

# Legislative Mechanisms of the European Union and of Transposition into the Romanian Legislation Concerning the Problem of Work-Life Balance for Parents and Caregivers - Sociological Aspects

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*In this study, we want to analyse the legal framework of the European Union regarding family leaves and flexible work formulas, measures that the Member States must take by transposing the Directive 2019/1158 of the European Parliament and the Council of Europe on work-life balance for parents and caregivers. A novelty in the Union legislation is the fact that this Directive replaces the notion of “reconciliation” with that of “balance”, and the notion of “family life” with that of “private life of parents and caregivers”. Also, the Directive, which had to be transposed by all EU Member States by August 22, 2022, aims to promote and facilitate the reintegration of mothers into the labour market after the period of maternity leave and parental leave, but, in particular: fathers’ right to paternity leave, parental leave, caregiver’s leave and not least, flexible working arrangements for workers who are parents or caregivers. As for fathers’ right to paternity leave, the EU legislator provides that it can be requested around the child’s birth date, before or after birth and should be granted regardless of the marital or family status, as will be defined in the internal law of each state. The parental leave granted to fathers can be extended by one or two months, a period of time that cannot be transferred to the other parent. The right to this leave will be guaranteed, by law, to all workers who have parental responsibilities. Finally, we will analyse how Romania transposed this Directive into the internal legislation.*

**Keywords:** *European Union, private life of parents and caregivers; Parental leave; Flexible working; Transposing the Directive (EU) 2019/1158 into the internal legislation*

## Introduction

In the sphere of the family, in contemporary society, countless changes have taken place as a result of some economic and social mutations at the level of human communities.

The purpose of this study is to identify the reasoning of the European Union legislator called to regulate unitarily, at the level of the European Union, through the new Directive no. 2019/1158, ensuring the balance between the professional

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and private life of parents and caregivers<sup>1</sup>, in order to reduce or even eliminate those effects that negatively affect the insertion and maintenance of parents or caregivers in the labour market, people involved in raising children and/or care relatives in need.

As specific objectives that we propose in this study, we list:

- the doctrinal, legal or jurisprudential definition, as the case may be, of some basic concepts with which the legal phenomenon under investigation operates (“family”, “family life”, “work-family balance” or “balance between professional and personal life” etc.);
- arguing the need to ensure the balance between the professional and private life of parents through sociological studies to verify the theoretical aspects;
- description of the Union normative framework in the matter adopted by the European Union;
- research and identification of new elements brought by Directive no. 1158/2019;
- analysis of the transposition of the Directive into national legislation, in order to ensure the legal bases.

Therefore, the degree of novelty of the topic is very high, the field under investigation being a topical one that is at the center of attention of the Union and national legislator, as evidenced by the recently adopted normative acts in the matter that we will analyse in this study.

### **Definition of Concepts from a Doctrinal, Legislative and Jurisprudential Perspective**

Foreign legal doctrine<sup>2</sup> states that “the family, the vital cell of society, is an irreplaceable way of anchoring the person in the group, a unique refuge when everything is destroyed”.

Gerard Cornu in “Vocabulaire juridique” defines the family as “the restricted group of father, mother and their minor children who live with them (conjugal, nuclear family)”<sup>3</sup>.

In the sociological meaning<sup>4</sup>, the family represents “the group of people united by marriage, filiation or kinship, which is characterised by the community of life, interests or help [...]”, being thus defined relative to the human community. In the same sense, there can be family relationships, but without being regulated

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<sup>1</sup>Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and caregivers and repealing Council Directive 2010/18/EU.

<sup>2</sup>Terre & Fenouillet (2011) at 1.

<sup>3</sup>Cornu (2014) at 448.

<sup>4</sup>Pricopi (1998) at 13.

by legal norms, such as the situation of cohabitation (free union)<sup>5</sup>, of which the doctrine says it is “outside the law”.

In the legal sense<sup>6</sup>, the family represents “the essential social form that brings together persons between whom there are legal relations of marriage, kinship (natural or civil) or other relations assimilated to family”, thus defined, the family being a legal reality through its regulation by the legal norms.

In domestic legislation, Art. 48 Para. 1 of the Romanian Constitution, revised and republished, states the concept of “family” as being “based on free-conscientious marriage between spouses, on their equality and on the right and duty of parents to ensure the growth, education and training of children” and the new Romanian Civil Code provides in Art. 258 that “The family is based on the freely-consented marriage between the spouses [...]” and in Art. 309 states that “Spouses owe each other respect, fidelity and moral support”.

In European legislation, the right to respect for family life has its material seat in Art. 8 Para. 1 of the European Convention on Human Rights, according to which “Every person has the right to respect for his private and family life, his home and his correspondence”. In the spirit of the jurisprudence of the European Court of Human Rights, the notion of “family life” includes relationships with a social, moral, cultural feature and material interests, implying “the existence of interpersonal and effective ties, capable of generating it, regardless of their source”<sup>7</sup>, the state having the positive obligation, among other things, to ensure the equality of spouses in terms of the exercise of parental duties<sup>8</sup> and to ensure the development of the bond between parents and children<sup>9</sup>.

Thus, the family is characterised by the community of life and continuous help between the family members.

### *The Need to Ensure Balance between Professional and Private Life*

However, in the context of the development of industry and services and the massive training of women in production by detaching them from the “shell of the family”, the immediate effect was a decrease in the birth rate and a change in the optics relative to the size of the family<sup>10</sup>. Thus, at the beginning of the 90s, 86% of women working outside the family had only one child and 75% of them had two children<sup>11</sup>.

In the last 20 years, our country, as well as the other Member States of the European Union, are facing a massive demographic decline due to the decrease in the birth rate, implicitly decreasing the active population, a fact that creates pressure on the long-term sustainability of the social and pension systems<sup>12</sup>.

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<sup>5</sup>Avram (2016) at 9.

<sup>6</sup>Lupaşcu & Crăciunescu (2021) at 37.

<sup>7</sup>Bârsan & Pivniceru (2008) at 88.

<sup>8</sup>ECHR, *Hoffmann v Austria*.

<sup>9</sup>ECHR, *Olsson v Sweden*; ECHR, *Gnahoré v France*.

<sup>10</sup>Voinea (2005) at 13.

<sup>11</sup>Segalen (2011) at 313.

<sup>12</sup>See also the “National Strategy for Employment 2021-2027”, p. 4 Annex 1 of the GD no. 558/19 May 2021, published in the Official Gazette of Romania, Part 1, no. 559/31 May 2021.

The need to integrate and keep women in the workforce is more current than ever, coming in conflict with a pressing problem that most families face in relation to adequately satisfying the two roles of women, the traditional role in the family, educating children and caring for the elderly, as well as that of the labour market<sup>13</sup>.

In the Romanian specialised literature<sup>14</sup>, the concept of “balance between professional and personal life” is defined as “that situation characterised by satisfaction, minimum role conflict and optimal functioning of the employee both in the tasks and roles at the workplace, and in personal/family life”.

In the foreign doctrine<sup>15</sup>, work-life balance represents the extent to which a person is equally involved and satisfied with both the professional and the personal role.

Following a sociological study<sup>16</sup>, relative to this issue, it emerged that approximately half of the respondents support the equality of women’s gender roles both in the family and on the labour market, the traditional view of women only in the family core being in a rate of more than half of the respondents. The professional achievement of the woman is tolerated, however, as this ensures both her own independence and the economic well-being of the family.

According to Eurofound 2017<sup>17</sup> the challenges of ensuring the work-life balance also come from changes occurring outside of working life due to the increase in needs and responsibilities regarding the care of children and the elderly.

In the European Union, the responsibilities of caring for children and the elderly, who have various ailments, take up a significant number of hours per week to carry out activities. Women are twice as likely as men to care for their own children and relatives in difficulty.

Thus, according to Eurofound (2017), 35% of respondents without children and 43% of respondents with a child were too tired, at least several times a month, after work to do household chores. However, the people who had the greatest difficulties in finding time to fulfil their family duties were parents with three or more children (67%).

The same study<sup>18</sup> shows that 77% of parents with children under 18, declared that they “take care of or educate their children every day”, of which 88% are mothers and 67% are fathers. Men are involved in this activity, on average, 21 hours per week, compared to 39 hours per week for women.

Comparing the stress indicators regarding the work-life balance 2007-2016, from this research it appears that this balance has deteriorated a lot, starting from 2011, especially for young women and women who fall into the category of age 35-49 years.

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<sup>13</sup>Popescu (2010).

<sup>14</sup>Ispas (2018).

<sup>15</sup>Greenhaus, Karen & Janson (2003) at 240.

<sup>16</sup>A sociological study with the topic “*Viața de familie*” [*Family Life*] (2008), conducted by the “Public Opinion Barometer” Program (Source: Soros Foundation). The barometer is a sociological research program of the Soros Foundation that constantly provides, from 1994 to the present, quantitative data on the opinions of citizens on various topics.

<sup>17</sup>Eurofound (2017).

<sup>18</sup>Ibid.

Most people with caring responsibilities are employees, therefore legislative measures were needed to be able to ensure the balance between paid work and unpaid work, for the fulfilment of household chores.

Some authors<sup>19</sup> point out that the responsibility of ensuring work-family balance should not remain solely with individuals, as there are a wide range of social and structural factors that prevent this balance from being achieved.

The factors that have an influence on the work-family balance are related to the personal characteristics and priorities of the individual, the organisation, social status as well as the support of those around him.

A key factor in ensuring the balance between professional and family life is the support that the state offers in the form of methods of reconciling work with the family through parental leaves<sup>20</sup> (paternity leave and parental leave), through caregiver leaves (in the case of caring for a seriously ill relative) as well as flexible forms of work for workers who are parents or caregivers.

### *The Research Method*

In the following sections, using the methods of legal scientific research (logical method, systematic method, comparative method and sociological method) for data collection, we will proceed to enumerate the Union legislation in force in the matter, focusing on the research of the provisions of the new Directive no. 2019/1158 relative to ensuring the balance between professional life and family life of parents and caregivers, we will investigate how this was recently transposed into domestic legislation by the legislator in order to draw the final conclusions of this study.

We will approach the inter and multidisciplinary research of the topic under investigation in order to be able to reach the desired results and to achieve our proposed goal, meaning in which we exemplify: legal sociology, general theory of law, labour law, social security law, family law, European Union law.

### ***De Lege Lata Regulations of the European Union Regarding the Insurance of the Life-work Balance***

At the level of the European Union, the employment rate among women has a strong positive impact on the economy<sup>21</sup>. However, many women face obstacles if they want to enter or stay on the labour market and improving work-life balance is

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<sup>19</sup>Gryzwacz, Carlson & Zivnuska (2009) at 455-471 in Leovardis & Cărcu (2018) at 104.

<sup>20</sup>Leovardis & Cărcu (2018) at 105.

<sup>21</sup>In 2021, women with children aged 25-54 who were employed in the EU had an employment rate of 72%, slightly lower than women aged 25-54 without children which forms a percentage of 77%, being a higher rate than ever. See [https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/dn-20230302-2?utm\\_campaign=later-linkinbio-eu\\_eurostat&utm\\_content=later-33429783&utm\\_medium=social&utm\\_source=linkin.bio](https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/dn-20230302-2?utm_campaign=later-linkinbio-eu_eurostat&utm_content=later-33429783&utm_medium=social&utm_source=linkin.bio)

one of the policies that can be applied to eliminate gender disparities on the labour market<sup>22</sup>.

The European Parliament and the Council of Europe have adopted a series of directives on ensuring the balance between professional and family life, of which we mention the most important: Council Directive 79/7/EC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security; 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; Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; 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; Directive 2006/54/EC 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.

August 2, 2022 was the deadline for the transposition by the EU Member States of the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and caregivers and repealing Council Directive 2010/18/EU that we will further analyse in the present study, as it was transposed into the internal legislation of our state.

### **Novelties brought in the Matter of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-life Balance for Parents and Caregivers**

The adoption of the Directive (EU) 2019/1158 on work-life balance for parents and caregivers<sup>23</sup> contributes to the fulfilment of the objectives of the European Union that are outlined in the Treaty of the European Union, namely respect for human dignity, human rights and equality, as values common to the EU Member States, on which the European Union is founded and which it promotes (Art. 2 of the TEU) as well as the provisions of the Treaty on the Functioning of the European Union regarding equality between men and women in terms of equal opportunities on the labour market and equal treatment at the workplace (Art. 153 Para. 1 Let. i of TFEU).

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<sup>22</sup>Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region. Gender equality is one of the goals of current feminism, see Kaka (2017).

<sup>23</sup>Directive (EU) 2019/1158 had to be transposed by August 2, 2022 in all Member States and by August 2, 2024 it must be transposed with regard to the payment of the amount related to the last two weeks of the period of minimum 2 months of parental leave. For a current situation regarding the transposition of this Directive at the level of the Member States. See <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX%3A32019L1158>

The general objective of the Directive (EU) 2019/1158 is to apply and ensure the principle of equal treatment in terms of opportunities on the labour market between women and men as well as their equal treatment in the workplace.

In a subsidiary way, the aforementioned Directive pursues specific objectives such as: increasing the degree of participation in the labour field of parents and employees who care for relatives or other people in the household, by regulating family leave and flexible work formulas, legislation provisions that ensures, at the same time, the improvement of women's access on the labour market, the father's assumption of childcare responsibilities and, implicitly, the equality of spouses in terms of the exercise of parental duties and the development of the bond between parents and children.

We note that the Union legislator replaced, through this Directive, the notion of "conciliation" with that of "balance", and the notion of "family life" with that of "private life of parents and caregivers".

In this context, the adoption of Directive (EU) 2019/1158 brings new elements regarding the reduction of gender disparities relative to employment, the Union legislator wanting the member states to establish individual rights and minimum standards, regarding:

- a) Fathers' right to paternity leave of 10 working days, which can be requested on the occasion of the birth of the worker's child. The EU Member States can establish unilaterally when it can be granted, for example, before or after the birth, or if this leave will be carried out in flexible formulas, not conditional on marital status or family status or length of service.
- b) Parental leave of four months is guaranteed to all workers with parental responsibilities, each parent being able to exercise their right to parental leave effectively and under equal conditions, in flexible formulas. But, in this case, the Directive allows the states to condition the right to this leave on a maximum of one year's work experience. The Directive provides for non-transferable rights to parental leave.
- c) Caregiver's leave of five working days per year – this leave is defined by the Union legislator as "a leave for workers in order to provide care or personal support to a relative or a person who lives in the same household as the worker and who needs significant care or support as a result of a serious medical problem as defined by each Member State" [Art. 3 Para. 1 Let. d) of the Directive (EU) 2019/1158], the Member State being able to provide in the legislation for the granting of this leave on the basis of "adequate evidence in accordance with domestic law or national practices". Here, the Union legislator introduces, through this Directive, a new concept, that of "caregiver leave".

The notion of "caregiver" means, within the meaning of the Directive, the worker who provides care or personal support to a relative (son, daughter, mother, father or husband/wife) or "to a person who lives in the same household as the worker and who needs of significant care or support as a result of a serious medical problem" [Art. 2 Para. 1 Let. d) from the Directive (EU) 2019/1158].

- d) the right to be absent from the workplace for each worker due to force majeure in situations of family emergency, in case of illness or accident that makes the immediate presence of the worker indispensable [Art. 5 from the Directive (EU) 2019/1158].

The right to be absent in cases of force majeure represents another new element of the Directive, which although it was not enshrined in law until now, in practice there were companies that provided a day of paid leave for emergency or medical situations.

- e) flexible working formulas, for a limited time, for care purposes, for workers who are parents with children aged at least 8 years old as well as for caregivers, request which can be conditioned by a requirement of at least six months of service [Art. 9 of the Directive (EU) 2019/1158].

The EU legislator defines the concept of “flexible working arrangements” as the possibility for workers to adapt their working schedule, including the use of remote working arrangements, flexible working arrangements or short time working hours [Art. 2 Para. 1 Let. f) of the Directive (EU) 2019/1158].

Also, the Directive provides for flexible working time arrangements, for both women and men, employers being encouraged to implement policies favourable to the balance between professional life and family life by adopting new (tele)work<sup>24</sup> arrangements that have been triggered to be able to participate actively in the field of work under the conditions of the Covid19 pandemic.

- f) the Directive states that workers, who are parents or caregivers, must not be treated discriminatory at the workplace [Art. 11] or unfavourable [Art. 14] on the grounds that they have requested/taken a paternity leave, paternal leave or caregiver’s leave, provided for in Art. 4-6 of the Directive.

In conclusion, the Directive provides for the promotion and equitable sharing of care responsibilities between parents and the facilitation of mothers’ reintegration into the labour market after a period of maternity leave and parental leave through regulations that ensure the balance between professional and private life.

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<sup>24</sup>Telework, relative to the topic under investigation, offers opportunities to contribute to gender equality with regard to increased flexibility in the organisation of working time, the possibility for both parents who work at home to more equitably share the responsibilities of caring for children or family members in difficulty and greater flexibility in harmonizing unpaid care responsibilities with paid work, which can improve labour market participation (Recommendation 1.3 of the Opinion of the European Economic and Social Committee on “Teleworking and gender equality — conditions so that teleworking does not exacerbate the unequal distribution of unpaid care and domestic work between women and men and for it to be an engine for promoting gender equality”).

## Transposing The Directive (EU) 2019/1158 in the Romanian Legislation

Therefore, in the context of demographic aging in Romania, the full participation of the available labour force has become an economic necessity, imposing measures to support parents and caregivers to enter the labour market, by supporting their ties with children or relatives in a state of need due to serious illnesses, allowing parents and people with caring responsibilities to reconcile professional life with family life.

In our country, women continue to be the main ones responsible for family and household care activities, given that the social services dedicated to the care of children and dependent people are not sufficient to meet the needs<sup>25</sup>, in terms of achieving a balance between professional and family life.

With the entry into force of this directive, the Romanian legislator managed to modify and complete more than 14 normative acts in order to harmonise the internal legislation with that proposed by the Directive to the Member States, for the harmonisation of the legislation relative to ensuring the work-life balance for parents and caregivers.

On September 14, 2022, the European Commission sent a letter of delay to Romania and to 18 other EU Member States by which it announced that it had initiated the infringement procedure because they had not notified whether it had transposed the Directive (EU) 2019/1158 on work-life balance for parents and caregivers until the deadline of August 2, 2022.

We will analyse the important points of the Directive's regulations to see if and how these provisions have been transposed into our legislation.

As for fathers' right to paternity leave, it was already regulated in the domestic legislation by Law no. 210/December 31, 1999 regarding paternity leave, but after the entry into force of Directive (EU) 2019/1158, the aforementioned law was amended by GEO no. 117/26 August 2022 and it is stipulated that the father of the newborn child, who is a worker, has the right to a paid leave of 10 working days [Art. 2 Para. 1 of the Law no. 210/1999, consolidated form], as the Directive also provides, 5 days more than the law provided in its original form, with the amendment that the Romanian legislator ordered that they can be requested only in the first 8 weeks from the birth of the child, based on the child's birth certificate, from which the petitioner's paternity results [Art. 2 Para. 2 of the Law no. 210/1999, consolidated form].

The employer has the obligation to grant this leave to the father of the newborn child, the law does not condition its granting on the length of service of the employee or the period of activity performed [Art. 153<sup>2</sup> Para. 1-2 of the Labour Code, consolidated form]. The employer's failure to grant paternity leave to employees who meet the conditions required by law is sanctioned with a fine between 4000-8000 lei [Art. 260 Para. 1 Let. u) of the Labour Code, consolidated form].

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<sup>25</sup>In 2018, approximately 12% of women were inactive due to family responsibilities. See, "Reducing the gender disparity in employment", Action Direction no. 4 of the "National strategy for employment 2021-2027", Annex 1 of GD no. No. 558/19 May 2021, published in the Official Gazette, Part I, no. 559/31 May 2021.

This paternity leave aims to ensure the effective participation of the father in the care of the newborn child and to facilitate the reconciliation of the professional life with the family life of the workers who are parents.

Regarding parental leave, although the Directive establishes a term of 4 months, the Romanian legislator has stated much more favourably through GEO no. 111/2010 on leave and monthly allowance for raising children, by granting a leave for raising a child aged up to 24 months, respectively 36 months, in the case of a child with a disability, for people who, in the last 2 years prior to the after the birth of the child, they have earned for at least 12 months income from wages or similar as wages<sup>26</sup>.

Through the changes made to the GEO no. 111/2010 is fully transposed into the national legislation Directive (EU) 2019/1158 and the non-transferable period for raising the child is extended in the case of the parent who did not initially request this right, from one month as it was regulated to 2 months of the total leave period, if both parents meet the legal requirements, as mentioned by the Directive.

“Caregiver's leave”<sup>27</sup> is a new concept transposed from the Directive in Art. 152<sup>1</sup> of the Romanian Labour Code by Law no. 283/2022 for the amendment and completion of Law no. 53/2003 on the Labour Code, as well as the GEO no. 57/2019 regarding the Administrative Code, taking over the same definition given by the Union legislator with the mention that the word “worker” was replaced by that of “employee”, maintaining the duration of the caregiver’s leave of 5 working days in a calendar year which can be granted to employees and specifying that this term may have a longer duration established by special laws or by the collective labour agreement [Art. 152<sup>1</sup> Para. 2 of the Labour Code, consolidated form].

Through the notion of “relative”, Art. 153<sup>1</sup> Para. 4 of the Romanian Labour Code stipulates that it means “the son, daughter, mother, father or husband/wife of an employee”.

In order to prove the quality of a relative of the employee or of a person who lives in the same household as the employee, to whom the latter provided care during the period in which he had a serious medical problem, he must, within 30 days of the request for leave the caregiver to submit the following documents: the identity document of the person requiring care, which shows the same domicile or residence as the employee, the document by which the person was taken into the space, the certificate from the owner/tenant association or the employee’s self-

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<sup>26</sup>Such as: income from independent activities, income from intellectual property rights, income from agricultural activities, forestry and fish farming, subject to income tax according to the provisions of the Law no. 227/2015 on the Fiscal Code, with subsequent amendments and additions, called by the legislator “taxable income”.

<sup>27</sup>In the Romanian legislation, there is also regulated “medical leave for the care of a sick child” which can be obtained by parents for a maximum duration of 45 calendar days, which can be extended up to 90 days for serious cases, for the child up to the age of 8 years, respectively 18 years for the child with disabilities [This leave is stated by the GEO 158/2005 published in the Official Gazette of Romania, Part I, no. 1074/29 November 2005]. However, this leave, which is a medical leave, should not be confused with the caregiver’s leave which is a leave granted for family reasons, the legislator in this situation increasing the spectrum of people who “need care or support” for which the leave can be requested, i.e. both the child and also a relative or other person who lives in the same home as the employee.

responsible declaration which results in the fact that the person to whom the employee provided care or support lives in the same household with him at least during the period of care leave [Art. 3 Para. 2 of the Order of the Minister of Labour and Social Solidarity no. 2172/3829/2022, hereinafter MMSS Order].

Also, Art. 152<sup>1</sup> Para. 5 of the Romanian Labour Code ordered the definition of the concept of “serious medical problems, as well as the establishment of the conditions for granting caregiver leave by joint order of the Minister of Labour and Social Solidarity and the Minister of Health. Thus, by MMSS Order no. 2172/3829/2022 regarding the granting of caregiver’s leave provides that by serious medical problems is meant “conditions or their complications that affect the patient’s functional status for certain periods or permanently, respectively significantly limit the possibility of performing basic activities and daily instrumental activities, reaching the impossibility of performing them, requiring the support of another person”.

Regarding the concept of “serious medical problems”<sup>28</sup> of the relative or of a person with whom the employee lives in the same household and who is in need, as ordered by the Directive, it is a condition sine qua non, which must be proven, in order to certify the existence of a serious medical problem, with medical documents such as: the hospital discharge ticket or, as the case may be, the medical certificate issued by the attending physician or the family doctor of the person with serious medical problems [Art. 3 Para. 3 of MMSS Order no. 2172/3829/2022].

For the granting of caregiver’s leave, it was established by Annex 1 of the MMSS Order no. 2172/3829/2022 regarding the granting of caregiver’s leave, the list of serious illnesses<sup>29</sup> for which the caregiver’s leave can be granted for employees.

It should be mentioned that the provisions of the Labour Code have included norms derogating from the provisions of Art. 244 Para. 2 of the Law no. 95/2006 regarding the reform in the field of health, republished with subsequent modifications and amendments, by which it was ordered that employees who request the caregiver’s leave will be insured, during this period, without paying the contribution, in the social health insurance system [Art. 152<sup>1</sup> Para. 4 of the Labour Code, consolidated form].

Failure by the employer to grant the caregiver's leave to employees who meet the conditions required by law is sanctioned with a fine between 4000-8000 lei [Art. 260 Para. 1 Let. t) of the Labour Code, consolidated form].

New regulations were brought by amending the Labour Code using the Law no. 283/17 October 2022 and regarding the right to be absent from work for each employee in unforeseen family emergencies [Art. 1522 Para. 1-3 of the Labour Code, consolidated form].

The Romanian legislator has stated this legal institution in a specific way, in compliance with the norms of the Directive, in the sense that it imposes two conditions on the employee who is absent from the workplace for unforeseen

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<sup>28</sup>These must be proven with medical documents provided in Art. 3 Para. 2 of the Order of the Minister of Labour and Social Solidarity no. 2172/3829/2022.

<sup>29</sup><https://legislatie.just.ro/Public/DetaliiDocument/263025>

family emergencies, caused by illness or accident, namely: the prior information of the employer and the recovery of the absent period until the full coverage of the normal duration of the employee's work schedule<sup>30</sup>. The period of time that can be absent cannot last longer than 10 working days per calendar year, and the way to recover this period will be established by mutual agreement between the employee and the employer.

However, the Labour Code does not use the term "force majeure", as provided by Directive (EU) 2019/1158, but the concept of "unforeseen situations", however, the phrase "force majeure" is defined, according to the provisions of Art. 1351 of the Romanian Civil Code, as "any external, unpredictable, absolutely invincible and inevitable event", i.e., an unforeseeable and ineradicable/insurmountable *lato sensu* fact, which objectively annihilates the execution of a contractual obligation<sup>31</sup>.

As for flexible working formulas, for a limited duration, for care purposes for parents and caregivers provided by Art. 9 of the Directive (EU) 2019/1158, this provision was transposed into Art. 118 of the Labour Code.

In the spirit of the Romanian Labour Code, "flexible way of organizing work" means "the possibility for employees to adapt their work schedule, including through the use of remote work formulas, flexible work schedules, individualised work schedules or some work with reduced working time" [Art. 118 Para. 1-3 of the Labour Code, consolidated form].

These provisions allow the employer to establish individualised work schedules, at the request of employees, including those who benefit from caregiver's leave, schedules that may have a limited duration, the employer's refusal having to be reasoned, in writing, within 5 working days from the receipt of the employee's request.

In the case of establishing a time-limited schedule, the employee has the right to return to the original work schedule at the end of the established period or if the circumstances that led to the establishment of the personalised schedule, he can return to the initial schedule and before the completion of the individualised work schedule [Art. 118 Para. 7 of the Labour Code, consolidated form], as also provided by Directive (EU) 2019/1158.

Therefore, with the new regulations, Romanian employers will be obliged to grant, at the employee's request, flexible working formulas and to motivate any refusal to grant them.

Even after the 1980s, employers saw benefits from implementing these work-life balance policies, with organisations beginning to adopt flexible schedules, such as family-friendly workplace policies, for employees to balance their work responsibilities with their family and personal responsibilities.

Regarding the discriminatory or unfavourable treatment at the workplace of employees, parents or caregivers, on the grounds that they have requested/taken a

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<sup>30</sup>The Romanian Labour Code provides in Art. 111 Para. 2 that by "work schedule is meant the way of organizing the activity, which establishes the hours and days when the work starts and ends".

<sup>31</sup>Sardare (2019).

paternity leave, parental leave or caregiver's leave, provided for in Art. 4-6 of the Directive it was prohibited by the internal legislation of our state. Thus, by amending and supplementing Law no. 202/2002 regarding equal opportunities and treatment between women and men by Government Ordinance no. 57/28 April 2022, the Romanian legislator also transposes Art. 14 of the Directive (EU) 2019/1158 and provides in Art. 10 Para. 3 of the Law no. 202/2002 that "any less favourable treatment applied to a woman or a man on the grounds that he requested or took leave to raise children, paternity leave, caregiver's leave or that he exercised his right to request flexible working arrangements, represents discrimination", the employee at the end of these leaves having the right to return to the last job or an equivalent job, with equivalent working conditions, and to benefit from any improvement in working conditions to which he would have been entitled to during his absence [Art. 10 Para. 8 of the Law no. 202/2002].

At the national level, there is already the National Commission in the field of equal opportunities between men and women, which operates under the authority of the National Agency for Equal Opportunities between Men and Women, which in turn is under the authority of the Ministry of Family, Youth and Equal Opportunities [regulated in Chapter V of the Law no. 202/2002 consolidated form].

Also, in each county and in the capital of the country, there is a county commission in the area of equal opportunities between men and women (COJES).

These public authorities have a legal obligation to monitor and ensure equality of opportunity and treatment between women and men.

## **Findings/Results**

We find that the Romanian legislator has transposed Directive (EU) 2019/1158 into the internal legislation of our state, with the mention that in some cases the internal rules state provisions more favourable to the employee, as we found to be the case of granting the parental leave that the Romanian state grants up to 24 months, while the rules of the Directive provide for a period of minimum 4 months.

Eurofound (2015) showed through statistical data that "the prevalence of health problems and absenteeism is the highest and the work-life balance is difficult to achieve", being issues "under pressure" for the European Union.

The sociological research (Eurofound 2023)<sup>32</sup> that started this year will investigate, through statistical data analysis, what changes have taken place as a result of the effects of the legislation newly entered into force as a result of the transposition of the Directive (EU) 2019/1158 on work-life balance, as well as on the health and well-being of employees.

We will analyse in a future study whether these legislative levers, with the involvement of state institutions and the employer, will create a climate that ensures equality between men and women in terms of equal opportunities on the

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<sup>32</sup>During the Covid 19 pandemic, these sociological studies were no longer carried out.

labour market and equal non-discriminatory treatment at the workplace, the insertion and maintenance of parents or caregivers on the labour market.

## **Conclusions**

The importance of the work-life balance of workers is recognised not only by employers, who directly note the difficulties faced by employees who are parents or caregivers, but also by the authorities of the European Union and the authorities of the Member States, who draw up and apply specific policies and strategies to ensure this work-family balance.

Maternity may come as an impediment regarding the women's access on the labour market.

This study showed that recent legislative measures allow and encourage the assumption of childcare responsibilities by the father, who can participate equally with the mother in the exercise of parental duties. It was a necessary legislative framework, in the institution where both the family and the children as well as the workplace represent the parents' priority.

These policies for granting leave for family reasons (parental leave, paternity leave, caregiver's leave), granting the employee the right to be absent from work for reasons of force majeure in family emergency situations, as well as the flexibility of time of work, will bring, in our opinion, benefits such as: insertion, maintenance and protection against discrimination of employees, parents and caregivers on the labour market, reduction of absenteeism, increase of productivity, avoidance of staff reductions, reduction of space requirements, loyalty employees etc.

However, we believe that the flexibility of work programs will be one of the important levers through which employers will adapt to the changes in the labour market that took place during the Covid19 pandemic, offering formulas for individualised work programs<sup>33</sup> and options regarding the place from which the employee works<sup>34</sup>.

The results of the most recent sociological studies as well as the adoption of new legislative acts in the matter show that the policy of ensuring a balance between the professional life and the private life of employees will be an important characteristic of workplaces in the future.

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<sup>33</sup>Moreover, from a series of sociological research in the field (face to face), from 2015 it emerged that 31% of workers are faced with a "last minute" change in their work schedule, a situation that complicates the work-life balance of workers and may lead to health or safety problems for them. See Eurofund (2015), [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1634en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1634en.pdf). 43.850 workers from the 28 EU Member States, the five EU candidate countries (Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey) and Switzerland and Norway participated in this study, for a total of 35 European countries.

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