Rodriguez: EU Law on Maternity and Other Child-Related Leaves. Impact on Gender Equality’ (2020) *European Labour Law Journal* 1.

¹⁸ Eugenia Caracciolo Di Torella, ‘Here we go again: The Court, the value of care and traditional roles within the family: Dicu’ (2020) *Common Market Law Review* 877.

¹⁹ Christina Hiessl, ‘Special Section: Work-Life Balance Introduction’ (2020) *Comparative Labour Law and Industrial Relations* 55, 56.

²⁰ *ibid* 55.

²¹ Hungler and Kende (n 10) 101–105.

²² Such legislation is typically Directive 2006/54/EC.

²³ Elisa Chierigato, ‘A Work-Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158’ (2020) *International Journal of Comparative Labour Law and Industrial Relations* 8–10 <academia.edu> accessed 18 September 2020.

to support parents in general, but, where appropriate, fathers especially (see e.g. the right to parental leave).²⁴

1.3. *The purpose of the legislation*

With regard to the objective of the legislation, we can conclude that the new Directive aims to strengthen workers' rights in the labour market, albeit in a general context, starting out from a specific regulatory area. The main reason for this is that, by involving the issue of equal treatment, the legislation places the stabilisation of the status of parents and carers in a general context, rather than exclusively in the context of labour law. This, of course, can be misleading – especially if considered in conjunction with the antecedents of the Directive – because the traditional requirement of equal treatment provides only a theoretical background to the new legislation, although it is true that these already established principles of law appear sharply in the Directive.²⁵ However, despite this starting point, the Directive does not aim to review or possibly revise the criteria for equal employment in general. It rather focuses on the employment status of workers affected by the issues covered by the Directive, and on specific rights they are entitled to. I note that it is not possible to avoid exploring the clear link between the general criteria of equal treatment and the strengthening of the legal status of workers who are parents and carers, but in my view, there is no evidence for the dominance of anti-discrimination in this piece of legislation. Eventually, the aim of the legislation could also be to strengthen, at least indirectly, the requirement for equal treatment between women and men, but this time extending the prohibition of discrimination against women – in a particular way – also to men, if they have parental or carer status.

This should not lead to the opposite of the above, i.e. to neglecting the strengthening of the equal treatment for women who are parents. However, since the Directive itself states, in connection with several issues, that the employment status of fathers should also be improved, in addition to that of mothers – i.e. they should be treated at least equally with women having children – this can be inferred as well. Using a somewhat distant analogy, I would recall that the principles and rules in the area of anti-discrimination based on gender, drawn up in the previous century, which served, among other things, as the antecedents of the present legislation, laid the foundations for the treatment of women as equals in the labour market according to a similar logic,²⁶ as this was not as evident at the level of legislation a few decades ago as

²⁴ C de la Porte, T Larsen and D Szelewa, 'A Gender Equalizing Regulatory Welfare State? Enacting the EU's Work-Life Balance Directive in Denmark and Poland' in Matthew Donoghue and Mikko Kusima (ed), *Whither Social Rights in (Post-) BREXIT Europe? Opportunities and Challenges* (Social Europe Publishing and the Friedrich Ebert Stiftung 2020) 94.

²⁵ Directive (EU) 2019/1158, recs (11) and (44) in the preamble, as well as arts 11–13.

²⁶ See, in particular, the following judgements of the CJEU: Case C-80/70 Gabrielle Defrenne v. Belgian State [1971] ECLI:EU:C:1971:55, Case C-43/75 Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena [1976] ECLI:EU:C:1976:56 and Case C-149/77 Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena [1978] ECLI:EU:C:1978:130.

it is today. Eventually, I do not want to claim that there is a flare-up of discrimination against men or an immediate need to overcome such discrimination, but I merely remind the reader that the legislative theme of labour law on gender equality has always worked on a kind of a 'relative' basis. This logic originates from the internal logic of the legislation, and currently it is the supporting of the labour law position of parents and carers – and, within these categories, of men – that has come to the foreground. This does not change the gender-neutral character of the legislation, and I only referred to the former in order to put some of the provisions to be outlined below in the context of the theoretical background of the legislation.

Overall, I believe that the renewed minimum standards of the Directive can substantially strengthen workers' fundamental rights in the future by approaching them from two directions. On the one hand, I consider it important to formulate the rules of the Directive that are of an imperative nature, in fact limiting the scope for employers and partly for the legislature, which are intended to explicitly develop further the existing guarantees (e.g. extra vacation time). The essential function of these standards can be paralleled with similar social protection provisions, which are therefore primarily aimed at strong support for the labour market and privacy of workers. On the other hand, we can regard the regulatory components, e.g. flexible working arrangements²⁷ and the possibility of working from home, as specific incentives that can be effective in this respect in the field of contractual freedom for the employer and the employee, namely, as content elements of the employment contract. I consider this regulatory method to be a remarkable novelty compared to the previous ones,²⁸ and I certainly see it as an example to follow in the area of social policy legislation, even if it is not clear today that the employment contract would be the most appropriate place to establish labour law standards, which are predominantly social in nature, protecting workers. Although the present paper does not discuss in detail the different legal solutions that may arise in the Member States, it should nevertheless be noted, using the Hungarian example, that the excessive contractual autonomy of the parties may in fact undermine the enforcement of legal guarantees, e.g. it is not appropriate to agree on parental leave at an individual level. A bridging solution, of course, could be the collective agreement accompanying effective negotiations between the social partners;²⁹ however, given the perhaps even stronger pressure on national regulations in this respect, it may be premature to think that there will be substantial progress in this area by the deadline for transposition, which is 2 August 2022 (in case of some norms the deadline is 2 August 2024).³⁰

²⁷ Additionally, the fundamental right to parental leave is safeguarded in the case of atypical employment (e.g. fixed-term employment, part-time work) as well, which is a powerful pillar in the legal protection of workers. See: case C-486/18 RE v. Praxair MRC SAS [2019] ECLI:EU:C:2019:379, paras 65 and 87.

²⁸ There were no such regulations in Directive 2010/18/EU, therefore these are great achievements towards creating a more effective regulation.

²⁹ Arts. 8, 15, 16 and 20 of Directive (EU) 2019/1158.

³⁰ Olga Rymkevich, 'Work-Life Balance in Italy pre-, during and post-COVID-19' (2021) *Studia z Zakresu Prawa Pracy i Polityki Społecznej* (Studies on Labour Law and Social Policy) 37, 39. (doi.org/10.4467/25444654 SPP.21.004.13198)

The general labour law context may be made complete by the regulatory issues concerning the substance of employment contracts in connection with the protection of the workers' rights. Overall, the aim of the Directive is primarily to strengthen the protection of the rights of workers with families or caring for children, and, secondarily, to introduce or strengthen such instruments that are aimed directly at raising the level of labour law protection in the Member States, which was not previously a standard legislative practice (e.g. paternity leave or burden of proof that is favourable for workers in a dispute).

2. The relationship of the new work-life balance Directive to the European Pillar of Social Rights and Charter of Fundamental Rights of the European Union

Labour market disadvantages that are gender-based or that are suffered by workers bringing up or caring for children, still induce significant regulatory dilemmas these days, in some cases with more spectacular results, although not without contradictions.³¹ At the same time, in my view, real equality is still to be achieved, since the abovementioned personal circumstances have a substantial impact on the legal situation of workers and, in many cases, in a negative direction. It is also important that, although discrimination and labour market inequality typically affect women today, the new legislation reinforces the presumption of the legislation that parents in general need labour protection.³² It is worth explaining in detail the expected methods and principles of this below.

2.1. Labour law priorities among the EPSR's principles of social protection

Art 9 of the EPSR specifically concerns work-life balance, with the starting point that it is a fundamental requirement in the EU's social policy to create such working conditions for parents and carers that will allow this balance to be achieved without workers suffering disadvantages in any area.³³ Although the latter concept can be identified as a kind of a universal requirement, it is important to note that, in addition to the new Directive, which constitutes the subject of the present investigation, some of the EPSR's other rules supporting the basic social interests of workers are also important in terms of the spirit of legislation. This should be understood as including even such specific provisions as the right to fair and just working conditions, with

³¹ While referring to the principle of equal pay for equal work, as a clear legal requirement set forth in art 157 (2) of the Treaty on the Functioning of the European Union (consolidated version of the Treaty on the Functioning of the European Union [2008] OJ C115/13, hereinafter: TFEU), we must also emphasize that the average wage gap between men and women is still 16% in the EU, with a very significant differences across the Member States (3.5 to 25.6%). <https://ec.europa.eu/info/sites/info/files/factsheet-gender_pay_gap-2019.pdf> accessed 11 January 2020.

³² In more detail, see Sipka and Zaccaria (n 16) 25–26.

³³ *ibid* 25–26.

a view to the fact that parents' situation in the labour market, and the specificities of their employment relationship in general, are defined primarily by their working conditions, cooperation with employers, the possibility of agreement, and sufficiently flexible but, from the point of view of guarantees, stable working conditions. Because of the above, the Directive fits in the line of social policy and labour law reforms designated by the EPSR.³⁴ Thus demonstrating that issues settled by way of the new legislation are of particular importance on the EU's labour market, while raising awareness of the importance of genuine employment equality. Accordingly, it is necessary to consider the rules of the Directive in a broader context, since the social and labour market issues addressed by it are, in fact, important in the entire range of social policy regulations, and through these, we can draw conclusions on the current situation of the protection of workers' rights.³⁵ Thus, although, there are a number of debates surrounding the substance of the relevant decision-making processes,³⁶ the Directive fits well among those new legal policy concepts that no doubt seek to channel the timely debates on the better protection of worker's rights towards legislative measures on both the level of the EU and the Member States.

The Directive itself also refers to the connection with the EPSR,³⁷ quoting arts 2 and 9 of the EPSR.³⁸ The EPSR's objectives³⁹ and key areas⁴⁰ both include improvement regarding equal opportunities in the workplace, a high level of support for access to work, so it can be clearly seen that the Directive could have been drafted underpinned by regulatory interests from many different points of view.⁴¹ This is because in terms of equal employment and access to work on equal terms, it is essential that gender differences – or those based on marital status or the number of children – should be taken into consideration in relation to the rights of workers and labour market expectations. These provisions in themselves, just as the EPSR itself, cannot in any way create lasting and genuine equality between workers in this area, yet we believe that the holistic approach of the Directive can indeed encourage Member States to take decisive action while guaranteeing the achievements so far.⁴² At the same time, while emphasising the benefits of the new Directive, atten-

³⁴ Sára Hungler, 'Nemzeti érdekek és szociális integráció az Európai Unióban: az Európai Jogok Szociális Pillérének kísérlete az integrációra' (2018) *Állam- és Jogtudomány* 36, 37, 41–42.

³⁵ Sipka and Zaccaria (n 16) 25–26.

³⁶ Ane Aranguiz 'More majority voting on EU social policy? Assessing the Commission proposal' (*EU Law Analysis – Expert insight into EU law developments*, 26 June 2019) <<http://eulawanalysis.blogspot.com/2019/06/more-majority-voting-on-eu-social.html>> accessed 28 January 2021.

³⁷ Rec 9 of the preamble to Directive (EU) 2019/1158.

³⁸ Rec 2 is on gender equality, while rec 9 is and work-life balance.

³⁹ EPSR, recs (1), (7) and (8).

⁴⁰ Chapter I is titled "Equal opportunities and access to the labour market". The chapter spectacularly links the right to equal treatment for all workers with such specific labour market measures as active support for employment. Although only a part of these rights directly serves the purpose of gender equality, the linking of these two areas is also very important in the context of the EPSR and the new directive.

⁴¹ From a legislative point of view, the new directive was drafted based on art 153(1) (i) of the TFEU, i.e. the legislative mandate is based on supplementing the activities of Member States aimed at achieving equality between women and men.

⁴² Sipka and Zaccaria (n 16) 25–26.

tion should also be drawn to wage differences between women and men as a major problem, i.e. one of the tasks of the new legislation is to overcome this obstacle in balancing parental roles.⁴³

In the context of the EPSR I have mentioned above that the issue of equal opportunities in the labour market arises as an independent area, including a number of related rights,⁴⁴ but I would consider it superficial if we were to be satisfied with merely mentioning this connection, which no doubt, refers to a rather close relationship.⁴⁵ It should be recalled that equal employment in the labour market, which is among the key issues in the EPSR, means a lot more than the prohibition of gender discrimination in the traditional sense or a substantive elaboration of parents' protection under labour law. Although, in my view, these areas are indeed neglected in today's economic and labour law climate, in themselves the criteria for equal employment, but in particular, supporting certain disadvantaged social groups, such as access to work or, *ad absurdum*, the general criteria of the right to work, also belong here.⁴⁶ Of course, the development and consistent enforcement of the conditions is only conceivable as falling within the competence of the Member States,⁴⁷ but that is why I consider it particularly important that within this key area of the EPSR the balance of work and family (supporting parents' labour rights) has been provided with new, stronger, independent legislative support.

Although I do not discuss it in detail, I should mention here the right to social security as another relevant key area of the EPSR, since supporting families or job seekers is also an important way for overcoming labour market inequalities, especially for workers who are parents or carers. The fundamental right to fair and just working conditions essentially provides a framework for the issue discussed here, as the Directive's standards aim to increase the level of protection of workers in parental or carer status in general. So the higher level of legal protection applies not only in a "fire-fighting" manner (e.g. along current family policy trends, interests), but in general, in a way that includes all relevant working conditions (working time,⁴⁸ pay, leaves, etc.). If these criteria are compatible, in my view, the purpose of the Directive can be achieved. The protection of privacy and family life – in relation to the labour market – can only be realised in a difficult, intermittent, periodical and campaign manner through the application of parental or carers' leaves or flexible working ar-

⁴³ Lucy Trevalien, 'New EU Directive seeks to address employees' work-life balance' (2020) International Bar Association – the global voice of the legal profession <<https://www.ibanet.org/Article/NewDetailPreview.aspx?ArticleUid=9ea8ade6-022a-4f0b-bba2-6860ad994191>> accessed 18 September 2020.

⁴⁴ EPSR, arts 1 to 4, especially, for example, principle 4 on active support to employment.

⁴⁵ Vera Pavlou, 'Whose equality? Paid domestic work and EU gender equality law' (2020) European Equality Law Review 36 <<http://eprints.gla.ac.uk/219106/1/219106.pdf>> accessed 18 September 2020.

⁴⁶ CFREU, art 15.

⁴⁷ See arts 145 to 147 of the TFEU, which address the fundamental issues of the division of competences between the EU and the Member States in the field of employment policy.

⁴⁸ See the recent judgments of the CJEU concerning the connection between working time regulation and parents' right to equal employment: case C-12/17 Tribunalul Botoșani és Ministerul Justiției v. Maria Dicu [2018] ECLI:EU:C:2018:799, paras 32–36 and case C-366/18 José Manuel Ortiz Mesonero v. UTE Luz Madrid Centro [2019] ECLI:EU:C:2019:757, paras 45–48.

rangements.⁴⁹ Therefore, a lasting and substantive solution can be found in a partial change of the status of employer and employee, which would mean a kind of paradigm change. By this, I mean primarily the change in the attitude of employers or the greater freedom of contract between the parties, as reinforced by legislation and consultations of social partners.

However, it is important that workers are also responsible for their behaviour, so it is important to achieve a position of partnership with their employers, so that it is not only through the means of enforcement or unilateral demanding that can make it evident that, for example, fathers are entitled to additional parental leave,⁵⁰ days or that they could also be permitted to work from home in case of childbirth.⁵¹ In my opinion, all of this can be best captured in the guarantees of fair and just working conditions, as also highlighted by the EPSR, in addition to the fact that, without the traditional regulation of equal employment, workers would not have a real weapon in their hands to protect their rights. Overall, this is how the three key areas of the EPSR can be linked in the context of the regulatory principles and subject matter of the new Directive.

2.2. *The fundamental “solidarity” rights of the Charter of Fundamental Rights of the EU and the new Directive*

With respect to the also direct reference to the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights of the European Union [2012] OJ C/326, hereinafter: CFREU),⁵² which correlates with the notions discussed above in connection with the EPSR, it is necessary to point out the following. The CFREU itself provides the principle of equal employment,⁵³ as well as such other fundamental rights directly concerning the new Directive, affecting stakeholders in the labour market, such as the right to work (art 15) or the right to fair and just working conditions (art 31). In view of the above, it can be concluded that the new Directive – both in its entirety and in particular, in terms of such specific provisions as those on parental

⁴⁹ Along a similar objective of employment policy, I mention working from home, a practice that is used increasingly today, since it allows workers raising or caring for children to fulfil their work and family responsibilities “simultaneously.” On the labour law aspects of this, see Lajos Pál, ‘A szerződéses munkahely meghatározása – a “home office” és a távmunka’ (2018) Munkajog 56–59.

⁵⁰ See the relevant case law of the CJEU regarding fathers’ rights to parental leave: case C-5/12 Marc Betriu Montull v. Instituto Nacional de la Seguridad Social (INSS) [2013] ECLI:EU:C:2013:571, paras 56 and 59–60, case C-222/14 Konstantinos Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthropinon Dikaïomaton [2015] ECLI:EU:C:2015:473, paras 41 and 48–49; with regards to parental leave in general: case C-129/20 XI v. Caisse pour l’avenir des enfants [2021] ECLI:EU:C:2021:140.

⁵¹ Directive (EU) 2019/1158, art 9 (Flexible working arrangements).

⁵² Directive (EU) 2019/1158, recs (2) and (3), referring to art 23 (Equality between men and women) and art 33 (Reconciliation of family and professional life) of the CFREU.

⁵³ Under Title III (Equality), see general provisions on equality and non-discrimination (arts 20 and 21) and the fundamental rights granted in respect of certain protected characteristics (e.g. art 25 on the protection of the elderly).

leave,⁵⁴ which is regulated differently in each Member State, or protection against termination – has the strength and background as fundamental rights, which can be an important guarantee later, in specific disputes with regard to social protection. This is because it can be raised via the example of the right to parental leave that in case the national legislation of a given country or the measures of an employer do not ensure this in accordance with the Directive, then it is not only a breach of the principle of equal treatment, but also the infringement of arts 31 or 23 of the CFREU, which may be the subject of a procedure before the Court of Justice of the European Union (hereinafter: CJEU). All fundamental rights contexts are reinforced by art 33 of the CFREU (with regard to art 31⁵⁵), which therefore provides for a fundamental social right to establish and ensure work-life balance.⁵⁶ In my opinion, in terms of the substance of art 23 of the CFREU, as interpreted by art 33 of the CFREU,⁵⁷ the new Directive is, in fact, sufficiently detailed with regard to individual support measures, referring to parental leave or flexible working arrangements.⁵⁸

At the same time, it can also be seen that the relevant provisions of the CFREU, due to their orientation toward equal employment, may be somewhat difficult to apply to the general working conditions referred to in art 31, at least on the level of legislation. In my view, in terms of the interpretation of the law, there can be no question about the direct link between this Directive and Directive (EU) 2019/1152,⁵⁹ since the legislative aims we can identify behind them are overlapping, even if from a different point of view. This is because, on the one hand, labour market access, interoperability and legal stability combined with flexibility⁶⁰ are striking in both cases; on the other hand, the idea of equality, immersed in the approach from fundamental rights, is almost tangible in these two pieces of legislation. The former cumulates precisely in the broadening of the protection of rights surrounding employment relationships, while the latter in the expectation of equality between forms of employment and workers. There are also some other provisions related to those in the former Directive (e.g. the regulation of probationary period, burden of proof, etc.). These specific regulations are meant to provide effective legal guarantees for all workers, especially for parents and carers.

⁵⁴ I Dobrotić and S Blum, 'Inclusiveness of Parental-Leave Benefits in Twenty-One European Countries: Measuring Social and Gender Inequalities in Leave Eligibility' (2020) *Social Politics* 588–614. (doi.org/10.1093/sp/jxz023)

⁵⁵ Thomas Blanke, '13. Fair and just working conditions (art 31)' in Brian Bercusson (ed), *European Labour Law and the EU Charter of Fundamental Rights* (Nomos 2006) 359–366.

⁵⁶ Importantly, the right to parental leave is an essential fundamental social right, however some limitations in national laws can be applied concerning the existing "employee" status as follows: "...not precluding national legislation which makes the grant of a right to parental leave subject to the condition that the parent concerned is employed without interruption for a period of at least 12 months immediately preceding the start of the parental leave. By contrast, those clauses preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent has the status of a worker at the time of the birth or adoption of his or her child." Case C-129/120 XI v. Caisse pour l'avenir des enfants [2021] ECLI:EU:C:2021:140, para 51.

⁵⁷ Yota Kravaritou, '9. Equality between men and women (art 23)' in Bercusson (n 55) 237–254.

⁵⁸ Sipka and Zaccaria (n 16) 26–27.

⁵⁹ European Parliament and Council Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union [2019] OJ L186/105.

⁶⁰ Directive (EU) 2019/1152, Chapter III (Minimum requirements relating to working conditions).

In any event, these areas to be addressed and the legislative solutions offered can represent a real novelty in many areas of the protection of workers' rights, even though the contradictions in the regulation of the labour market such as those mentioned above are not yet entirely unknown even at the present time. To prove this claim, it is sufficient merely to point out that the CJEU has already examined the merits of the possibility to limit the right to free movement of mothers in self-employed status,⁶¹ specifically from the point of view of the protection of fundamental rights.⁶² This also shows that the fundamental labour law guarantees discussed in this chapter cannot be independent from the concepts of employees that typically appear in a diversified way in national laws. Therefore, protective rules and guarantees, which are particularly relevant to parental status, should apply to them as well, thereby elevating to a higher level the most important guarantee standards, rather than excluding certain groups of workers from the scope of the norms, which is a realistic threat because of the independence inherent in national legislation.⁶³

3. Old, new and renewed instruments of legal protection in the new work-life balance Directive

The method of legislation is unique in this regard, in my view, inasmuch that it intends to manage specific labour law issues such as the possibility of working from home, parental or carers' leave,⁶⁴ or flexible working arrangements.⁶⁵ I consider this approach to be functional, because either we approach from the direction of the EPSR and the CFREU, or from the universal requirement of equality in the labour market, and so we conclude that the Directive is attempting to provide Member States with "guidance" in the area of the protection of workers' rights, which is, of course, not new in all of its elements. Alternatively, it does not depart too far from the traditional concepts of the principle of equal treatment, yet it may shape the laws and employment relations also in such areas which are not currently typical in the labour law systems of Member States.

Based on what has been explained so far, the provisions covered by the new Directive can essentially be divided into four categories: rules specifically supporting childbearing, promoting equal treatment and equal opportunities by means of labour laws, rules allowing temporary flexibility (issuing leaves, easier changes to working hours), and guarantees of legal protection in the narrower sense (protection against dismissal, burden of proof, guarantee of adequate remuneration, etc.). As can be derived from the above four groups, the logic of the Directive is if the impact of econom-

⁶¹ Steve Peers, 'Self-employed new mothers and EU free movement law: the CJEU delivers the obvious conclusion' (*EU Law Analysis – Expert insight into EU law developments*, 22 September 2019) <<http://eulawanalysis.blogspot.com/2019/09/self-employed-new-mothers-and-eu-free.html>> accessed 27 January 2020.

⁶² Case C-544/18 *Her Majesty's Revenue and Customs v. Henrika Daknevičute* [2019] ECLI:EU:C:2019:761, paras 29–34.

⁶³ Nóra Jakab, 'Gondolatok a rugalmasság és biztonság egyensúlyáról Prugberger Tamás 80. születésnapja alkalmából' (2017) *Miskolci Jogi Szemle* 213, 216.

⁶⁴ Arts 4-6 of Directive (EU) 2019/1158.

⁶⁵ Rec 10 and art 9 of Directive (EU) 2019/1158.

ic counter-incentives to work can be reduced or eliminated, it will have a beneficial effect in the labour market.⁶⁶ Against this background, the legislation is not limited to optimising the labour law environment, but also sets out expectations regarding institutional requirements for social security, social policy and labour control.⁶⁷

An overview of the main areas covered by the Directive shows that the legislature's aim is essentially to address an issue that is considered a borderline case in terms of regulation, by such means that may also affect the substance of national labour legislation at some points. In my view, the main reason for this is that the labour law protection of parents and carers – even though a number of established formulas are available⁶⁸ – is in fact an area of labour law which is difficult to regulate and is only partially regulated; *mutatis mutandis* it consists of certain components of other regulatory areas, such as equal treatment, which makes it difficult to interpret and apply the rules in a uniform, coherent structure. At the same time, the legislature does not have much choice in this area, because supporting the cooperation of the social partners and the employers' and workers' freedom of contract are not sufficient to actually achieve a higher, more effective level of protection of workers' rights. This would be desirable in terms of fundamental rights, the market, the economy and the whole of the society, especially when we think of problems of a non-legal character that point to the difficulty of creating a balance between work and family. I will address some of the Directive's key elements separately below.

Certain basic standards with a common minimum standard in all respects are necessary, which place the provision of support for childbearing or various flexible working time arrangements in an essential labour law context. In my opinion, with a view to the above, it is necessary to refer briefly to art 2 of the Directive, which concerns its scope, specifying the actual personal and substantive scope of the legislation. Although, in my opinion, the essential content of legislation is not necessarily affected by this kind of quasi-definition, as it is ultimately a definition of national legal focus; yet I believe that, when examining the main ideas of the Directive, it is indispensable to recall the key elements of this definition.

We must highlight the phrasing "all workers, men and women", because – even though it seems evident that a particular labour legislation, irrespective of its specific object or legal character, applies equally to both sexes, or in the present case to both parents – there may be a special significance from the point of view of legal interpretation that the Directive specifies both sexes with emphasis. This phrasing of the Directive's text highlights that not only women or men can be the beneficiaries of those rights. It is my opinion that with this definition, such rules appearing in subsequent passages of the Directive are also placed in context that specifically support fathers, since a support measure in itself would not make the Directive discriminative (exactly because its scope covers both sexes). Therefore, we do not see the regula-

⁶⁶ Art 12 in the preamble to Directive (EU) 2019/1158.

⁶⁷ Sipka and Zaccaria (n 16) 27–28.

⁶⁸ The restriction on or protection against termination, working time allowances and additional leave days are typically included in the labour law toolbox, supported by a general and strict set of criteria for equal treatment.

tory methodology according to the traditional approach, centred on a protected characteristic and focusing on overcoming a certain type of discrimination (a property as opposed to another, typically women versus men), which confirms, in my view, the general nature of the protection provided by the norms of labour law discussed here. It is also worth mentioning the definition of employment,⁶⁹ appearing alongside the above gender-neutral phrasing in art 2, which is very similar to the relevant part of Directive (EU) 2019/1152.⁷⁰ The reason why this should be highlighted is that it may be of particular importance in the future – and this Directive may be an excellent example – that despite differences in conceptual and regulatory frameworks and traditions of legal concepts, there may be a common interpretation of the concepts of employment and workers. While this is only a presumption on my part for the time being, and perhaps the regulatory and logical link between the two Directives is not so clear – see, for example, the different versions of the final text of Directive (EU) 2019/1152 which significantly affect that concept⁷¹ – it may be of real importance, in my view, that the same definition has been included in the Directive on equal opportunities in the labour market, thus strengthening the EPSR's aims and key areas.

I do not intend to discuss all provisions of the Directive in detail, and therefore, I will primarily call attention to the link between them and to developments in improving the level of protection of workers' rights. The Directive itself seeks to proceed, in some cases more carefully and in other cases more decisively, in relation to the issues of legal protection, strictly from the point of view of labour law. For this reason, some of the provisions appear to remain "recommendations" only, but in some cases, the marked, stronger character that has already been mentioned predominates. It is important to note that the Directive sets out to draw an intrinsically complex picture also in terms of what types of provisions can even create and maintain equal employment in the labour market, in particular for women and men in parental or carers' status.

The Directive also aims to achieve better cooperation between workers and employers,⁷² in order to regulate better a number of issues, through the agreement of the two sides that could have a meaningful impact on the protection of workers'

⁶⁹ I consider this to be less than a definition in the textbook sense of the word, but more than an interpretative and introductory provision, since the nature of the definition, from a methodological point of view, is that of a recommendation (and almost like a soft law), while its content, in comparison with the cautious wording of the directives, is confusingly detailed and substantive; see the relevant case law of the CJEU.

⁷⁰ However, the concept of the platform in labour law, which primarily requires a broader interpretation, continues to create dilemmas. Martin Risak, *Fair Working Conditions for Platform Workers. Possible Regulatory Approaches at the EU Level* (Friedrich Ebert Stiftung 2018) 3–19 <<http://library.fes.de/pdf-files/id/ipa/14055.pdf>> accessed 12 January 2020.

⁷¹ The most spectacular difference between concepts, and at the same time the most extensive regulatory solution, can be found in the following passage: "‘worker’ means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration"; Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union. Brussels, 21.12.2017 COM(2017) 797 final, art 2 (1), point a).

⁷² In fact, art 9 of Directive 2019/1158 refers flexible working arrangements, which is a central element in the legislation, as an issue subject to the agreement of the parties, or more precisely, it requires Member States to create that possibility and to support the development of such working conditions.

rights, as well as on labour rights guarantees affecting the willingness to have children (flexible working arrangements, different work schedules, etc.). I think it is important to mention that although the Directive does contain mainly novel provisions on a number of issues that strive to achieve the desired objective by way of binding legal force (for example, by incorporating these rules in the national labour laws of the Member States), but this solution is not exclusive. In other words, the Directive mainly regulates such areas for which, irrespective of EU law, the parties have a substantial impact in all national labour law systems,⁷³ i.e. by way of agreements, contractual clauses or even collective agreements,⁷⁴ the parties may in fact derogate from almost any of the rules negotiated here.

On the one hand, this is an important common platform from the point of view of workers, but especially employers, who are thinking along conflicting interests, as this enables them to take due account of economic, market and human resource management interests, even with the existence of a cogent norm of binding force in the given case.⁷⁵ On the other hand, these – in this sense – flexible rules also point out that we need to address an area of labour law which is still flexible and difficult to grasp; that is, the creation of such rules and guarantees have and will become necessary which may not necessarily fit into the already established labour law structure. Eventually, this cannot depend solely on a Directive that otherwise uses a new perspective (at least for the time being), but if we really want to enforce the objectives of the Directive through specific legislation, then it is inevitable to take seriously and further develop such standards which – from the point of view of labour law – are currently almost impossible to label, such as protection from unfair dismissal, set out in art 12 of the Directive. Such standards are known in labour law systems, but the Directive explicitly refers to cases in which a worker may suffer the disadvantage of dismissal by the employer because of using or applying for parental, paternity or carers' leave.⁷⁶

Although these norms are logically linked to the infringement of the principle of equal treatment.⁷⁷ Particularly, if we take into account the shared burden of proof provided for in art 12 and the sanctions provided for in art 13,⁷⁸ in my opinion, even

⁷³ See some Hungary-specific links of the new directive: 'A munka és a magánélet egyensúlya' <https://www.parlament.hu/documents/10181/1789217/Infojegyzet_2019_24_munka_maganelet.pdf/cb7b4ebc-7d63-85b9-889f-8f4b588e1e1a> accessed 18 September 2020.

⁷⁴ Recs 25 and 49, as well as art 5 of Directive (EU) 2019/1158.

⁷⁵ A typical example is paternity leave. For many employers, this institution may still be new, or they may even be surprised at or be hostile toward colleagues who want to use it. Clearly, due to the provisions of fundamental rights and directives, it is imperative that the minimum of the directive be ensured, but the employer may also take a supplementary guarantee measure against the employee (e.g. fewer days, but reduced working hours, equal working hours with a flexible work schedule, the same number of working hours but working from home).

⁷⁶ See also the group of case related to flexible working arrangements, pursuant to art 9 of Directive (EU) 2019/1158.

⁷⁷ In this respect, therefore, the legal protection system of Directive 2006/54/EC, mentioned several times before, is particularly relevant in relation to gender equality for workers.

⁷⁸ Substantive, i.e. effective, proportionate and dissuasive adverse consequences should be established at Member State level.

if we take this into consideration, it is difficult to conceive of such thorough demands on the part of workers or, conversely, such an attitude on the part of employers which would lead to sanctions in case of applying for a paternity leave – together with the right to decent standard living during the leave periods⁷⁹ – without any legitimate justification. However, it should be added that I am only trying to demonstrate the importance of this legislation for the protection of workers' rights through a few typical examples. They are without exception a substantive intervention in the law of employment and employment contracts, which is inherently problematic due to EU's social policy legislation and the primary legislative powers of the Member States, while, in addition to national specificities, the labour market problems covered by the new Directive are increasingly relevant (also) at the EU level.⁸⁰

This may lead not only to dilemmas of legislation and legal theory, since making employment more flexible in terms of its substance may, also in the framework of the rules currently in effect, lead to friction, in case the parties are unable to agree on all relevant issues. Naturally, this is not only an anomaly affecting parents and carers in employment legislation and in the labour market, but according to the European Commission's perception,⁸¹ this dilemma – affected by many contradictions in terms of the economy and the market, but in a narrower sense in terms of labour law and social policy – can be dealt with effectively by legislation is stronger, more targeted and more specific, but at the same time also covering all essential elements of employment. In other words, the legislative methodology and essential content of this Directive is clearly in line with the process generated by the EPSR, as well as the CFREU and the relevant case law of the EU. All these sources point in the direction of prioritising social interests in legislation, and at least the most fundamental of workers' rights must be strengthened and protected by decisive steps.

As the last aspect of this brief overview, I would like to highlight arts 7 to 10 of the Directive, which – in addition to the general incentive to have children and the forms of leave specifically linked to it, and preceding legal protection mechanisms – concern the content of the employment relationship, in close compliance, of course, with the legislative principles guaranteed by national laws. Interestingly, but also understandably from the perspective of the labour market, the Directive intends to increase the level of protection of rights in the fields of pay and working time under general working conditions. It also contains such elements of an employment contract that are freely agreed by the parties (as opposed to, for example, leave). In other words, we can see once again that the Directive – supplemented by the prohibition of discrimination provided for in art 11⁸² – attempts to intervene in the

⁷⁹ Ivana Isailovic, 'Gender Equality as Investment: EU Work-Life Balance Measures and the Neoliberal Shift' (2020) *Yale Journal of International Law* <file:///C:/Users/User/AppData/Local/Temp/SSRN-id3523289.pdf> accessed 27 September 2020.

⁸⁰ Sara Benedi Lahuerta and Ania Zbyszewska, 'EU Equality Law: Looking Ahead after 20 Years of Policy-making' (*European Law Blog – News and Comments on EU Law*, 8 April 2019) <<https://europeanlawblog.eu/2019/04/08/eu-equality-law-looking-ahead-after-20-years-of-policy-making/>> accessed 29 January 2020.

⁸¹ Art 14 in the preamble to Directive (EU) 2019/1158.

⁸² The prohibition of discrimination generally protects workers who are parents or carers; however, in accordance with art 11, particularly those who exercise their rights under the new Directive and receive less favourable treatment.

content of employment relationships in the interests of workers, in order to protect their fundamental interests and rights, even if at this point we also see a number of “recommendation-like” norms.⁸³ Employment rights (art 10) or flexible working arrangements (art 9) are – or to be more precise, could be – defining characteristics of all employment relationships, which could not lead to such situations in which employers may, even by way of voluntary agreements, limit or restrict workers’ rights. Therefore, we can conclude once again that there is a kind of protective character in relation to the content of the employment relationship that dominates, while keeping in mind the objectives and the scope of the Directive. As regards the general conditions of employment, as well as fair and just working conditions, I refer to the fact that the substantive scope of the Directive analysed here is special, but its tools are based on the general level. Therefore, once again, a close taxonomical and practical relationship can be identified with Directive 2019/1152/EU, but it should also be pointed out that in the case of parents or carers, particular attention should be paid to these conditions.

The expected transposition in the Member States can be both fundamental and labour law-focused at the same time. It is important, however, that since the new rules play a major role in the free agreement of the parties in this area, in particular as regards fair and just working conditions, which are also rooted in fundamental social rights (para 2 of art 31 of the CFREU), we cannot be sure that meaningful legislative results such as the optimism previously indicated can be expected. The regulation reflects on the one hand, very specific and firm principles – see the Directive’s preamble⁸⁴ – but on the other hand, its soft law character may inevitably be criticised.⁸⁵ It is difficult, of course, to predict what kind of legislative outcomes this will generate, but I believe that there will certainly be substantial changes in the context of arts 5, 9 and 12, which can be considered as the core of the Directive. At least in view of the fact that these articles are all meaningfully novel in order to promote gender equality in the labour market, this time using specific legal guarantees.

In a brief and summary way, these standards deserve to be respected in order for art 5 to carry forward the previous legislation as a whole, but with more specific and stronger pressure on Member States’ legislation. The issue of parental leave is crucial for fundamental working conditions respecting human dignity, and art 5 offers Member States stronger and more concrete regulation on a number of points. For example, the new standard emphasises the subjective eligibility character (para 1) and the flexibility of taking leave supported by the enforceability of parental leave (specifically paternity, see the aforementioned gender-neutral legislation) based on para 6. With regard to art 9, I would point out that, as mentioned above, the development of flexible working conditions, which are essentially in the interests of the

⁸³ In my opinion, arts 12 to 14 potentially prohibiting discrimination and imposing adequate legal consequences are borderline cases with their specific wording – based on which the directive only provides for a framework for legal protection – but art 9, which is the central provision of the new directive, does not contain specific standards of imperative character either.

⁸⁴ Recs 1-3 and 6-12 of Directive (EU) 2019/1158.

⁸⁵ Frank Hendrickx, ‘The European Social Pillar: A first evaluation’ (2018) *European Labour Law Journal* 3, 5. (doi.org/10.1177/2031952518759987)

workers, is an important step towards an ideal balance between work and family life. Paras 2 and 3 also include fundamental guarantees in the context of possible employment contract-based regulation, so that fixed time constraints or even the binding consideration of employee interests also seem important in the context of para 2 of art 31 of the CFREU. It should be noted that, since it is in the fundamental interest of both parties to cooperate effectively and peacefully and have a good professional relationship, this provision might not even require an overly detailed transposition into national law. Although motivational factors from the side of EU labour law reforms⁸⁶ may be effective, overall, the primacy of the labour market characteristics of the Member State concerned will presumably dominate the future content of art 9. Going back to art 12, as is the case with art 18 of Directive (EU) 2019/1152, it could be a key provision in the future with a specific protection from dismissal and, in this connection, the reverse of the burden of proof to be allocated in any labour law dispute. Although, this does not mean, even indirectly, harmonisation of dismissal law, mainly because of its fundamental shortcomings in the regulation,⁸⁷ reading it together with art 30 of the CFREU, these standards may also play a significant role in the future protection of parental status in labour law. Although this new provision relates to a similar principle of infringement of the principle of equal treatment, even on grounds of sex,⁸⁸ nevertheless, I believe that its main novelty is in the general approach and, ultimately, in the character of protecting workers' job security. However, the latter is one of the pillars of all labour law and social protections; however, its effectiveness can create serious legal challenges.⁸⁹

4. Conclusion

Overall, it can be concluded that the new Directive is organically integrated into the series of social policy reform steps driven by the EPSR, and perhaps we can even go as far as to call it – together with the relevant provisions of Directive 2019/1152/EU – one of the most important new standards. I consider the renewed legislation to be important, on the one hand, due to its strengthening of equal employment, as well as focusing on some new aspects of it, and, on the other hand, because it strengthens general employment standards, such as enhanced protection against dismissal and supporting the institution of paternity leave. Although the rules – at least seemingly – point in a clear direction in terms of the effective protection of workers' rights

⁸⁶ Sacha Garben, 'The European Pillar of Social Rights: An Assessment of its Meaning and Significance' (2019) Cambridge Yearbook of European Legal Studies 101, 103. (doi.org/10.1017/cel.2019.3)

⁸⁷ Guus Herma van Voss and Beryl ter Haar, 'Common Ground in European Dismissal Law' (2012) European Labour Law Journal 215, 228–229.

⁸⁸ Lilla Farkas, 'Getting it right the wrong way? The consequences of a summary judgment: the Meister case' (2012) European Anti-Discrimination Law Review 23, 32.

⁸⁹ Zoltán Petrovics, 'A jogellenes munkajogviszony-megszüntetés jogkövetkezményeinek margójára' in István Horváth (ed), *Ünnepi tanulmányok Dr. Hágelmayer Istvánné születésnapjára* (ELTE Eötvös 2015) 367, 368–369.

and their fundamental right to privacy,⁹⁰ which is particularly at risk in connection with working, I am of the opinion, largely based on previous experiences, that this Directive can also be seen as a spectacular first step in encouraging debate and further reflection on a difficult path that will eventually take us further. What I mean by this is primarily that, although the Directive's legislative purpose and methodology are not in fact new, the aim, the legal climate and the set of social expectations have a number of novelties. The Directive, therefore, makes the need for social protection particularly stronger and more visible in some areas; additionally, it broadens its toolbox, but in many respects – for the time being – we also need to rely on the discretion of the Member States and the cooperation of employers and workers. At the same time, the role of the social partners in shaping working conditions to be established can also be of key importance in the longer term.

Finally, it should also be pointed out that harmonising work and private life from a legal (labour law) point of view is a problem that can be analysed and interpreted not only in the context discussed here. Because if we think of today's economic and social challenges, we can see that we encounter a single but all the more important element of this set of tools in the present piece of legislation. In my opinion, the need to change national legislation also stems from the Directive, which intends to make progress exactly in such fields related to the protection of workers' rights that may be problematic regarding social policy competences of the EU.⁹¹ Although it seems that Directive 2019/1152/EU may lead to the removal of several barriers in this respect, perhaps this Directive may also be considered a pioneer in legal history in a few years or decades. Moreover, why would this role be really significant? On the one hand, because this area of legislation, touching on several key elements of the EPSR⁹², really constitutes the focal point of labour law reform processes. On the other hand, the labour law opportunities for reconciling work and private life can, in my opinion, be best achieved by specific legislation of largely imperative character, and the Directive provides assistance in this respect from several sides. In addition, I would also like to mention that the fundamental rights, human rights and social interests of workers might, as a result, come into focus, which were not central to labour law legislation beyond fundamental equality requirements, and this is something that may finally change now. In the final analysis, I believe that achieving a delicate balance between work and private life, which has long been overturned, is at least as fundamental to workers – to the economy and society – as legislation on working time or equal employment, which is taken for granted. It seems, however, that all EU citizens and, of course, the legislatures of the Member States, can most easily be made aware of this by way of a decisive step of this kind.

⁹⁰ CFREU, art. 7.

⁹¹ Aranguiz (n 36).

⁹² Thus, specifically in connection with arts 2 to 4 (equal opportunities in the labour market), 5 and 9 (in terms of guaranteeing fair employment conditions) and 11 (in the area of social protection and security).