RAISING THE MINIMUM LABOR STANDARDS IN THE EUROPEAN UNION: TRANSPARENT AND PREDICTABLE WORKING CONDITIONS AND A WORK-LIFE BALANCE

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Skopje, December 2022

This brief provides an overview of the legal instruments of the EU on transparent and predictable working conditions and a work-life balance with a transposition deadline that expired in August 2022.

On 20 June 2019, the European Parliament and the Council adopted two important directives to raise minimum labor standards in the European Union – Directive 2019/1152 on transparent and predictable working conditions in the European Union[1] (EU Directive 2019/1152) and Directive 2019/1158 on work-life balance for parent(s) and carer(s)[2] (EU Directive 2019/1158). The deadline for transposition of EU Directive 2019/1152 expired on August 1, 2022 and the deadline for transposition of EU Directive 2019/1152 expired on August 2, 2022. This brief treats the main novelties and the importance of these two directives, and aspects important for our country regarding their harmonization.

TRANSPARENT AND PREDICTABLE WORKING CONDITIONS

What does the EU directive 2019/1152 foresee?

The EU directive 2019/1152 advances the minimum standards of the EU for transparency and predictability in relation to working conditions. It covers all workers and employers who have an employment relationship or employment contract provided by law, collective agreement, or practice, with a few exceptions that are not of major importance for North Macedonia.[3] The matter regulating the directive consists of three main pillars – information on the employment relation, minimum working conditions and horizontal provisions.

1 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1152.
2 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32019L1158.
3 Some of the provisions do not cover sailors and fishermen.

This policy brief was prepared under the project Building bridges for a common future: Rule of law in view of EU accession, funded by the European Union. The contents of this Brief do not reflect the official opinions and positions of the European Union. Responsibility for the information and views expressed in this Brief lies entirely with the European Policy Institute (EPI) - Skopje.

The directive prescribes an obligation to employers t**o notify employees of key aspects of the employment relation**, either in written form, or, under certain conditions in electronic form.[4] It proscribes the information to be provided (as detailed in Article 4 paragraph 2), when (partly during a period starting on the first working day and ending no later than the seventh calendar day, and partly within one month of the first working day.) (Article 5 paragraph 1), in what form (easily understandable, complete and transparent, with the possibility for Member States to devote a website to share this information) (Article 5 paragraph 2 and 3), and how this employer's obligation continues to apply in case of changes in the employment relation (Article 6), and obligations in case of work in another Member State or in a third country (Article 7).

Several minimum working conditions are foreseen. *A maximum duration of probationary period* of six months is foreseen and respectively proportional duration for shorter contracts, and the possibility of longer duration, but only in specific conditions. Thereafter, the employer shall not prohibit the employee from having other employment outside the work schedule or subject the employee to ill-treatment due to having such so-called *parallel employment*. It is left to the Member States to provide for conditions in which parallel employment would be considered to be incompatible with the existing one and limited only to objective grounds tied to health and safety, protection of trade secrets, integrity of the public service or avoidance of conflict of interest. There shall be a certain minimum level of work predictability determined through the so-called *reference hours* and days and the employee shall be informed by the employer that they will have to work within a period that can be considered a reasonable time limit in accordance with domestic laws, collective agreements or practices. It is also stipulated that the Member State shall find a way to provide compensation for the employee if the employer cancels the announced work outside the reasonable period and does not compensate them for their work. The provisions in the directive concerning countries allowing the conclusion of contracts for *hiring employees for works for which there is no permanent need* are also significant. The directive envisions that all Member States allowing the conclusion of such contracts must take one or more of the following measures in order to prevent abuses: to strictly limit the possibility to use and the duration of such contracts, to introduce a conciliatory presumption of the existence of a work contract with a minimum number of working hours based on the average of working hours over a specifically determined period, i.e. to consider that there is a work contract with such working hours, unless the employer fails to prove otherwise or to introduce another equivalent measure ensuring effective protection against abuse. There are also obligations of the employer for a reasonable and written explanation within one month for the rejection of the requests of an employee for a more predictable or safer workplace after the expiry of the probationary period or, in any case, after six months from the start of the employment relation. Any training the employee has to complete in order to be able to perform the work shall be free of charge, counted as part of the working time and, if possible, during working hours. Any collective agreement concluded shall respect the minimum working conditions provided for by this Directive, as they will be transposed into domestic law.

The Directive also provides for several **horizontal provisions**. The right to redress in the case of infringements of the minimum rights, protection against worse treatment and consequences due to the requirement of compliance with the provisions arising from this directive, protection in the event of dismissal due to the use of the rights arising from this directive, including the transfer of the burden of proof to the employer if the employee makes it probable that the dismissal or equivalent measure was taken due to the use of the rights arising from this directive. It is also necessary to introduce effective, proportionate and deterrent penalties for infringements of rights arising from this directive.

4 According to Article 3 of this directive, electronic sharing of these informations will be in accordance with this directive only if the information is provided and transmitted on paper or, provided that the information is accessible to the worker, that it can be stored and printed, and that the employer retains proof of transmission or receipt, in electronic form.

How does the transposition of EU directive 2019/1152 in the Member States proceed?

The transposition of this Directive has been done by the Member States in various ways, but the most common is by revising the domestic *lex generalis* for work and employment relations. Due to failure to take any measures to transpose this Directive or failure to inform in relation to them, the European Commission initiated infringement proceedings on 20 September 2022 against Austria, Belgium,[5] Greece, Denmark, Ireland, Cyprus, Luxembourg, Malta,[6] Poland, Portugal, Romania,[7] Slovakia,[8] Slovenia, Hungary, Finland, France, Croatia, the Czech Republic and Spain. Under the founding agreements, the EC sent a formal notice of initiation of procedure to these countries on the basis of Article 258 TFEU – Article 260(3) TFEU.

Why is the EU directive 2019/1152 significant?

This Directive is significant because it modernizes and enhances labor legislation in the EU, by considering new forms of work and by providing for new rights for employees and obligations for employers. This Directive is a significant step forward compared to its predecessor. Namely, EU Directive 2019/1152 came as a result of an evaluation of Council Directive 91/533/EEC on the obligations of employers to inform employees about the terms of the contract or employment relation[9] (Council Directive 91/533/EEC), which EU Directive 2019/1152 put out of force as of 31 July 2022. The evaluation carried out showed that, although still relevant and highly appreciated, Council Directive 91/533/EEC does not cover modern forms of labor relations, employment contracts and, in general, greater potential for its effectiveness is required.[10] That is also where the greatest potential for contributing to this directive lies.

What is important for the EU Directive 2019/1152 and North Macedonia?

Compliance with this Directive is important for North Macedonia due to the ongoing EU accession process in which compliance with the entire European acquis will be monitored. Moreover, Macedonian labor legislation lags behind contemporary labor legislations in terms of ensuring recognition of different types of employment and modern jobs, but also recognition of the status of employee. Hence, changes to the labor legislation in this direction are needed even without the ongoing EU accession process.

But the greatest significance of this directive for North Macedonia lies in its potential to help with some of the key challenges to the protection of employees and their rights in the country, such as abuses of service contracts and the inequality of arms before the courts in the event of a labor dispute. With regard to the former, the measures required by the directive to prevent abuses in connection with contracts for hiring of employees and for works for which there is no permanent need are significant. Compliance with this directive, in particular the introduction of the so-called conciliatory presumption of the

5 On 31 October 2022, Belgium enacted a law partly transposing this directive.
6 On 21 October 2022, Malta enacted amendments to the Law on Labor and Industrial Relations with the aim of transposing this directive.
7 Romania has made legislative changes on two occasions in order to transpose this directive, on 19 October 2022 amendments to the Code on Labor Relations and to the Governmental State of Emergency Decree No. 57/2019 regarding the Administrative Code, and then on 10 November 2022 to the Code on Labor Relations and to the Law on Social Dialogue.
8 On 29 October 2022, Slovakia enacted a law amending the Labor Law in order to transpose this directive.
9 Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31991L0533.
10 Commission Staff Working Document, REFIT Evaluation of the 'Written Statement Directive' (Directive 91/533/EEC) {C(2017) 2611 final}, https://ec.europa.eu/social/BlobServlet?docId=17658&langId=en.

existence of a labor contract, will help a lot in dealing with this often-used form of abuse for the denial of labor rights. In addition to this, the provision providing for the transfer of the burden of proof to the employer in the case of a dismissal or similar measure is significant if the employee makes it probable that the dismissal or similar measure was applied due to the use of the rights arising from this directive. This will significantly help the position of employees before the courts and can be expected to act empoweringly towards their potential and motivation to practice their own rights.

WORK-LIFE BALANCE

What does the EU directive 2019/1158 foresee?

With the EU Directive 2019/1158, the EU has set the ground for regulation and is introducing new rights within the area that is crucial for gender equality as a declared value of the Union, which transpires with the time in which it is enacted. This directive governs several main substantive issues, safeguards and other issues. In doing so, the personnel scope of the directive is extended to all employees, i.e. both those who have an employment contract and those who are in employment relation, including part-time employees, fixed-term employees and those who are engaged through temporary employment agencies.

The substantive issues governed by EU Directive 2019/1158 are paternity leave (Article 4), parental leave (Article 5), carer leave (Article 6), leave in connection with events caused by force majeure (Article 7), reimbursements for these leaves (Article 8), flexible working arrangements (Article 9), the right to return to the same or equivalent place and rights as before the leave (Article 10), protection against discrimination due to the use of rights arising from this Directive (Article 11), prohibition of lay-off due to the use of rights arising from this Directive or requested protection of these rights (Article 12 paragraph 1 and 2). Here we will keep only to paternity leave, parental leave and carer leave, as absolute rights that do not depend on the approval of the employer and as key novelties from this directive. Regarding **paternity leave**, at least ten working days of leave related to the birth of the child are foreseen, leaving it up to the Member States to decide whether they will give the employee the opportunity to use part of the leave before the birth and/or in a flexible manner. The employee is entitled to paternity leave regardless of marital or family status (for example, extramarital or family union) and regardless of how long he previously worked for that employer, and during the leave the employee must be paid at least as per the rules for payment during sick leave. **Parental leave** (Article 5) is defined as individual, non-transferable, entitlement to four months' leave, of which two are paid months, which must be used up to the age which will be determined by the national legislator, but no later than the age of eight of the child. The national legislator can regulate the ways of using this leave more closely, for example, how long a parent should previously work for that employer (by not being able to exceed the minimum threshold of one year), how much compensation will be received for this leave (whereby the arrangement must be made in such a way as to allow the use of this leave by both parents) or why the employer may request a postponement of the use of this leave, whereby conditions must be tied to a serious disruption of the employer's work. The domestic legislator has an obligation to establish rules for adjustment in cases of use of this leave by adoptive parents, parents with disabilities and parents of a child with disabilities or long-term illness. **Carer leave** is a leave for the purpose of providing personal care or support to a relative or a person with

whom the employee lives in the same household and who needs significant assistance or support for a serious medical reason (defined by domestic legislation). This leave amounts to five working days each year for each employee, and it needs to be grounded on real need under domestic law and practices. For this leave, the directive does not explicitly foresee any payment.

Safeguards provided for by the Directive are protection against discrimination on account of the use of the rights deriving from this Directive (Article 11), prohibition of lay-off on account of the use of the rights deriving from this Directive or requested protection of these rights (Article 12, paragraphs 1 and 2), burden of proof (Article 12, paragraph 3, as well as paragraphs 4, 5 and 6 of the same Article), effective, proportionate and deterrent penalties (Article 13), protection against victimization (Article 14), appointment of a competent gender equality body able to implement protection against discrimination as under this Directive (Article 15), and prohibition of regressing existing standards at a national level (Article 16). The arrangement of these institutes is mainly aimed at the previously regulated standards with the equality directives and thus they are already well known for all domestic legislations in the Member States.

In other issues, the Directive provides for an obligation for Member States to inform employees and their organizations of the rights arising from this Directive (Article 17), of the obligation for Member States to notify the Commission by August 2, 2027, with gender-disaggregated statistics included, of the implementation of this Directive (Article 18) and the repeal of the Parental Leave Directive 2010/18/EU (Article 19).

The transposition of EU directive 2019/1158 in the Member States?

Just as with the previous Directive, the transposition and application of this Directive is mostly through the revision of the domestic lex generalis on labor and employment relations. Due to failure to take measures to transpose this Directive or failure to report in regard to them, the European Commission initiated infringement proceedings on 20 September 2022 against Austria, Belgium,[11] Germany, Greece, Denmark, Ireland, Cyprus, Latvia,[12] Luxembourg, Poland, Portugal, Romania,[13] Slovakia,[14] Slovenia, Hungary, France, Croatia, the Czech Republic and Spain. Under the founding agreements, the EC sent a formal notice of initiation of procedure to these countries on the basis of Article 258 TFEU – Article 260(3) TFEU.

Why is the EU directive 2019/1158 significant?

The significance of this directive is in the potential for changing social relations, especially in the sense of destroying patriarchal relations and forces of power in society. This is mostly seen in two parts – the focused approach and stimulation of fathers and recognition of the need for care in the life cycle.[15]

11 On 31 October 2022, Belgium enacted a royal decree partly transposing this Directive.
12 On 15 September 2022, the Republic of Latvia passed a law amending the Law on Maternity and Other Leave with a view to the partial transposition of this Directive.
13 Romania has made legislative changes on two occasions in order to transpose this Directive, and on October 19, 2022 it adopted amendments to the Code on Labor Relation and to the Governmental Emergency Decree No. 57/2019 regarding the Administrative Code, and then on August 29, 2019 it adopted an emergency regulation amending the Law on Paternity Leave.
14 On 29 October 2022, Slovakia enacted a law amending the Labor Act in order to transpose this directive.
15 Miguel De la Corte-Rodríguez, The transposition of the Work-Life Balance Directive in EU Member States: A long way ahead (2022), https://www.equalitylaw.eu/downloads/5779-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-a-long-way-ahead.

Stimulating fathers is done through two key components – introducing the right for fathers to paternity leave and non-transferable and adequately paid parental leave as an incentive for fathers to use this leave. Recognition of the need for care in the life cycle is, in turn, made through the introduction of a right to carer leave for carers, as well as the right to flexible working arrangements, whereby the Union recognizes that carer obligations can arise at any time during the working life and that those obligations are not tied only to children but also to a more severely ill partner and/or parents.[16]

What is important for the EU Directive 2019/1158 and North Macedonia?

Compliance with this directive is extremely important for North Macedonia precisely because of this potential for social progress with wider implications for the equality of all in society. Macedonian labor legislation lags behind contemporary labor legislations in terms of providing conditions for flexible and inclusive treatment on the issue of leaves and its profound systemic impact on reinforcing existing patriarchal relations still persists. Hence, changes to the labor legislation in this direction are needed even without the ongoing EU accession process.

The civil sector in Macedonia has been demanding legislative changes for several years[17] that will go precisely in this direction, i.e. abandoning the regulation of leave in relation to birth and parenthood in a way that either anticipates or stimulates leave only of the mother. In the process of amending the Labor Law, which has now grown into a process of adopting a new labor law, it is envisaged to introduce paternity and parental leave. Within the framework of this process, the minimum standards provided for by this Directive must be maintained. This means that it must be explicitly stated that paternity leave is at least ten working days of paid leave and to define the payment and who has the obligation to make the payment, which, in order to be compliant with this Directive, must be as a minimum the same as the rules for payment during sick leave. It must be explicitly stated that family and marital status must not affect the use of this right, i.e. this must also apply to fathers from extramarital unions. Also, parental leave must be at least *four months,* two of which are non-transferable and paid leave per parent. Adapting the rules for using this leave should be provided for *adoptive parents, parents with disabilities and parents of a child with disabilities or long-term illness*. Additionally, it is necessary to also foresee for carer leave, according to the aforementioned minimum standards of EU directive 2019/1158.

16 Ibid.

17 Reactor – research in action, "Parental leave for all", Radio Free Europe [Реактор – истражување во акција, „Родителско отсуство за сите", Радио слободна Европа] (15.07.2017). https://reactor.org.mk/blogpost-all/родителско-отсуство-за-сите/