

GENDER MAINSTREAMING AND WORK-LIFE BALANCE

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ABSTRACT

The past decade has witnessed major changes in the size and composition of the workforce in the EU Member States, including in Romania. The changes occurred in terms of technology and economy were accompanied by a strong surge in the number of women at work and led to a significant increase in the proportion of families where both parents are at work. The massive entry of women into the labour market across many European countries determined changes in household structures and in the relationship between work and family. This paper examines how the European Union and, particularly, Romania have responded to these challenges by examining the extent to which the adoption of formal policies succeeded to promote equality in the workplace, as well as working arrangements that support work-life balance. A special synthetic conclusive chapter is dedicated to moral harassment at work, a health-related risk that affects more and more employees, and which catalyses inequalities in the workplace.

***Key-words:** gender equality, work-life balance, work-life conflict, moral harassment, women in the workforce.*

JEL classification K31; K32; K49

I. Introduction

The past decade has witnessed major changes in the size and composition of the workforce in the EU Member States, including in Romania. The changes occurred in terms of technology and economy were accompanied by a strong surge in the number of women at work and led to a significant increase in the proportion of families where both parents are at work. The massive entry of women into the labour market across many European countries determined changes in household structures and in the relationship between work and family.

This article examines how the European Union and, particularly, Romania have responded to these challenges by examining the extent to which the adoption

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of formal policies succeeded to promote equality in the workplace, as well as working arrangements that support work-life balance.

Needless to say, measures promoting work-life balance are of vital importance to the practical outcome of gender equality: not only do they allow women, who disproportionately bear the responsibilities of caring for children and other dependents, to balance those responsibilities with paid work, but they can also facilitate the partial transfer of caring responsibilities onto men, thus advancing gender equality at a more elaborated level.

In terms of combining parenthood and employment, Romania faces real issues in ensuring a stable and clear legislative framework for reconciling work, private life and family. The gender gap is more evident with respect to the possibility of varying the start and/or the end times of the working day, men employees enjoying a bigger advantage in this regard.

Moreover, the perpetual combustion of technology led to a permanent connection of the employees to their work. The “privilege” to be in possession of technology which allows e-mail checking 24/7, the “responsibility” to be updated with all aspects that are work-related even during free-time, as well as the employers’ expectancy that employees dedicate all their efforts to handle the given workload irrespective of the contractually agreed working schedule, have tied-up the employees by an electronic strap. The impossibility to effectively leave work and the permanent connection to work causes stress, burnout and depression. Under these circumstances, work-life balance turns into a utopic concept. The question to be addressed is whether we leave this aspect to become universal and an accepted “modus vivendi”, or whether further legislative intervention should be considered in relation thereto.

II. Gender Equality and Work-Life Balance – Historical Background

The enforcement of the principle of gender equality has represented a priority to the European Union since its founding. It was firstly introduced in 1957, when the principle of equal pay for equal work became part of the Treaty Establishing the European Economic Community¹, and since then it has been strengthened and consolidated throughout an extensive body of primary and secondary legislation enacted by the European Union.

In this regard, it is worth mentioning that art. 119 of the EEC Treaty provided the principle that men and women should receive equal pay for equal work. As per the aforementioned provisions, equal pay without discrimination based on gender had the following meaning: first, the same unit of measurement should be

¹ Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC TREATY]. Retrieved from http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf [28 December 2016].

considered as calculation basis of the pay attributed to the same work at piece rates, and, secondly, same jobs where work at rate times is performed should be paid the same.

The first legislative measure adopted by the Council in the field of gender equality was the Equal Pay Directive², which developed the principle provided by the EEC Treaty. The Equal Pay Directive provided that the principle of equal pay implied the elimination of any discrimination on the grounds of gender with regard to anything related to pay for the same work or work of equal value³.

One year later, the Council adopted the Equal Treatment Directive⁴, extending the principle of equal pay to equal treatment between women and men in the field of access to employment, professional training and promotion, and conditions of employment⁵.

Also, the Council adopted legislation on equal treatment in the field of social security⁶, and the self-employed and the role of their spouses⁷.

The Treaty on European Union⁸, signed at Maastricht in 1992, confirms and enlarges the principle of equal pay introduced by art. 119 of the EEC Treaty, foreseeing the possibility that Member States maintain or adopt “measures providing for specific advantages in order to make it easier for women to pursue a

² Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, OJ L 045, 19/02/75 [hereinafter Equal Pay Directive]. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML> [28 December 2016].

³ Equal Pay Directive, *supra* note 2, art. 1.

⁴ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 39, 14/02/1976 [hereinafter Equal Treatment Directive]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207> [28 December 2016].

⁵ Equal Treatment Directive, *supra* note 3, art. 1.

⁶ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10/01/1979. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31979L0007> [28 December 2016]. Also, Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ L 225, 12/08/1986. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986L0378:EN:HTML> [28 December 2016].

⁷ Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, OJ L 359, 19/12/1986. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986L0613:EN:HTML> [28 December 2016].

⁸ Treaty on European Union, OJ C 326, 26.10.2012 [hereinafter Treaty on European Union]. Retrieved from https://europa.eu/european-union/sites/europaefiles/docs/body/treaty_on_european_union_en.pdf [28 December 2016].

vocational activity or to prevent or compensate for disadvantages in their professional careers” (art. 6).

During the period 1992 – 1997, a whole range of other instruments addressing the important aspect of equality between women and men in the field of employment and social security were enacted at the level of the European Union (*i.e.*, directives on pregnancy and maternity leave, directive on parental leave, directive on part-time work, directive on the burden of proof in cases of discrimination on the grounds of sex)⁹. With the entry into force of the Treaty of Amsterdam in 1999¹⁰, the promotion of equality between men and women became one of the essential tasks of the European Union¹¹ and one of the most important activities¹². Art. 3 para. (2) of the EC Treaty is of particular importance, since it introduces for the first time in the Treaties the concept of gender mainstreaming, which entails for the integration of a gender perspective into every stage of the issuing process (design, implementation, monitoring and evaluation) and into all policies of the Union, with a view to promoting equality between women and men¹³.

Furthermore, the former art. 119 (renumbered as art. 141) of the EC Treaty was also subject to amendment in the Treaty of Amsterdam, incorporating the concept of “equal pay for work of equal value” (initially provided by the Equal Pay Directive). The aforementioned text allows Member States to adopt or maintain positive measures in order to facilitate the exercise of professional activities for the underrepresented sex or to avoid or compensate disadvantages in their professional careers.

⁹ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28/11/1992; Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145, 19/06/1996; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L 14, 20/01/1998; Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, OJ L 14, 20/01/1998.

¹⁰ Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, O.J. C 340/1 1997 [hereinafter Treaty of Amsterdam]. Retrieved from <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> [30 December 2016].

¹¹ Art. 2 of the Treaty Establishing the European Community (Consolidated version 2002), OJ C 325, 24/12/2002 [hereinafter EC Treaty]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12002E%2FTXT> [30 December 2016].

¹² Art. 3 of the EC Treaty.

¹³ Arribas, G. V., Carrasco, L., 2003. Gender equality and the EU. An assessment of the current issues. EIPAscope (2003/1) [online] pp. 23. Retrieved from http://www.eipa.eu/files/repository/eipascope/scop2003_1_3.pdf [30 December 2016].

Another important principle established by the Treaty of Amsterdam was the principle of non-discrimination, provided by art. 13. This text of law is of crucial importance, since it covers discrimination beyond the workforce and includes eight specific grounds on which discrimination is prohibited: gender, race or ethnic origin, religion or belief, disability, age or sexual orientation.

The next important moment in the development of EU gender equality legislation was the adoption of the Charter of Fundamental Rights of the European Union¹⁴, which was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission. The principle of gender equality was established in: (i) art. 21 – it prohibits discrimination on any grounds, including gender; (ii) art. 23 – it recognises the right to gender equality in all areas and the necessity of positive action for its promotion; (iii) art. 33 – it contains the right to reconciliation of professional and family life.

In 2009, the Treaty of Lisbon¹⁵ confirmed once again the importance of gender equality in the European Union. Equality between men and women is a fundamental right and a common principle of the European Union, enshrined in art. 2 and art. 3 para. (3) of the Treaty on European Union¹⁶ and in art. 8 of the Treaty on the Functioning of the European Union¹⁷. Both Treaties – the Treaty on European Union and the Treaty on the Functioning of the European Union – are important for the further development of EU gender equality legislation, as these serve as basis for the adoption of future legislation and other EU gender equality measures.

¹⁴ The Charter of Fundamental Rights of the European Union, 2010 O.J. C 83/02 [hereinafter Charter of Rights].

¹⁵ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 17/12/2007 [hereinafter Treaty of Lisbon]. Retrieved from <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12007L%2FTXT> [30 December 2016]. The Charter of Rights became a binding catalogue of EU fundamental rights since the entry into force of the Treaty of Lisbon.

¹⁶ Treaty on European Union (consolidated version), OJ C 326, 26/10/2012 [hereinafter Treaty on European Union]. Retrieved from <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT> [30 December 2016]. Art. 2 of the Treaty on European Union provides that “*the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*”. Also, pursuant to art. 3 para. (3) of the Treaty on European Union, one of the aims of the EU is to “*combat social exclusion and discrimination, and (...) promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*”.

¹⁷ Treaty on the Functioning of the European Union (consolidated version), OJ C 326, 26/10/2012 [hereinafter Treaty on the Functioning of the European Union]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT> [30 December 2016]. According to the provisions of art. 8 of the Treaty on the Functioning of the European Union, “*in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women*”.

III. EU Legislation on Gender Equality and Work-Life Balance

1. The crucial importance of art. 157 of the Treaty on the Functioning of the European Union

Art. 157 of the Treaty on the Functioning of the European Union¹⁸ is, without question, of paramount importance in the European Union area of gender equality and work-life balance.

Firstly, it should be noted that art. 157 not only prohibits direct discrimination based on gender in the field of pay, but also indirect discrimination. Direct gender discrimination occurs where either a woman or a man is treated less favourably on the grounds of his/her sex than a person of the opposite sex and suffered a detriment. Indirect gender discrimination occurs where a provision, criterion or practice is applied to both sexes but to the detriment of a considerably larger proportion of one sex than the other, and where it is not justifiable, irrespective of gender, to apply that provision, criterion or practice.

Secondly, art. 157 also extends the principle to “work of equal value”, which implies that a comparison should be made between the work performed and the salary received by male and female workers. In this regard, several factors need to be taken into account, such as the nature of the activities actually entrusted to employees, training requirements and working conditions.

Finally, the prohibition applies in cases of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which work is carried out in the same establishment or service, whether private or public.

2. Relevant EU legislation regulating gender mainstreaming

The EU legal framework on gender equality and work-life balance is represented by the main following instruments:

¹⁸ The art. 157 of the Treaty on the Functioning of the European Union provides as following:

„1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”

a) *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*¹⁹

The purpose of the recast Directive 2006/54/EC is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, by bringing together in a single text the main provisions existing in this field²⁰, as well as certain developments arising out of the case-law of the Court of Justice of the European Union.

The recast Directive 2006/54/EC contains provisions to implement the principle of equal treatment in relation to: (a) access to self-employment and employment, including promotion, recruitment, dismissals and to vocational training; (b) working conditions, including pay; (c) occupational social security schemes particularly concerning the scope and conditions of access to the schemes, the contributions, the calculation of benefits and the conditions governing the duration and retention of entitlement.

Needless to say, in addition to art. 157 of the Treaty on the Functioning of the European Union, the recast Directive 2006/54/EC also applies to equal work and work of equal value and also, *a fortiori*, to work of higher value. Finally, it should be noted that the application of the recast Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

b) *Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/ECC*²¹

Balancing family life and work, as a factor of gender equality, is a challenge not only for male and female employees, but also for the self-employed and their partners who help them in their professions or businesses.

¹⁹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26/07/2006 [hereinafter Directive 2006/54/EC]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0054> [30 December 2016].

²⁰ Equal Treatment Directive; Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ L 225, 12/08/1986. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986L0378:EN:HTML> [28 December 2016]; Equal Pay Directive; Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, OJ L 14, 20/01/1998.

²¹ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010 [hereinafter Directive 2010/41/EU]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0041> [30 December 2016].

Directive 2010/41/EU replaces and updates the former legislation (Directive 86/613/EEC of 11 December 1986), which established the principle of equal treatment between men and women in self-employment. The Directive 2010/41/EU applies to self-employed workers, meaning all persons pursuing a gainful activity for their own benefit, and to the spouses of self-employed workers (including to the life partners of self-employed workers, when and insofar as recognised by national law, where they habitually participate in the activities of the self-employed worker and perform the same tasks)²².

The Directive 2010/41/EU contains provisions on maternity benefits. Self-employed women and female spouses or life partners who regularly contribute to the activity of self-employed workers without being employees or business partners shall be entitled to a maternity allowance for at least 14 weeks. This allowance shall be sufficient to enable them to interrupt their activities, if they wish to do so²³.

The maternity allowance shall therefore be equivalent to: (i) the average loss of income or profit (with the amendment that this amount may be subject to a ceiling limit); and/or (ii) the allowance provided at national level in the event of an interruption in activities on health grounds; and/or (iii) any other family-related allowance provided for and determined by the EU country²⁴.

During the interruption in their activities due to maternity, women shall have access to replacement services and national social services. The provision of these services may replace all or a part of the maternity allowance²⁵.

c) *Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC*²⁶

Work life balance is a natural corollary to gender equality and aims to achieve gender equality not only in law but also in the real life. Therefore, although not adopted as a specific gender equality directive, the Parental Leave Directive plays an important role in the gender mainstreaming.

The revised Parental Leave Directive lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, concerning the following issues:

1. Parental leave: (i) male and female workers must have the individual right to parental leave on the grounds of the birth or adoption of a child to take care of

²² Art. 2 of Directive 2010/41/EU.

²³ Art. 8 para (1) of Directive 2010/41/EU.

²⁴ Art. 8 para. (3) of Directive 2010/41/EU.

²⁵ Art. 8 para. (4) of Directive 2010/41/EU.

²⁶ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18/03/2010 [hereinafter Parental Leave Directive]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0018> [31 December 2016].

that child until a given age up to eight years to be defined by Member States and/or social partners; (ii) the leave shall be granted for a period of at least four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis²⁷.

2. Employment rights and non-discrimination: (i) at the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship; (ii) the working parents should be protected against dismissal on the grounds of an application for, or the taking of, parental leave; (iii) rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained and will stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply²⁸.

3. Returning to work: (i) the working parents, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time; (ii) the working parents may take time off from work, in accordance with national legislation, collective agreements and/or practice, for unforeseeable reasons arising from a family emergency in the event of sickness or an accident which makes the immediate presence of the worker indispensable²⁹.

d) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services³⁰

The purpose of the Gender Directive is to lay down a framework for preventing discrimination based on gender with respect to the access to and supply of goods and services, particularly in the field of insurance, with a view to enforcing the principle of equal treatment for men and women in the Member States.

The prohibition of discrimination between women and men applies to access to and supply of goods and services, in both the public and private sectors. The Gender Directive applies to goods and services which are available to the public, irrespective of the persons concerned, and which are offered outside the area of private and family life. All direct and indirect discrimination between women and men is prohibited, including unfavourable treatment for reasons of pregnancy and

²⁷ Clause 2 of Parental Leave Directive.

²⁸ Clause 5 of Parental Leave Directive.

²⁹ Clause 6 of Parental Leave Directive.

³⁰ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21/12/2004 [hereinafter Gender Directive]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0113> [31 December 2016].

maternity. Harassment, sexual harassment and instigation to discrimination are considered as discrimination based on gender and for this reason are also prohibited.

Differences in the treatment of men and women may be accepted only if they are justified by a legitimate aim, such as the protection of victims of sex-related violence (in cases such as the establishment of single-sex shelters) or the freedom of association (in cases of membership of single-sex private clubs). Any limitation should nevertheless be appropriate and necessary³¹.

e) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding³²

The objective of this Directive is to take minimum measures to protect the health and safety of pregnant workers, workers who have recently given birth and women who are breastfeeding. The main provisions are related to:

1. Maternity leave: (i) maternity leave must be for an uninterrupted period of at least 14 weeks before and/or after delivery, two of which must occur before the delivery; (ii) the pay and allowance for maternity leave shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, and is subject to any ceiling laid down under national legislation; (iii) the right to pay or to an allowance may be subject to certain conditions, though not the condition that a period of work of more than 12 months should have immediately preceded the presumed date of birth³³.

2. Exposure to risks: (i) exposure of the workers in question to chemical, physical, biological and stress risks is to be avoided by provisionally adjusting their working conditions or their working hours; (ii) where such adjustment is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job; (iii) where transfer to another activity is not feasible, the workers in question must be granted leave for the whole of the period considered necessary to protect their safety and health³⁴.

3. Night work: (i) the workers should not be obliged to perform night work during their pregnancy and for a period following childbirth; (ii) the workers must be transferred to daytime work where possible, or otherwise by excusing them from work or extending maternity leave³⁵.

³¹ Article 4 para. (5) of Gender Directive.

³² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28/11/1992 [hereinafter Directive 92/85/EEC]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085> [31 December 2016].

³³ Art. 8 of Directive 92/85/EEC.

³⁴ Art. 5 of Directive 92/85/EEC.

³⁵ Art. 7 of Directive 92/85/EEC.

4. Ante-natal examinations: pregnant workers have the right to take leave from work without loss of pay to enable them to attend ante-natal examinations if such examinations take place during working hours³⁶.

5. Employment rights: (i) the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for the pregnant workers, workers who have recently given birth and workers who are breastfeeding must be guaranteed; (ii) women may not be dismissed for reasons related to their condition for the period from the beginning of their pregnancy to the end of the period of leave from work. In the event of dismissal, the employer must justify their action in writing³⁷.

*f) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security*³⁸

The Directive 79/7/EEC aims to implement the principle of equal treatment in matters of social security. This principle protects European citizens against discrimination on grounds of gender, whether direct or indirect. More specifically, it regards: (i) the scope of the schemes and the conditions of access; (ii) the obligation concerning contributions and the calculation of these contributions; (iii) the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit.

The Directive 79/7/EEC applies to statutory social security schemes which provide protection against sickness, invalidity, accidents at work and occupational diseases, unemployment and risks related to old age and to social assistance which supplements or replaces the basic schemes. It does not apply to survivors' benefits and family benefit schemes³⁹.

*g) Council Recommendation 92/241/EEC of 31 March 1992 concerning childcare*⁴⁰

The objective of the Council Recommendation 92/241/EEC is to encourage increased participation by men in childcare in order to achieve a more equal sharing of parental responsibilities between men and women, and to enable women to have a more effective role in the labour market.

The recommendation addresses the following areas: (i) the provision of childcare services while parents are either working, studying or training or actively seeking work; (ii) special leave for working parents who have children to look

³⁶ Art. 9 of Directive 92/85/EEC.

³⁷ Art. 10 of Directive 92/85/EEC.

³⁸ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10/01/1979 [hereinafter Directive 79/7/EEC]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31979L0007> [31 December 2016].

³⁹ Art. 3 of Directive 79/7/EEC.

⁴⁰ 92/241/EEC: Council recommendation of 31 March 1992 on child care, OJ L 123, 08/05/1992 [hereinafter Council Recommendation 92/241/EEC]. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992H0241> [05 January 2017].

after; (iii) making the working environment more responsive to the needs of workers with children; (iv) measures to help both parents share their work and childcare responsibilities.

3. Gender equality and work-life balance in the most recent European Union policy documents

Gender equality and work-life balance have also been considered in the most recent EU policy documents, thus revealing that the concern at the EU level is growing with respect to this issue. The recent EU policy documents on gender equality and work-life balance, with real impact at national level, are the following:

a) Europe 2020 Strategy

Europe 2020 Strategy, which follows the Lisbon Strategy for the period 2000-2010, puts forward three mutually reinforcing priorities: (i) smart growth, with the aim to develop an economy based on knowledge and innovation, (ii) sustainable growth, in the sense of promoting a more resource efficient, greener and more competitive economy, and (iii) inclusive growth, targeting to foster a high-employment economy so as to create social and territorial cohesion⁴¹.

In order to achieve the priorities established by Europe 2020 Strategy, the increase of the employment rate of the population aged 20-64 is of pivotal importance. This target should be achieved through the greater involvement of women, older workers and the better integration of migrants in the work force. This includes promoting female entrepreneurship, reducing the gender gap in employment levels and working with Member States concerning the availability of affordable high-quality child care and other policies which aim to improve work-life balance.

In addition, work-life balance policies aimed at increasing women's participation in the labour market may contribute to the achievement of another headline target of the Europe 2020 Strategy: the reduction in the number of Europeans living below the national poverty lines, taking woman into consideration as they face a higher poverty risk.

The "Guidelines for the employment policies of the Member States", adopted by the Council in 2015 and which are part of the "Europe 2020 integrated guidelines", also outline, in this regard, the importance of the implementation, assessment and follow up of employment policies that promote gender equality and work-life balance⁴².

⁴¹ Retrieved from http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/index_en.htm [15 January 2017].

⁴² Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015, , OJ L 268/28, 15/10/2015. Retrieved from http://ec.europa.eu/europe2020/pdf/eu2020_20151005_employment.pdf [15 January 2017]. According to Guideline 6 (Enhancing labour supply, skills and competences) thereof, "Female participation in the labour market should be increased and gender equality must be ensured, including through equal pay. The reconciliation between work and family life should be promoted, in particular access to affordable quality early childhood education, care services and long-term care".

c) Pact for gender equality for the period 2011-2020

The Pact for gender equality for the period 2011 - 2020⁴³ urges the European Union and Member States to work towards achieving equality, ensure equal pay for equal work and promote the equal participation of women in decision-making and, in particular: (i) to close the gender gaps in employment and social protection, including the gender pay gap, with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and promoting social inclusion in particular through the reduction of poverty, thus contributing to the growth potential of the European labour force; (ii) to promote better work-life balance for women and men throughout the life-course, so as to enhance gender equality, increase women's participation in the labour market and contribute to meeting demographic challenges; and (iii) to combat all forms of violence against women in order to ensure their human rights and to achieve gender equality.

Finally, it is worth mentioning that the Pact for gender equality for the period 2011-2020, in order to promote better work-life balance for women and men, recommends the adoption at national level of three main measures: (i) to improve the supply of adequate, affordable, high-quality childcare services for children under the mandatory school age with a view to achieving the objectives set by the European Council in Barcelona in March 2002, taking into account the demand for childcare services and in line with national patterns of childcare provision; (ii) to improve the provision of care facilities for other dependants; (iii) to promote flexible working arrangements and various forms of leave for both women and men.

b) Strategy for equality between women and men 2010-2015

The European Commission's Strategy for equality between women and men 2010-2015⁴⁴ is a comprehensive framework committing the Commission to promote gender equality into all its policies for the following thematic priorities: (i) equal economic independence; (ii) equal pay for equal work or work of equal value; (iii) equality in decision-making; (iv) dignity, integrity and ending gender-based violence; (v) gender equality in external actions; (vi) horizontal issues such as gender roles, legislation and governance.

⁴³ Council conclusions of 7 March 2011 on European Pact for Gender Equality (2011-2020), OJ C 155, 25/05/2011 [hereinafter Pact for gender equality for the period 2011 - 2020]. Retrieved from [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011XG0525\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011XG0525(01)) [15 January 2017].

⁴⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Strategy for equality between women and men 2010-2015*, not published in the Official Journal. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0491> [15 January 2017].

IV. Romanian National Legislation on Gender Equality and Work-Life Balance

In 2007, Romania joined the European Union, which had significantly contributed to the evolution of gender equality law, including by adopting measures regarding equal opportunities for women and men, combating sex-based discrimination and domestic violence.

Although general equal opportunities for women and men exists (in terms of legislation), Romania has not yet developed a consolidated legislation regarding the reconciliation of professional and private/family life⁴⁵. However, it should be mentioned that, in the context of the severe imbalances induced by the economic crises, there have been several recent legal developments with significant impact on the area of work-life balance, as further detailed.

1. Maternity, paternity, parental and related leaves

The types of leaves aiming to facilitate the reconciliation of work and family life in Romania are: maternal risk leave, maternity leave, paternity leave, parental leave, leave to take care of a sick child or a handicapped child, paid days off for exceptional family events and unpaid leave to solve personal matters.

1.1 Maternal risk and maternity leave

These types of leaves are established by G.E.O. no. 96/2003 on maternity protection at work⁴⁶ and G.E.O. no. 158/2005 regarding sick leave and medical allowance⁴⁷.

a) Maternal risk leave may be granted to pregnant or postpartum women who are not on maternity leave and whose employer cannot guarantee them working conditions that are free of risks to their health or that of the child. Maternal risk allowance may be granted for up to 120 days before and after maternity leave on the recommendation of a family doctor or obstetrician and gynaecologist. Maternal risk allowance is equal to 75 % of the mother's average monthly income over the last 6 months before the benefit was requested⁴⁸.

⁴⁵ In a 2014, the European Commission conducted a comparative study on family-related work schedule flexibility across Europe, namely "*Gender equality in the workforce: Reconciling work, private and family life in Europe*" (retrieved from http://ec.europa.eu/justice/gender-equality/files/documents/140502_gender_equality_workforce_ssr_en.pdf [15 January 2017]). According to the study, Romania ranks last in the EU28. Essentially, fewer than 10% of employees can vary the start or end of the working day and fewer than 5% can take whole days off. With respect to the possibility to vary the start and/or the end times of the working day, in Romania there is a significant gender gap, men having a bigger advantage in this respect.

⁴⁶ Government Emergency Ordinance no. 96/2003 on maternity protection at work, Official Gazette of Romania Part. I, no. 750 dated 27/10/2003, as further completed and amended [hereinafter G.E.O. no. 96/2003 on maternity protection at work].

⁴⁷ Government Emergency Ordinance no. 158/2005 regarding the sick leave and medical allowance, Official Gazette of Romania Part I, no. 1074 dated 29/11/2005, as further completed and amended [hereinafter G.E.O. no. 158/2005 regarding sick leave and medical allowance].

⁴⁸ Art. 31 of the G.E.O. no. 158/2005, corroborated with art. 10 of the G.E.O. no. 96/2003.

b) Maternity leave is granted for a total of 126 calendar days, out of which 63 days of leave before the birth (antenatal leave) and 63 days after the child is born (postnatal leave). The first 42 days of leave after the child is born are compulsory. The remaining 84 days need not be taken if the mother does not feel that she needs them or can be taken earlier, before birth or later, after birth. Maternity allowance is equal to 85 % of the average monthly income earned by the mother during the last 6 months prior to maternity leave. This allowance is paid for the 126 days of maternity leave, even if the child is stillborn⁴⁹.

1.2. The paternal leave

Law no. 210/1999⁵⁰ and G.D. no. 244/ 2000⁵¹ represent the Romanian legal framework regulating the paternal leave. In brief, according to the aforementioned legal framework, fathers are entitled to benefit of the paternal leave for a period of 5 working days, anytime during the first 8 weeks after the child's birth⁵².

1.3. Parental leave

The parental leave had been subject to intense legislative changes in Romania. The G.E.O no. 111/2010⁵³, which regulates the parental leave, was significantly amended in 2016⁵⁴, which set new (and more favourable) rules and conditions to parents eligible to benefit from the parental leave.

Basically, according to the Romanian legislation currently in force, the parental leave is non-transferable and at least one month should be taken by the other parent (usually, the father of the child). Moreover, if the parent decides, during parental leave, to return to work, the parental leave is suspended and the other parent may opt to take the rest of the parental leave chosen by the returning parent only if he/she qualifies for it.

Also, the Romanian legislation expressly protects workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave. Specifically, the law forbids any dismissal of employees who are on parental leave, employees who are being paid the incentive for coming

⁴⁹ Art. 23 - 25 of the G.E.O no. 158/2005, corroborated with art. 2 letter g) of the G.E.O. no. 96/2003.

⁵⁰ Law no. 210/1999 regarding the parental leave, Official Gazette of Romania Part I, no. 654 dated 31/12/1999, as further completed and amended [hereinafter Law no. 210/1999].

⁵¹ Government Decision no. 244/2000 approving the Methodological Norms for the application of the Law no. 210/1999, Official Gazette of Romania Part I, no. 150 dated 11/04/2000 [hereinafter G.D. no. 244/2000].

⁵² Art. 1 and art. 2 of the Law no. 210/1999, corroborated with art. 1 and art. 2 of the G.D. no. 244/2000.

⁵³ Government Emergency Ordinance no. 111/2010, Official Gazette of Romania Part I, no. 830 dated 10/12/2010, as completed and amended [hereinafter G.E.O. no. 111/2010].

⁵⁴ G.E.O. no. 111/2010 was significantly amended by Law no. 66/2016, Official Gazette of Romania Part I, no. 304 dated 20/04/2016 [hereinafter Law no. 66/2016].

back to work before the child is two years old, or employees who are in the six-month period after returning to work from parental leave. The only exception to this rule is when the company is being declared insolvent or bankrupt.

Likewise, it should be noted that the Romanian legislation⁵⁵ grants a person taking parental leave the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship.

The novelties brought by Law no. 66/2016 referred to the following:

a) *The increase of the minimum monthly allowance for child growth leave*: according to the new law, the monthly allowance is established in the amount of 85% of the net average income in the last 12 months from the last 2 years prior to the child's birth and can't be less than 85% of the gross national minimum wage guaranteed⁵⁶.

Thus, the monthly allowance will be reported at the gross minimum wage, specifying only a minimum limit, not a maximum one, as it happened before the enforcement of Law no. 66/2016.

b) *The length of parental leave*: up until mid-2016, parents opted either for parental leave of 1 (one) year or for parental leave of almost 2 (two) years⁵⁷. From July 1st, 2016, things changed. Under the new regulations, parents will benefit from a single length of parental leave, until the child reaches two years⁵⁸.

c) *The insertion incentive*: parents benefitting from parental leave, who will start working before the end of the parental leave, will be entitled to receive - up to the end of the statutory duration of 2 (two) years of the parental leave - a monthly incentive insertion of 50% of the minimum allowance provided by the law⁵⁹.

1.4. Parental care leave (ill or handicapped children)

As per the provisions of G.E.O. no. 111/2010, as amended by Law. No. 66/2016, the parent who meets the eligibility conditions prescribed by law will benefit of childcare leave until the ill child reaches the age of 3 / the handicapped child reaches the age of 4, as the case may be, and the related allowance will be paid in the amount of 85% of the average net revenue achieved in the last 12 months.

2. Equal opportunities between women and men at the workplace

The principles of equality of opportunity for men and women are addressed in Law no. 202/2002⁶⁰, adopting the *acquis communautaire* addressing this matter. Law

⁵⁵ Law no. 202/2002 regarding equal opportunities between women or men, Official Gazette of Romania Part I, no. 326 dated 05/06/2013 (republished), as further amended and completed [hereinafter Law no. 202/2002].

⁵⁶ Art. I item 3 of the Law no. 66/2016.

⁵⁷ Specifically, until the child reaches 2 (two) years of age.

⁵⁸ Art. I item 1 of the Law no. 66/2016.

⁵⁹ At present, the insertion incentive is in amount of approximately EUR 130.

⁶⁰ *Supra*, footnote 55.

no. 202/2002 expressly forbids any kind of discrimination in recruiting or hiring for any management position and protecting parental leave⁶¹. However, the said law does not contain provisions that refers even implicitly to any aspect connected to work-life conciliation.

The 2010-2012 National Strategy for equality between women and men, adopted by the Romanian Government through G.D. no. 237/2010⁶², recognized that gender equality on the labour market remains problematic and identified as priorities for action policies directed at reducing the gender pay gap and a better balance between work and family.

The 2014-2017 National Strategy for equality between women and men, adopted by the Romanian Government through G.D. no. 1050/2014⁶³, is more shaped in its approach to labour market gender imbalances⁶⁴. Likewise the former strategy, the 2014-2017 National Strategy for equality between women and men sets out the equality objectives in the labour market: (i) promoting gender perspective in employment policies, mobility and labour migration; (ii) increasing awareness about the legal provisions of equal opportunities between women and men; (iii) increasing awareness on the gender pay gap; (iv) increasing awareness on reconciling work and family life and private; (iv) promoting the labour market integration of women vulnerable to discrimination.

To achieve the reconciliation of work and family life, the 2014-2017 National Strategy for equality between women and men sets out several actions, such as⁶⁵:

a) To organize trainings and awareness seminars in the area of equality between men and women, meant for the labour inspectors, who ensure the implementation and compliance with the legal provisions on equal opportunities and equal treatment between men and women, according to the tasks provided for therein.

⁶¹ An entire chapter of Law no. 202/2002 (Chapter 2) is dedicated to this aspect.

⁶² Government Decision no. 237/2010 approving The 2010-2012 National Strategy for equality between women and men, as well as the General Action Plan for the implementation of The 2010-2012 National Strategy for equality between women and men, Official Gazette of Romania Part. I, no. 242 dated 15/04/2010.

⁶³ Government Decision no. 1050/2014 approving The 2014 - 2017 National Strategy for equality between women and men, as well as the General Action Plan for 2014 - 2017 for the implementation of the Strategy, Official Gazette of Romania Part I, no. 890 dated 08/12/2014.

⁶⁴ Chapter 2 of the 2014 - 2017 Strategy provides as follows: *"A balanced participation on the labour market of both women and men - in terms of occupation, payment, promotion and participation to continuous learning - is strongly connected to the family context. For these reasons it appears the need to implement certain coherent policies that would stimulate this process of balancing the professional life with the family life and the private life. The approach for this issue should take into account not only the economical dimension, but also the socio - cultural one within which are perpetuated gender stereotypes, which, most of the time, lead to an unequal distribution of the economic power in the society and to a limitation of the women's access to different social life spheres, for example, in certain professional areas considered naturally masculine. [...]"*

⁶⁵ Chapter VII, item 2.1. of The 2014 - 2017 National Strategy for equality between women and men, supra, footnote 63.

b) To conduct a study in order to identify and assess the gender discrimination situations that interfere in the professional development process, with two components: (a) equal access to promotion for women who return to work after extended periods of leave for childcare and for other dependent family members; and (b) a set of recommendations for the improvement and completion of the legislative framework and of the practices used by the human resources departments.

3. Flexible working time

Flexible working hours for parents are regulated in the Romanian Labour Code⁶⁶ in order to endure a greater flexibility of the labour market. An entire chapter of the Romanian Labour Code is dedicated to the working time and rest period, mainly regulating the following:

- Working time is defined as “any period” during which the employee performs the work in favour of the employer (art. 111);
- The length of the working time for the full-time employees is of eight hours per day and 40 hours per week (art. 112 para. 1);
- As a rule, distribution of the working time within the week shall be uniform, of eight hours per day for five days, with 2 days of rest (art. 113 para. 1). However, according to the specific features of the organization or activity performed, an unequal distribution of the working time may be chosen, while observing the normal length of the working time of 40 hours per week (art. 113 para. 2);
- It should be noted that the actual organization of the unequal work schedule within the working week of 40 hours, and within the compressed workweek, shall be negotiated in the collective labour agreement at the level of the employer or, in its absence, shall be provided in the internal regulation of the employer company (art. 116 para. 1). An unequal work schedule shall only operate if expressly stated in the individual labour contract (art. 116 para. 2);
- With the agreement or at the request of the concerned employee, an employer may establish individualized work schedules (art. 118 para. 1). Individualized work schedule implies a flexible organization of the working time (118 para. 2), in the sense that the length of the working time is divided into two main periods:

a fixed period, when the entire personnel is simultaneously present at the workplace, and a variable period, when the employee chooses the time of arrival to and departure from work, in compliance with the daily working time (art. 118 para. 3).

Also, according to the provisions of G.E.O. no. 96/2003 on maternity protection at work⁶⁷, any pregnant employee who, due to health reasons related to

⁶⁶ Law no. 53/2003 on the Labour Code, Official Gazette of Romania Part I, no. 345 dated 18/05/2011 (republished), as further amended and completed [hereinafter Romanian Labour Code].

⁶⁷ *Supra*, footnote 43, art. 13.

their person or to the unborn child, cannot work full 8 hours, has the right to diminish the working hours, by one quarter, while maintaining full payment, from the salary fund of the employer, in accordance with the legal provisions in force.

The employers are compelled to allow two breaks, one hour each, for the women breastfeeding their infants up to the age of one. These breaks include the time necessary to go and return from the place where the infant is. Upon the request of employee mothers, these breaks for breastfeeding may be substituted by reducing the working time by two hours daily. The breastfeeding breaks and the shortened working hours, on grounds of breastfeeding, are included in the working time and have no financial impact on the wage of the employees, which is paid entirely from the salary fund of the employer⁶⁸.

As already stated above⁶⁹, in terms of family-related work schedule flexibility, Romania ranks last in EU28. Recent study⁷⁰ reveals that young Romanians work very long hours, in the sense that the overall number of weekly working hours for young people is 42.4 (40 hours is the legal weekly working time), while approximately 25% of young people in employment report working 50 hours a week. From this perspective, one may assess that the work-life balance desiderate is profoundly affected. According to the data released by the Romanian National Institute of Statistics, the birth rate in Romania in 2013 was the lowest since WWII⁷¹ and the current numbers follow this trend.

4. Workplace flexibility: working at home and teleworking

Romania has not yet adopted any specific legislation on telework. Also, so far, this type of work had not been covered by collective agreements. Nevertheless, it appears that this kind of work organisation is more preferred both by employers and employees, despite the lack of legislative support. Therefore, from this point of view, Romanian employees do not benefit from any flexibility. As a novelty, it is worth mentioning that a legislative initiative amending the Labour Code, introducing the concept of "teleworking", has been tacitly endorsed by the Romanian Senate and is to the stages of the legislative process in the Romanian Chamber of Deputies. The Romanian Labour Code only regulates the possibility to work at home, dedicating an entire chapter to this aspect⁷². Specifically, employees working at home are the employees who accomplish at home the tasks specific to

⁶⁸ Art. 17 of the G.E.O. no. 96/2003 on maternity protection at work.

⁶⁹ *Supra*, footnote 45.

⁷⁰ 2014 Survey carried out by Friedrich-Ebert-Stiftung România (FES) and Centrul de Sociologie Urbană și Regională (CURS). Retrieved from http://www.fes.ro/media/2014_news/Raport-FES-Tineri_in_Romania.pdf [15 January 2017].

⁷¹ Stroe D., *Romania's birth rate, the lowest since WWII*, retrieved from <http://www.balkaneu.com/romanas-birth-rate-lowest-wwii/> [15 January 2017].

⁷² Chapter IX (*Work at home*), comprising art. 108 – art. 110, of the Romanian Labour Code.

their jobs, during a working schedule that they establish. The employer has the right to check on their activity, based on the conditions stipulated in the individual work contract. The individual labour agreement to be concluded with the employees working at home needs to be concluded in written form and must expressly provide the following: the clear specification that the employee works at home, the specific form under which the employer has the right to monitor the activity, and the practical modalities for control.

V. Political Commitment in Terms of Work Life Balance

As noted above, political commitment to gender equality and work-life balance has increased over the past years both at EU and national levels. However, this commitment needs to be transformed into action and progress.

Dedicated policies and measures are required to achieve a better work life balance and gender equality, namely:

- gender equality must be developed, including in terms of gender equality in employment and changing role models of women and men;
- affordable, accessible and quality care services for children and other dependants must be developed;
- flexible working and leave arrangements must be upgraded;
- family-friendly policies must be implemented in the workplace;
- workplace flexibility must be enshrined into legislation.

In conclusion, the complexity of the issues outlined above and the wide range of policies involved require an integrated approach to reconciling family life, private life and professional life and mainstreaming gender equality.