

# Expanding Choices through Family-Friendly Policies

## Kosovo Analytical Report

Prepared for UNFPA by David JJ Ryan on behalf of the Kosovo Women's Network



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## Introduction

The Work-Life Balance Directive entered into force on 1 August 2019.<sup>1</sup> Its adoption represented a move towards taking a broader approach to addressing women's underrepresentation in the labour market.<sup>2</sup> Key aspects of the Directive address paternity leave, parental leave, leave for caring purposes and flexible working arrangements for parents and carers. This report considers the impact that the Directive will have on the legal framework in Kosovo, bearing in mind Kosovo's obligations to harmonise its legislation to that of the European Union pursuant to the Stabilisation and Association Agreement.

This report considers the impact that the WLB Directive will have on the legal framework in Kosovo<sup>3</sup> and what legislative changes will be necessary, bearing in mind Kosovo's obligations to harmonise its legislation to that of the European Union ("EU") pursuant to the Stabilisation and Association Agreement.<sup>4</sup> As a number of concepts are entirely new to the framework (such as parental leave or carers' leave), and as existing concepts (such as paternity leave) will require significant expansion and increased detail, a substantial level of reform will be necessary to approximate the law. Although the WLB Directive does not contain any new legislative measures on maternity leave, the relevant entitlements in Kosovo are considered as part of this analysis, owing to their fundamentally inter-related nature.

The final section of this report departs from the WLB Directive to provide an overview of some social protections that support workers in reconciling their professional and family responsibilities, or that might provide economic support to parents or carers. It also highlights some current key reform efforts in Kosovo.

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<sup>1</sup> Directive [2019/1158](#) on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. EU Member States must transpose the WLB Directive by 2 August 2022, with the exception of Article 8(3) (payment or allowance corresponding to the last two weeks of parental leave) which must be transposed by 2 August 2024 (Articles 20.1 - 20.2).

<sup>2</sup> ETUC, "Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive" ([2019](#)) p. 7.

<sup>3</sup> The following abbreviations are used to reference relevant laws of Kosovo within the footnotes of this report: Law No. [03/L-212](#) on Labour ("LL"); Law No. [05/L-021](#) on the Protection from Discrimination ("LPD"); Law No. [05/L-020](#) on Gender Equality ("LGE"); Law No. [03/L-149](#) on the Civil Service ("LCS"); and Regulation No. [06/2011](#) on Civil Servants Leave ("CS Leave Regulation").

<sup>4</sup> Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part (OJ L 71, [2016](#)), Article 74.

## Family-related Leave

### Paternity Leave

A novelty of the WLB Directive is the introduction of 10 working days of paternity leave for fathers on the birth of their child.<sup>5</sup> It is open to Member States to determine whether paternity leave can be taken partly before or only after the birth and whether such leave may be taken in flexible ways. The recitals to the WLB Directive make it clear, however, that paternity leave should be taken around the time of the birth of the child and be clearly linked to the birth of the child and for the purposes of providing care.<sup>6</sup>

“ ... ‘paternity leave’ means leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care.”

(WLB Directive, Article 3.1(e))

Kosovo law currently provides two days of paid leave to fathers on the birth or adoption of their child.<sup>7</sup> There appears to be an error in the law as all parents are entitled to three days paid leave on the birth of their child under a separate article,<sup>8</sup> thereby potentially making the lower entitlement for fathers redundant. This discrepancy should be addressed when amending the paternity leave entitlement to reach at least the 10-day standard of the WLB Directive. Fathers in Kosovo are additionally entitled to two weeks unpaid leave to be taken at any time until the child turns three.<sup>9</sup> The flexibility of this entitlement resembles parental leave more closely than paternity leave but could be maintained in the updated law as an additional entitlement of fathers.

The WLB Directive encourages Member States to extend the entitlement to take paternity leave to stillbirths.<sup>10</sup> Kosovo law currently provides women with at least 45 days maternity leave in the event of a stillbirth or miscarriage.<sup>11</sup> This provision should be amended to also allow fathers to take their paternity leave entitlements in the event of a stillbirth or miscarriage.

While paternity leave under the WLB Directive cannot be subject to length of service qualifications,<sup>12</sup> compensation while on such leave may be subject to up to a minimum six-month period of employment.<sup>13</sup> Such qualifications negatively impact atypical or temporary workers,<sup>14</sup>

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<sup>5</sup> WLB Directive, Article 4.1.

<sup>6</sup> WLB Directive, Recital 19.

<sup>7</sup> LL, Article 50.2.1. The entitlement is three days for civil servants but no provision is made for adoption (CS Leave Regulation, Article 12.8).

<sup>8</sup> LL, Article 39.1.3.

<sup>9</sup> LL, Article 50.2.2.

<sup>10</sup> WLB Directive, Recital 19.

<sup>11</sup> LL, Article 51.1; CS Leave Regulation, Article 13.2. These provisions are currently dependant on a doctor's recommendation and is framed as an entitlement to recover "from birth and the psychical condition caused with the loss of the infant". Consideration should be given to removing these potentially limiting aspects of the entitlement.

<sup>12</sup> "Length of service qualification" is a term used in the Directive that means that the worker has to have worked with their employer for a certain period of time to be eligible for a particular benefit.

<sup>13</sup> WLB Directive, Article 8.2.

<sup>14</sup> "Atypical work" refers to "employment relationships that do not conform to the ...'typical' model of full-time, regular, open-ended employment with a single employer over a long time span." Examples of atypical work

and no such restrictions currently exist in the Kosovo framework. This position should be maintained.

The WLB Directive requires states to extend paternity leave to equivalent second parents “insofar as recognised by national law”. The Constitution of the Republic of Kosovo allows any two persons to marry and prohibits discrimination based on sexual orientation or gender.<sup>15</sup> The Law on Gender Equality and Law on Protection from Discrimination also include sexual orientation as a protected characteristic.<sup>16</sup> The recently adopted Criminal Code also prohibits the denial or restriction of any right provided by the Constitution on the basis of sexual orientation or gender.<sup>17</sup> Nonetheless, the Family Law is in conflict with the Constitution by referencing “two persons of different sexes” for marriage and “two persons of different gender” for engagement.<sup>18</sup> These conflicting provisions should be amended for consistency with the Constitution. While there is no restriction on same-sex adoption in the Family Law, spouses may only adopt a child jointly and unmarried persons may only adopt a child alone.<sup>19</sup> Joint or second parent adoption may therefore be inaccessible for some. Within the updated paternity provisions in the labour law, consideration should be given to defining “equivalent second parent” to explicitly extend paternity leave rights to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities. One-parent families could also be supported by allowing paternity leave to be utilised by a nominated person, thereby allowing care responsibilities to be shared.<sup>20</sup>

Compensation while on paternity leave is discussed below (see “*compensation while on leave*”).

## Parental Leave

The WLB Directive provides four months of parental leave as an individual right of each worker to be taken before the child reaches a specified age (up to eight).<sup>21</sup> The age is to be determined with a view of ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis. A minimum of two months must be non-transferable.<sup>22</sup> A reasonable period of notice may be imposed, considering the needs of employers and workers.<sup>23</sup> A length of service qualification may be imposed up to one year.<sup>24</sup>



... ‘parental leave’ means leave from work for parents on the grounds of the birth or adoption of a child to take care of that child.”

(WLB Directive, Article 3.1(b))

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include part-time, casual, seasonal, self-employed, and fixed-term work. (European Observatory of Working Life, Industrial Relations Dictionary, “atypical work” [4 November 2017]).

<sup>15</sup> [Constitution of the Republic of Kosovo](#), Articles 37.1 and 24.2.

<sup>16</sup> LGE, Article 4.1 and LPD, Article 1.1.

<sup>17</sup> Code No. [06/L-074](#) Criminal Code of the Republic of Kosovo, Article 190.1.

<sup>18</sup> Law No. [2004/32](#) Family Law of Kosovo, Articles 14.1 and 9.

<sup>19</sup> Law No. [2004/32](#) Family Law of Kosovo, Articles 164.

<sup>20</sup> COFACE, “Assessment of the EU Work-life balance Directive” ([2019](#)), p. 7.

<sup>21</sup> WLB Directive, Article 5.1.

<sup>22</sup> WLB Directive, Article 5.2.

<sup>23</sup> WLB Directive, Article 5.3.

<sup>24</sup> WLB Directive, Article 5.4.

The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law. Kosovo law does not reflect the predecessor of the WLB Directive, the Parental Leave Directive.<sup>25</sup> Currently, leave entitlements vest almost exclusively with the mother, with the exceptions of three days leave provided to all employees on the birth of a child and paternity leave entitlements, discussed above. Maternity leave entitlements are transferrable to the father in certain circumstances, namely where the mother dies, “abandons” the child, or gets sick.<sup>26</sup> The latter six months of the 12-month maternity leave period may also be conveyed to the father by agreement.<sup>27</sup> Mothers with children up to the age of three and single parents are entitled to two additional days of annual leave per year.<sup>28</sup>

Empirical evidence shows that individual, non-transferable entitlements to parental leave, coupled with a high level of compensation, contribute to increased uptake among fathers and the potential for care practices to become more “gender equalizing”.<sup>29</sup> For example, the introduction of non-transferable parental leave in Norway caused the take-up rate amongst fathers to rise from 2.4 per cent in 1992 to over 70 per cent in 1997.<sup>30</sup> Where men are not specifically targeted by parental leave policies, the entitlements are predominantly used by women.<sup>31</sup> In support of a more gender-equal sharing of family responsibilities, the entire four months should therefore be non-transferable.<sup>32</sup> Increasing the length of the non-transferable period also “has considerable benefits in terms of increased household incomes and individual well-being (for fathers, mothers and children)”.<sup>33</sup>

While the WLB Directive foresees the possibility for parental leave being contingent on a minimum length of service qualification, such a position is not desirable in the context of Kosovo as no other form of family leave is subject to such a requirement. As noted above, such

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<sup>25</sup> Directive [2010/18/EU](#) implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [repealed by Article 19 of the WLB Directive with effect from 2 August 2022].

<sup>26</sup> LL, Articles 49.7 and 50.1. For civil servants, there is no provision for where the mother gets sick (CS Leave Regulation, Article 12.7).

<sup>27</sup> LL, Articles 49.8.

<sup>28</sup> LL, Article 32.4. This provision is likely to be superseded by the more favourable parental leave entitlements above. However, if the provision is retained in addition to the parental leave entitlements, it should be amended to be applicable to all parents.

<sup>29</sup> de la Porte, C., Larsen, T. P., and Szelewa, D., “A Gender Equalizing Regulatory Welfare State? Enacting the EU’s Work-Life Balance Directive in Denmark and Poland” [2020] *The Annals of American Academy of Political and Social Science* 84–103, citing Saxonberg, S. “From Defamilialization to Degenderization: Toward a New Welfare Typology” [2013] 47(1) *Social Policy & Administration* 26-49 and Lundqvist, A., *Transforming Gender and Family Relations. How Active Labour Market Policies Shaped the Dual Earner Model* (Edward Elgar, 2017).

<sup>30</sup> Oliveira, Á., De la Corte-Rodríguez, M., Lütz, F. “The new Directive on work-life balance: towards a new paradigm of family care and equality?” [2020] 45(3) *European Law Review* 295-323, 305.

<sup>31</sup> van Belle, J. for RAND Europe, “Paternity and parental leave policies across the European Union” (2016) p. 9.

<sup>32</sup> This position has been supported by the Kosovo Women’s Network (“Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” (2017) p. 24), the European Women’s Lobby (“The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers” (2019)) and the European Trade Union Confederation (“Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive” (2019) p. 8)

<sup>33</sup> European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#)), p. 97.

qualifications also negatively impact atypical or temporary workers.<sup>34</sup> Regarding the notice period, the position of 10 days' notice to take additional unpaid paternity leave under the Labour Law<sup>35</sup> could be adopted as the notice period for parental leave.

A higher standard should be sought for the eight year age limit of the child by making the limit 12 years of age.<sup>36</sup> The European Commission's Impact Assessment of the WLB Directive acknowledged that this would have a number of benefits, including supporting parents who may wish to take shorter periods of parental leave over time, encouraging more fathers to take parental leave, and allowing parents to accompany their children as they gain greater autonomy and integrate into secondary school.<sup>37</sup>

The WLB Directive allows states to establish circumstances for employers to postpone the granting of parental leave for a reasonable period of time on the basis that granting leave would "seriously disrupt the good functioning of the employer", but reasons for such postponement must be provided in writing.<sup>38</sup> If an employer seeks to postpone a request for full-time parental leave, flexible leave must be offered to the extent possible.<sup>39</sup> States must also ensure that workers have a general right to request flexible parental leave, and employers must provide reasons should they refuse.<sup>40</sup>

A flexible design of parental leave is another factor that influences uptake,<sup>41</sup> and this is recognised by the WLB Directive. The Recitals to the WLB Directive suggest that "workers should be able to request that parental leave be granted on a full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways."<sup>42</sup> This language should be adopted in Kosovo to illustrate what may be requested while allowing for further flexibility as needed. The right to be offered or to request flexible leave should be based on similar conditions and criteria as outlined below (see "*flexible working arrangements*").

In order to prevent unjustified postponement of parental leave, the implementing law should provide detail on the conditions under which employers can deny or postpone requests<sup>43</sup> by defining what is material enough to "seriously disrupt the good functioning of the employer". This definition could be based on non-exhaustive examples drawn from the original framework agreement on parental leave ("where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic

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<sup>34</sup> ETUC, "Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive" (2019) p. 16.

<sup>35</sup> LL, Article 50.2.2.

<sup>36</sup> This position has been supported by COFACE ("Assessment of the EU Work-life balance Directive" (2019), p. 11) and the ETUC ("Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive" (2019) p. 22).

<sup>37</sup> European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (SWD(2017) 202 final), p. 63 – 64.

<sup>38</sup> WLB Directive, Article 5.5.

<sup>39</sup> WLB Directive, Article 5.7.

<sup>40</sup> WLB Directive, Article 5.6.

<sup>41</sup> Aumayr-Pintar, C. for Eurofound, "Parental and paternity leave – Uptake by fathers" (2019), p. 20.

<sup>42</sup> WLB Directive, Recital 23.

<sup>43</sup> European Confederation of Independent Trade Unions, "Priorities: Proposal for a Directive on work-life balance for parents & carers" (2017) p. 2.



importance”<sup>44</sup>). While requests for flexible modalities of parental leave may be refused or postponed, requests for full-time parental leave may only be postponed.<sup>45</sup> Employees should be entitled to refuse any flexible options offered in favour of postponed full-time leave.

The WLB Directive encourages states to grant parental leave to all workers who exercise parental responsibilities.<sup>46</sup> As with paternity leave, consideration should be given to extending parental leave rights to equivalent second parents who exercise parental responsibilities and to provide support for one-parent families. States must assess the need for parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.<sup>47</sup> The position of adoptive parents in the Kosovo Labour Law is currently ambiguous.<sup>48</sup> For clarity, any revision of the law should ensure that adoptive parents are granted equal access to parental leave rights. The Labour Law currently provides two additional days of leave per year for persons with disabilities.<sup>49</sup> Persons with children who have special health care requirements could also be included in this protection. Additional protection for such parents might include: enhanced restrictions on employers’ ability to refuse or postpone parental leave requests; allowing parental leave to be taken until the child reaches the age of 18 or removing the maximum age in defined circumstances; or extending the leave period.

Compensation while on parental leave is discussed below (see “*compensation while on leave*”).

## Maternity Leave

The WLB Directive does not contain any new legislative measures on maternity leave.<sup>50</sup> Under the Pregnant Workers Directive, women must be entitled to at least 14 weeks’ maternity leave, including a compulsory period of at least two weeks.<sup>51</sup> Kosovo law currently provides women with up to 12 months’ maternity leave, nine months of which are paid.<sup>52</sup> Six months are non-transferable.<sup>53</sup> There is no compulsory period under the LL, however leave may be

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<sup>44</sup> Directive [96/34/EC](#) on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, Clause 2.3(e).

<sup>45</sup> WLB Directive, Recital 23.

<sup>46</sup> WLB Directive, Recital 21.

<sup>47</sup> WLB Directive, Article 5.8.

<sup>48</sup> The paternity leave rights under Article 50.2 are applicable to adoptive fathers and maternity leave rights under LL Article 50.3 may be used by an adoptive parent where both parents have died or abandoned the child. By comparison, the right to three days paid absence from work under Article 39.1.3 appears to exclude adoptive parents. Adopted children are included in the definition of “close family members” under Article 3.16 but the definition has limited applicability in the LL.

<sup>49</sup> LL, Article 32.4.

<sup>50</sup> Rather, a series of “soft measures” form part of the package, including “a specific study on enforcement of dismissal protection treatment, monitor the transposition and enforcement of EU legislation, raise awareness of the dismissal of pregnant women and provide policy guidelines on transitions between maternity leave and employment” (European Women’s Lobby, “The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers” (2019) p. 8).

<sup>51</sup> Directive [92/85/EEC](#) 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, Article 8.

<sup>52</sup> LL, Article 49.1; CS Leave Regulation, Article 12.1 – 12.2.

<sup>53</sup> LL, Article 49.8; CS Leave Regulation, Article 12.9. The latter six months may be transferred to the father by consent.

commenced up to 45 days prior to the expected date of birth.<sup>54</sup> The World Bank has commented that “[t]he design of maternity benefits [in Kosovo] – both length and distribution of financial burden – make it harder for women to enter the labor market.”<sup>55</sup>

The OECD highlights that excessive leave can undermine economic opportunities for women:<sup>56</sup>

“...negative effects may begin as early as 6 months, with increases in labor force participation for women being offset by decreased wages for high-skill workers and increased vertical segregation. Less time at work reduces women’s experience and seniority and may weaken their attachment to the labor force. These absences may also contribute to discrimination as employers expect women to spend less time in the workforce.”

The World Bank similarly highlights that maternity leave beyond six months can “create disincentives to hiring women and also lead to skill deterioration and missing opportunities for mothers’ training and promotions.”<sup>57</sup> Research by the Kosovo Women’s Network has similarly found that the longer the period of maternity leave taken by women, the less likely it is that they will return to work,<sup>58</sup> and women may lose opportunities such as training or promotion after maternity leave.<sup>59</sup> Moreover, discrimination against women exists in Kosovo in hiring, as some employers will not hire women who are pregnant or want to have families.<sup>60</sup> The ILO additionally notes that very long maternity leave might hamper a balanced division of family responsibilities.<sup>61</sup> This issue is similarly identifiable in Kosovo.<sup>62</sup>

In transposing the WLB Directive, any existing periods and payments for family-related time off work which are above the minimum standards provided by the WLB Directive and the Pregnant Workers Directive may be counted towards fulfilling the requirements for one or more of the leaves covered<sup>63</sup> (known as a “*passerelle clause*”). Only the non-transferrable portion of leave is relevant to this calculation and the minimum requirements for each form of leave must still be met. In practice, this means that where a state’s current legal framework

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<sup>54</sup> The equivalent provision for civil servants is unclear but appears to suggest a mandatory minimum of 28 prenatal days: “The female civil servant with the presentation of medical certificate, may comme[n]ce maternity leave up to forty five (45) days, or at least twenty eight (28) days before the expected day of birth” (CS Leave Regulation, Article 12.2).

<sup>55</sup> World Bank Group, “Jobs Diagnostic Kosovo” (Job Series, Issue No. 5, [2017](#)) p. 34.

<sup>56</sup> OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” ([2018](#)) p. 6.

<sup>57</sup> World Bank Group, *Jobs Diagnostic Kosovo* (Job Series, Issue No. 5, [2017](#)) p. 35.

<sup>58</sup> Banjska, I., Rrahmani, G. and Farnsworth, N. for the Kosovo Women’s Network, “Striking a Balance” ([2016](#)) p. 28.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, p. 27 - 28.

<sup>61</sup> Addati, L., Cassirer, N. and Gilchrist K. for the ILO, “Maternity and Paternity at work: Law and Practice across the World” ([2014](#)) p. 8.

<sup>62</sup> A survey conducted by the Kosovo Women’s Network in 2015 found that one in four women in Kosovo was unemployed and not working because of caretaking and housekeeping responsibilities at home, compared to 3.7% of men (Banjska, I., Rrahmani, G. and Farnsworth, N. for the Kosovo Women’s Network, “Striking a Balance” ([2016](#)) p. 26).

<sup>63</sup> WLB Directive, Article 20.6.

exceeds the requirements of EU law, the existing entitlements may be used to satisfy the new rights being introduced where appropriate.<sup>64</sup>

In Kosovo, this means that the six months (24 weeks) of well-paid, non-transferable maternity leave may therefore, in principle, be adequate to satisfy both the 14 weeks of maternity leave provided by the Pregnant Workers Directive and the two non-transferable months (8 weeks) of the four parental leave months guaranteed by the WLB Directive. However, as discussed above, the full four months (16 weeks) of parental leave should be non-transferable, in which case, the existing well-paid, non-transferable maternity leave entitlements in Kosovo would be insufficient.

A further issue with using the *passerelle* clause in this context is that maternity leave rights in Kosovo are designed to be taken full-time, around the time of childbirth. While this is consistent with the concept of maternity leave in the Pregnant Workers Directive, significantly more flexibility is required for “parental leave” within the meaning of the WLB Directive. Use of the *passerelle* clause must not reduce the general level of protection provided to workers in the areas covered by the Pregnant Workers or WLB Directives.<sup>65</sup> Nonetheless, in integrating non-transferable parental leave for women, the interaction and cumulation of maternity leave should be holistically considered.

Compensation while on maternity leave is discussed below (see “*compensation while on leave*”).

## Carers’ Leave

In recognition of changing demographics in Europe, and an expected corresponding rise in the need for informal care,<sup>66</sup> the WLB Directive introduces an entitlement of five days of “carers’ leave” per year for all workers.<sup>67</sup> Significant discretion is left to states as to the scope and conditions of carers’ leave.



... ‘carers’ leave’ means leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State.”

(WLB Directive, Article 3.1(c))

Carers’ leave may be particularly valuable in Kosovo, as the World Bank has noted that “...existing systems to provide care are not widely available, too expensive, and are embedded with disincentives for labor market participation.”<sup>68</sup> Many care activities therefore remain informal and family-based, with responsibilities primarily being borne by women.<sup>69</sup> Research in Kosovo in 2016 found that more than half of the employed persons surveyed depended on family members providing unpaid care services.<sup>70</sup> While carers’ leave alone is not a panacea for these issues, coupled with measures like flexible work arrangements, such leave is likely to

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<sup>64</sup> Oliveira, Á., De la Corte-Rodríguez, M., Lütz, F. “The new Directive on work-life balance: towards a new paradigm of family care and equality?” [2020] 45(3) European Law Review 295-323, 311.

<sup>65</sup> WLB Directive, Article 20.6.

<sup>66</sup> WLB Directive, Recital 7.

<sup>67</sup> WLB Directive, Article 6.1.

<sup>68</sup> World Bank Group, “Jobs Diagnostic Kosovo” (Job Series, Issue No. 5, 2017) p. 3.

<sup>69</sup> Ibid.

<sup>70</sup> Farnsworth, N. et. al. for the Kosovo Women's Network, “Who Cares? Demand, Supply, and Options for Expanding Childcare Availability in Kosovo” (2016).

facilitate greater opportunities for the reconciliation of paid work and care responsibilities, thereby potentially improving labour market access and preventing long-term unemployment.<sup>71</sup> In 2015, the World Bank similarly highlighted that “[c]are leave and flexible work arrangements complement a supporting framework for the economic participations of women in Kosovo.”<sup>72</sup> Such measures also may facilitate the rebalancing of care responsibilities within families, thereby positively impacting the well-being and health of carers and lowering the physical and psychological burdens of care.<sup>73</sup> Nonetheless, leave “should not be designed to provide an alibi for not creating a service infrastructure” and thus the provision of affordable, quality services remains essential.<sup>74</sup>

The European Women’s Lobby advocates for 12 working days of carers’ leave per year, to be taken full-time, part-time, or needs-based.<sup>75</sup> This entitlement would be particularly supportive to carers “who need to cater for persons with regular medical or other support needs, allowing them to have at least one day per month.”<sup>76</sup> Consideration should be given to adopting this flexible, and more favourable, position in Kosovo.

Workers may take carers’ leave under the WLB Directive to care for a “relative” or a person who lives in their household. Kosovo law currently contains a definition of “close family member” which is aligned with the definition of “relative” under the WLB Directive.<sup>77</sup> The introduction of a new provision on carers’ leave could therefore make use of this existing definition. The inclusion of “members of the same household” is particularly important for same-sex couples<sup>78</sup> but may also be important in the Kosovo context to account for where multiple or extended families live together.



... ‘carer’ means a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State.”

(WLB Directive, Article 3.1(d))

... ‘relative’ means a worker’s son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership.

(WLB Directive, Article 3.1(e))

Compensation while on carers’ leave is discussed below (see “*compensation while on leave*”).

<sup>71</sup> COFACE, “Assessment of the European Commission Work-Life Balance package” (2017) p. 15.

<sup>72</sup> World Bank, “Why should we care about care? The role of childcare and eldercare in Kosovo” (2015) p. 39.

<sup>73</sup> ETUC, “Rebalance: Trade unions’ strategies and good practices to promote work-life balance” (2019) p. 25.

<sup>74</sup> COFACE, Assessment of the European Commission Work-Life Balance package (2017) p. 15.

<sup>75</sup> European Women’s Lobby, “The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers” (2019), p. 7.

<sup>76</sup> Ibid.

<sup>77</sup> “Close family member” is defined as “...spouse, marital and extramarital children, adopted children, brothers, sisters and parents” (LL, Article 3.1.6). While this definition goes further than the WLB Directive by including siblings, consideration should be given to including grandparents, as encouraged under Recital 27 of the WLB Directive.

<sup>78</sup> Winter, B. *The Political Economy of Same-Sex Marriage: A Feminist Critique* (Routledge, 2021), Part III.

## Time Off from Work on Grounds of Force Majeure

The WLB Directive requires states to ensure that workers have the right to time off on the basis of “*force majeure* for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable.”<sup>79</sup> Unlike the other forms of leave discussed above, no minimum period is set. This position makes no significant changes to the comparative entitlement under the Parental Leave Directive<sup>80</sup> and continues to allow such leave to be unpaid. In Kosovo, five days of fully paid compassionate leave are provided to workers in the event of the death of a “close family member”.<sup>81</sup> This entitlement should be broadened to account for other urgent family reasons related to illness or accident.

## Compensation while on Leave

### EU Law Entitlements

The WLB Directive requires paternity leave to be paid at least at the level of sick pay.<sup>82</sup> No minimum level of pay is set for parental leave. Rather, compensation must be “set in such a way as to facilitate the take-up of parental leave by both parents”.<sup>83</sup> The WLB Directive highlights that Member States which “pay the worker a payment or allowance during [parental] leave at a relatively high replacement rate experience a higher take-up rate by fathers and a positive trend in the rate of employment of mothers.”<sup>84</sup>

Maternity leave, under the Pregnant Workers Directive, must be compensated at least at the level of sick pay.<sup>85</sup> There is no obligation for carers’ leave to be paid; however, states are “encouraged to introduce such a payment or an allowance in order to guarantee the effective take-up of the right by carers, in particular by men.”<sup>86</sup>

### Current Entitlements in Kosovo

In Kosovo, the initial two-day paternity leave period is currently fully paid by the employer. As parental and carers’ leave, within the meaning of the WLB Directive, are new concepts to the Kosovo legal framework, no provisions exist on compensation. Maternity leave is compensated by the employer at 70% of the employee’s basic salary for the initial six months. Mothers may choose to extend their leave for three months further, compensated by the Government of Kosovo at the rate of 50% of the average salary, and a further three months without compensation.<sup>87</sup> Kosovo does not have a contributory social insurance scheme for financing maternity leave benefits. Therefore, social assistance from the state budget funds the

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<sup>79</sup> WLB Directive, Article 7.

<sup>80</sup> Parental Leave Directive, Clause 7.

<sup>81</sup> LL, Article 39.1.2; CS Leave Regulation, Article 11.1.2. “Close family member” is defined in the LL as “...spouse, marital and extramarital children, adopted children, brothers, sisters and parents” (Article 3.1.6) but is undefined in the CS Leave Regulation.

<sup>82</sup> WLB Directive, Article 8.2.

<sup>83</sup> WLB Directive, Article 8.3.

<sup>84</sup> WLB Directive, Recital 26.

<sup>85</sup> Pregnant Workers Directive, Article 11.3.

<sup>86</sup> WLB Directive, Recital 32. The initial European Commission Proposal sought for carers’ leave to be compensated at least at the level of sick pay (European Commission Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([COM\(2017\) 253 final](#)) p. 10)

<sup>87</sup> LL, Articles 49.3 - 49.5; CS Leave Regulation, Article 12.2.

government-funded maternity leave period. This relates to a broader issue in Kosovo, whereby social protection expenditure is poorly positioned to reduce inequality and poverty. According to Haxhikadrija and Mustafa:

Since around 95% of all social protection expenditure is financed by government revenues ... and national revenues are up to 85% financed from consumption taxation, this structure implies that there is low redistribution. The national revenues come disproportionately from the poorer part of society (which has to consume more of its income than the better-off, who can save/invest), whereas the revenues are spent mostly on public-sector wages and – increasingly – on cash transfers to powerful social groups.<sup>88</sup>

## Compensation Levels

“Adequate” pay under the Pregnant Workers Directive is considered to be a guaranteed 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.”<sup>89</sup> The WLB Directive establishes the same standard for paternity leave. The purpose of these provisions is to ensure that workers receive an income “at least equivalent to the sickness allowance provided for by national social security legislation” during leave.<sup>90</sup> Social security systems are underdeveloped in Kosovo<sup>91</sup> however ordinary sick leave is fully compensated by the worker’s employer for up to 20 days and absence due to occupational injuries and related illnesses are compensated at 70% salary by the employer for up to 90 days.<sup>92</sup>

The position is less clear regarding parental and carers’ leave. Adequate payment of all forms of family leave is a key element in preventing discrimination based on economic conditions of the family, addressing and preventing poverty resulting from persistent gender pay and pension gaps, and in rebalancing care responsibilities and family leave uptake.<sup>93</sup> In this regard, COFACE highlights:

Where leaves are not paid, only those who can afford it will take them or, in a family economy, the person who earns less will take up the leave to minimise income loss. Due to structural problems of the labour market, like gender segregation and the gender pay gap, and a traditional separation of roles between men and women, the latter are those who earn less and therefore those who take the leave in most cases.<sup>94</sup>

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<sup>88</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, Financing social protection: Kosovo (2019), p. 17.

<sup>89</sup> Pregnant Workers Directive, Article 11.3.

<sup>90</sup> ECJ Case C-411/96 *Boyle and Others*, paragraph 32.

<sup>91</sup> Discussed below (see “social protection”).

<sup>92</sup> LL, Articles 59.1 and 59.3 – 59.4. The position is the same for civil servants (CS Leave Regulation, Article 9).

<sup>93</sup> European Women's Lobby, “The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers” (2019), p. 12.

<sup>94</sup> COFACE, Assessment of the European Commission Work-Life Balance package (2017) p. 16.



In a 2020 review of leave policies in 45 countries, while the majority of countries surveyed included some payment for parental leave, payment policy varied significantly.<sup>95</sup> These findings are similarly reflected within the EU.<sup>96</sup> Compensation rates for carers' leave within the EU vary significantly but are generally lower than other family leave measures.<sup>97</sup>

The European Commission defines “well-paid” leave to be 66% of previous earnings.<sup>98</sup> This may be a useful indicator in determining minimum levels for parental and carers' leave. However, the OECD estimates that a wage replacement rate of 80% is necessary to keep families out of poverty and to facilitate middle-income families being able to meet essential needs, such as rent or mortgage payments, during paid leave.<sup>99</sup> Moreover, 80–100% wage replacement is needed to achieve substantial take-up by most men because women tend to earn less than men, and it may not be affordable for the primary earner to take paid leave if benefits do not fully replace income.<sup>100</sup> The WLB Directive recognises this issue, adding that families are only able to make use of parental leave if it is sufficiently remunerated “with a view to allowing for a decent living standard.”<sup>101</sup>

As noted above, the key test for compliance with the WLB Directive on parental leave is whether the remuneration facilitates take-up by both parents. Statistics on the take-up of parental leave before and after the introduction of national transposing legislation could therefore guide the determination of whether the standard is met.<sup>102</sup>

## Finance Sources

Most countries provide paid leave through social security schemes that rely on a mix of employment contributions, often with additional government funds.<sup>103</sup> Current maternity leave entitlements in Kosovo place approximately two-thirds of the financial cost on employers. This is divergent from ILO Convention No. 183, which establishes a preference for maternity benefits to be paid from compulsory social insurance or publicly funded programmes and the confinement of individual employers' liability to a limited range of cases in order to protect the position of women in the labour market.<sup>104</sup> The rationale for this position is as follows:<sup>105</sup>

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<sup>95</sup> Koslowski, A., Blum, S., Dobroćić, I., Kaufman, G. and Moss, P., International Review of Leave Policies and Research (2020), p. 32.

<sup>96</sup> European Commission, Study on the costs and benefits of possible EU measures to facilitate work- life balance for parents and care givers (2017) p. 10, 29 and 38.

<sup>97</sup> Ibid, p. 49.

<sup>98</sup> van Belle, J. for RAND Europe, “Paternity and parental leave policies across the European Union” (2016) p. 4; European Commission, Indicators for monitoring the Employment Guidelines including indicators for additional employment analysis, 2010 compendium, Table 18.M3.

<sup>99</sup> OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” (2018) p. 8.

<sup>100</sup> Ibid, p. 9.

<sup>101</sup> WLB Directive, Recital 31.

<sup>102</sup> Oliveira, Á., De la Corte-Rodríguez, M., Lütz, F. “The new Directive on work-life balance: towards a new paradigm of family care and equality?” [2020] 45(3) European Law Review 295-323, 306.

<sup>103</sup> OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” (2018) p. 12.

<sup>104</sup> ILO Convention No. 183 concerning the Revision of the Maternity Protection Convention (Revised) 1952, Article 6.8.

<sup>105</sup> ILO, “Social protection for maternity: Key policy trends and statistics” (Social Protection Policy Papers, Paper 15, 2015) p. 3.



Collectively financed schemes, funded from insurance contributions, taxation or both, are based on the principles of solidarity and risk-pooling, and therefore ensure a fairer distribution of the costs and bear the economic costs of maternity directly, which often results in a double burden (payment of both women's wages during maternity leave and costs of their replacement)....

While some individual workers may obtain appropriate compensation under such provisions, employers may be tempted to adopt practices that deny women the income security to which they should be entitled in order to avoid the related costs and the financial hardship that they may entail for small businesses or in times of instability.

**Discrimination against women of childbearing age in hiring and in employment, and non-payment of due compensation by the employer, are more commonly evident in the absence of collective mechanisms to finance maternity protection.** Pressure on women to resume work to the detriment of their health or that of their child may also be more prevalent where employers have to bear the costs of maternity leave.”

(ILO, Social Protection Policy Paper 15, [2015](#), p. 3)

A shift from employer liability towards collective finance through the introduction of a contributory social insurance scheme may therefore advance the promotion of equal treatment of women in the labour market. The development of such a scheme in Kosovo may also provide an opportunity to support enhanced compensation while on paternity, parental and carers' leave without placing a higher burden on employers.

Interest in such a scheme is rising in Kosovo, however commentators have pointed out the need for such reform to be informed by local context.<sup>106</sup> In particular, the low employment rate in Kosovo suggests that contributions may produce limited revenue, and “low capacities for quality governance of public institutions ... suggest that it would be difficult [to] successfully manage contributions.”<sup>107</sup>

Thus, financial and actuarial studies should be undertaken on the feasibility of a contributory social insurance scheme to rebalance the financial costs of maternity leave, and to fund extended paid paternity leave and the introduction of paid parental and carers' leave. Such studies should consider the levels of wage compensation that could be granted, any applicable ceilings or decreasing phases of payments that may be appropriate and the potential necessity of maintaining some level of employer liability (albeit decreased) or drawing from the state budget until labour rates increase. However, research from the OECD supports the notion that high wage replacement rates are compatible with high labour force participation rates, low unemployment and economic growth.<sup>108</sup>

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<sup>106</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, “Financing social protection: Kosovo” ([2019](#)), p. 18.

<sup>107</sup> Ibid.

<sup>108</sup> OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” ([2018](#)) p. 10.



## Self-employed Workers

The WLB Directive excludes self-employed workers. However, it remains over to states to extend the rights contained therein to self-employed persons. The Self-Employment Directive requires states to provide self-employed mothers and the women spouses or life partners of self-employed persons with “a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.”<sup>109</sup> Few OECD countries entirely exclude self-employed workers from paid parental leave benefits; however, some provide less generous benefits to such workers.<sup>110</sup> Only a minority of countries provide paternity leave to self-employed fathers.<sup>111</sup>

Self-employed workers are not adequately protected in Kosovo law.<sup>112</sup> Future reform should ensure that the status of self-employed parents regarding maternity, paternity and parental rights is equal to that of parents who are employees.

## Informal Employment and Unemployment

The ILO notes that most maternity leave provisions exclusively cover women in formal employment, causing maternity benefits to only be available to a minority of women in many low and middle-income countries.<sup>113</sup> ILO Convention No. 183 provides that women who do not meet qualifying conditions for maternity benefit entitlement must be provided with adequate benefits financed by social assistance funds based on means testing.<sup>114</sup> More broadly, the European Institute for Gender Equality has highlighted that most policies which seek to support equal care responsibilities are limited to people in employment, thereby “leaving behind those families who experience the most acute tensions between care responsibilities and paid work.”<sup>115</sup> Few countries have taken steps towards more universal systems.

A proposal in Kosovo in 2018 sought to introduce a system of maternity cash assistance for unemployed women for six months.<sup>116</sup> The amount of assistance was to be determined in relation to the national minimum salary, although no further detail was provided. While the overall proposal had several significant issues and shortcomings,<sup>117</sup> such an entitlement would have a far-reaching effect on the many women who do not meet the qualifying criteria for

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<sup>109</sup> Directive [2010/41/EU](#) 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, Article 8.1.

<sup>110</sup> OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” ([2018](#)) p. 15.

<sup>111</sup> Ibid.

<sup>112</sup> Cleff le Divellec, S. and Miller, K. for the Kosovo Women's Network, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” ([2017](#)), p. 27.

<sup>113</sup> Social protection for maternity: Key policy trends and statistics (Social Protection Policy Papers, Paper 15, [2015](#)) p. 3.

<sup>114</sup> ILO Convention No. 183 concerning the Revision of the Maternity Protection Convention ([Revised](#)) 1952, Article 6.6.

<sup>115</sup> EIGE, “Gender inequalities in care and consequences for the labour market” ([2021](#)) p. 12.

<sup>116</sup> Ministry of Labour and Social Welfare, Project Law on Leave ([2018](#)) Article 19.

<sup>117</sup> The Project Law was to be adopted separately to a new Labour Law. This was strongly criticised by the Kosovo Women's Network and the Women’s Economic Forum, which pointed out that the failure to consolidate the various forms of family-related leave within the Labour Law was a serious threat to the well-being of women. The proposed framework was also criticised on a number of grounds that remain relevant to the current framework, including: inadequate discrimination provisions, a failure to provide breastfeeding protection for the first six months following birth and improper protection of self-employed workers (Kosovo Women's Network, Letter to Members of Parliament dated [14 June 2019](#) and Women Economic Forum, Letter to Members of Parliament dated [12 June 2019](#)).

maternity benefits in Kosovo<sup>118</sup> and would be consistent with ILO Convention No. 183. However, as the employment rate of women in Kosovo is extremely low at 14.1%,<sup>119</sup> such an entitlement is likely to put pressure on public finances.<sup>120</sup> The ILO suggests that social insurance mechanisms can play a significant role in extending maternity protection coverage to workers in the informal economy who have some contributory capacities and may also facilitate workers' transition to the formal economy.<sup>121</sup> For persons with limited or no contributory capacities, alternative options may include full or partial government subsidies, or a combination of contributory and non-contributory mechanisms (such as through legislation on social assistance) to reach universal coverage.<sup>122</sup>

## Flexible Working Arrangements

The WLB Directive provides carers and workers with children up to a specified age (to be determined by states but, at a minimum, eight years) with a right to request flexible working arrangements for caring purposes.<sup>123</sup> The duration of such arrangements may be subject to a reasonable limitation. Upon receiving the request, employers must consider and respond within

a reasonable period of time, “taking into account the needs of both the employer and the worker.”<sup>124</sup> When considering requests for flexible working arrangements, employers should be able “to take into account, inter alia, the duration of the flexible working arrangements requested and the employers' resources and operational capacity to offer such arrangements.”<sup>125</sup> Reasons must be provided for refusing or postponing the request. Where flexible working arrangements are limited in duration, workers are entitled to return to their original working pattern at the end of the agreed period or to request to return early, where justified, on the basis of a change of circumstances.<sup>126</sup>



... ‘flexible working arrangements’ means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.”

(WLB Directive, Article 3.1(f))

<sup>118</sup> Boshnjaku, A. and Ryan, D. for Democracy for Development, “Parental Rights in Kosovo: Legal analysis regarding the proposed amendments to maternity and parental leave” (2019) p. 23 – 24.

<sup>119</sup> Compared to 46.2% for men (Kosovo Agency of Statistics, Labour Force Survey [Q3 2020](#), p. 12).

Notwithstanding the impact of COVID-19, this figure is relatively consistent with previous labour force surveys. For example, in [Q1 2018](#), the employment rate of women was 12.6%, compared with 45.6% for men.

<sup>120</sup> World Bank, “Maternity, Paternity, and Parental Leaves in Europe: Comparison of Family-Related Leave Policies and Key Legal Provisions with Implications for Kosovo” ([2019](#)) p. 17.

<sup>121</sup> ILO, “Maternity cash benefits for workers in the informal economy” ([2016](#)) p. 4 – 5. The ILO suggests offering voluntary affiliation as a first step, or compulsory coverage under a general social security system extended to workers in the informal economy through adapted procedures.

<sup>122</sup> Ibid, p. 5.

<sup>123</sup> WLB Directive, Article 9.1.

<sup>124</sup> WLB Directive, Article 9.2.

<sup>125</sup> WLB Directive, Recital 36.

<sup>126</sup> WLB Directive, Article 9.3.

Some concern has been raised over how flexibility will be implemented in practice. In particular, clear guidance is needed on working time outside of “traditional” working hours<sup>127</sup> and remote work. One measure that may support flexible working arrangements in practice is the integration of a right to disconnect, meaning “a worker’s right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours.”<sup>128</sup>

Some commentators have pointed out that “[t]he right to be inaccessible outside working hours is not really a right, but a simple non-existence of work obligations” so the same effect could therefore be met by strengthening the enforcement of existing rights rather than introducing a distinct right to disconnect.<sup>129</sup> Nonetheless, a number of states have put the right to disconnect on a legislative basis and the European Parliament has called on the European Commission to propose a law that would enable those who work digitally to disconnect outside their working hours; prompted, in particular, by the radically changed working landscape during COVID-19.<sup>130</sup> Recent research from Eurofound on telework and ICT-based mobile work also has supported the right to disconnect, stating that it “might be the only way to curb the trend towards a culture of work characterised by self-imposed work intensity, project-based work, performance-based pay and constant availability.”<sup>131</sup>

As noted by the OECD, technology is likely to affect different sectors and occupations in different ways, thereby potentially widening rather than reducing inequalities in remote work.<sup>132</sup> For businesses, the development of flexible policies will depend on the characteristics of the individual organisation or wider sector. Ultimately, the development of flexible working arrangements “requires creative thinking about existing models of work organisation and managerial practice.”<sup>133</sup> Such changes in work organisation may include:

- a system of “core working time” whereby employees have discretion over when to work an agreed number of hours during or over a fixed period,<sup>134</sup>
- compressed working hours, whereby employees work their ordinary hours in longer but fewer shifts per week, thereby building up additional hours that may be taken off without affecting salary,<sup>135</sup>

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<sup>127</sup> See for example, European Women's Lobby, “The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers” (2019) p. 8, and ETUC, “Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive” (2019) p. 16.

<sup>128</sup> Eurofound European Observatory of Working Life, Industrial Relations Dictionary, Right to disconnect (22 October 2019).

<sup>129</sup> Glowacka, M, “A little less autonomy? The future of working time flexibility and its limits” [2020] European Labour Law Journal 19.

<sup>130</sup> European Parliament, Press Release: ‘Right to disconnect’ should be an EU-wide fundamental right, MEPs say (21 January 2021).

<sup>131</sup> Eurofound, “Telework and ICT-based mobile work: Flexible working in the digital age” (2020).

<sup>132</sup> OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” (2016) p. 15.

<sup>133</sup> Ibid.

<sup>134</sup> Ackermann, K., “The Future of Working Time Management in Global Competition: A Microeconomic Perspective” in Strzeżewska, H. and Bednarski, M. (eds.) *Working Time Trends and Prospects in the New Economy* (2014).

<sup>135</sup> Riedmann A., Bielenski H., Szczurowska T. and Wagner, A. for Eurofound, “Working time and work-life balance in European companies” (2006).

- flexitime or job-sharing.<sup>136</sup>

The nature of flexibility requires law to not be overly prescriptive. Beyond developing the right to request flexible working arrangements within the meaning of the WLB Directive, the role of governments may include providing information and guidance to businesses and workers, and developing networks, organisations or agencies “that facilitate the exchange of best practices across companies, complementing the action they can take to grant employees the right to request a change in their working practices and to promote collective bargaining on flexible workplace issues.”<sup>137</sup>

Reduced working hours is a further form of flexible working arrangements recognised by the WLB Directive. The Directive acknowledges, however, that:

[w]hile working part-time has been shown to be useful in allowing some women to remain in the labour market after having children or caring for relatives with care or support needs, long periods of reduced working hours can lead to lower social security contributions and thus reduced or non-existing pension entitlements.<sup>138</sup>

The European Trade Union Confederation similarly highlights that the gender pension gap, averaging 40% in Europe, puts women at a higher risk of social exclusion or poverty later in life.<sup>139</sup> Part-time work is also a key contributing factor to the existing gender pay gap, being associated with weakened social protection and career opportunities.<sup>140</sup> Conversely, low-wage workers may be unable to afford to work-part time<sup>141</sup>, thereby emphasising the importance of other forms of flexible working arrangements. Thus, while a useful option for some workers, part-time work should not be the sole emphasis of flexible working options.

Kosovo law currently foresees flexible working arrangements for parents to some extent. However, the current provisions are far too narrow in scope and lack detail. The Labour Law provides that one parent of a child that requires special care due to poor health conditions or a permanent disability may work part-time until the child turns two.<sup>142</sup> Provisions on the “protection of motherhood” provide that certain persons are not obliged to work longer than full-time working hours or nights shifts, namely: pregnant women, mothers with a child under three years of age, single parents with a child under three years of age or with a serious disability, and adoptive parents or guardians of a child under three years of age whose parents have both died or otherwise abandoned the child.<sup>143</sup>

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<sup>136</sup> OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” (2016) p. 15.

<sup>137</sup> OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” (2016) p. 15.

<sup>138</sup> WLB Directive, Recital 35.

<sup>139</sup> ETUC, “Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive” (2019) p. 11.

<sup>140</sup> Ibid.

<sup>141</sup> OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” (2016) p. 12.

<sup>142</sup> LL, Article 52.1. The same entitlement exists for civil servants (CS Leave Regulation, Article 13.1).

<sup>143</sup> LL, Article 48. For civil servants, this entitlement is only applicable to pregnant workers, disabled workers and mothers with children under three (LCS, Article 36).

The Law on Gender Equality provides that “employers are obliged to take all necessary measures to enable women and men to correspond to both their professional and family obligations.”<sup>144</sup> No further detail is provided on how this is to be implemented in practice. The Law on Gender Equality also provides that time schedules of employees returning from maternity, parental, abortion or sick leave, or time spent out of work due to family emergencies or professional training, must be organised “in such a way that [employees] can return to their previous posts”.<sup>145</sup>

In order to reflect the provisions of the WLB Directive, a new article within the Labour Law is necessary. The provision should provide a right of all parents or guardians to request flexible work arrangements until their child reaches 12, as discussed above. Carers also should have the right to request flexible working arrangements for caring purposes. The provisions on the “protection of motherhood” should be reframed in gender-neutral terms. Finally, the increased level of protection for parents with children who have special health care needs should be maintained by providing that requests from such parents cannot be refused by an employer. Policy guidance on flexible working arrangements should be developed for businesses and workers.

Perhaps more radically, some states have chosen to extend the right to request flexible working arrangements to all employees of companies which have a certain number of employees.<sup>146</sup> This approach may reduce the risk of certain groups of workers experiencing discrimination or unfavourable treatment as a result of taking or requesting flexible working arrangements and may strengthen the bargaining position of workers.<sup>147</sup>

## Workers’ Protection

### Employment Rights

The WLB Directive provides a number of rights designed to protect workers who exercise their entitlements to paternity, parental or carers’ leave (together, “**Family Leave**”) or to time off on grounds of *force majeure* against any changes in national law, employer abuse or discouragement and any lowering of working conditions when on leave.<sup>148</sup>

Firstly, any rights that have been acquired, or are in the process of being acquired, by workers on the date on which they exercise their Family Leave or time off for *force majeure* rights are maintained until the end of such leave.<sup>149</sup> The status of the employment relationship while on Family Leave must be defined, including as regards social security and pension entitlements, while ensuring that the employment relationship is maintained during the leave period.<sup>150</sup> These entitlements are currently reflected in Kosovo law as employment continuity is not interrupted by taking any leave under the Labour Law.<sup>151</sup> The interruption of occupational

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<sup>144</sup> LGE, Article 17.1.15.

<sup>145</sup> LGE, Article 17.1.16.

<sup>146</sup> OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” (2016) p. 14.

<sup>147</sup> Ibid.

<sup>148</sup> COFACE, “Assessment of the EU Work-life balance Directive” (2019), p. 15.

<sup>149</sup> WLB Directive, Article 10.1.

<sup>150</sup> WLB Directive, Article 10.3.

<sup>151</sup> LL, Article 12.1.1. This provision currently explicitly protects maternity leave, causing some to support the explicit inclusion of paternity, parental, carers’ and *force majeure* leave for clarity (Cleff le Divellec, S. and Miller,

social security schemes for employees on maternity leave “or leave for family reasons” is also prohibited, but the provision is poorly drafted and should be rephrased for clarity.<sup>152</sup>

At the end of any Family Leave, workers are entitled to return to their jobs or to an equivalent post on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.<sup>153</sup> This right is reflected in the Kosovo Law on Gender Equality, but the provision is poorly drafted, mixes gender neutral and gender specific language, and is confined to parental leave despite such leave being undefined in Kosovo law.<sup>154</sup> The provision should be redrafted for clarity and extended to all forms of Family Leave. The comparative provision under the Civil Servants’ Leave Regulation is gender-specific and should be amended to be applicable to all parents and carers.<sup>155</sup>

## **Discrimination**

Workers are protected from less favourable treatment on the ground that they have applied for or have taken Family Leave or time off on grounds of *force majeure*, or that they have exercised their right to request flexible working arrangements.<sup>156</sup> The employment-related anti-discrimination framework in Kosovo is likely to adequately capture this discrimination prohibition in the WLB Directive<sup>157</sup> owing to the inclusion of “catch-all” language.<sup>158</sup> However, explicit recognition of paternity, parental and carers’ leave, as well as flexible work arrangements and time off on grounds of *force majeure*, would be preferable. Moreover, the framework has not been drafted harmoniously and a number of provisions in disparate legislative acts overlap but attract differing penalties.<sup>159</sup> This incongruity should be addressed.

## **Protection from Dismissal and the Burden of Proof**

The dismissal of a worker, or any preparation for dismissal, on the basis that Family Leave has been applied for or taken or that flexible working arrangements have been requested, is prohibited by the WLB Directive.<sup>160</sup> Kosovo law currently protects workers from dismissal while on “pregnancy, maternity leave and absence from work due to special care for the child”.<sup>161</sup> This provision should be broadened to protect workers exercising the rights provided by the WLB Directive.

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K. for the Kosovo Women's Network, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” (2017) p. 20).

<sup>152</sup> LGE, Article 16.2.7.

<sup>153</sup> WLB Directive, Article 10.2.

<sup>154</sup> LGE, Article 17.2.

<sup>155</sup> CS Leave Regulation, Article 14.

<sup>156</sup> WLB Directive, Article 11.

<sup>157</sup> See, in particular: LGE, Article 4.1; LL, Articles 5.1 and 5.5; and LPD, Articles 1.1 and 2.1.

<sup>158</sup> For example, the LGE prohibits discrimination on “...any other basis defined by law” (Article 4.1), the LPD seeks to combat discrimination on “...any other grounds” (Article 1.1) and the LCS prohibits discrimination on “other personal status” (Article 5.1.2).

<sup>159</sup> Banjska, I. et. al. for the Kosovo Women's Network, “Gender-Based Discrimination and Labour in Kosovo” (2019) p. 19 and 23.

<sup>160</sup> WLB Directive, Article 12.1.

<sup>161</sup> LL, Article 53. Collective dismissals are an explicit exception under the LL. The LPD and LGE also contain more broad prohibitions on discrimination in dismissals, including on the bases of parenting (LGE, Article 15.1.2) or “any other grounds” (LPD, Articles 1.1 and 2.1.6). As noted above, the inharmonious nature of the



Where an employee has applied for, or taken, Family Leave, employers must provide written reasons for any dismissal (but no such explicit obligation is included for flexible working arrangements).<sup>162</sup> Where a worker considers that they have otherwise been dismissed in violation of the prohibition, they may request substantiated reasons for their dismissal from their employer. In Kosovo, any decision to terminate an employment contract must be in writing and must include the grounds for dismissal.<sup>163</sup> The Labour Law also encourages employers to hold a meeting to explain termination of an employment contract to an employee, where the employee is entitled to be accompanied by a representative.<sup>164</sup>

The burden of proof in cases of alleged dismissal on the grounds of taking or applying for Family Leave is shared.<sup>165</sup> This means that a complainant only needs to raise facts capable of giving rise to a presumption that they have been dismissed on such grounds, after which the burden shifts to the employer to prove that the dismissal was based on other grounds. This principle is applicable to all discrimination proceedings under Kosovo law.<sup>166</sup>

## **Victimisation**

Workers are protected from adverse treatment or consequences resulting from lodging a complaint or legal proceedings seeking to enforce compliance with rights provided by the WLB Directive.<sup>167</sup> This protection is similar to the prohibition of victimisation under the Recast Directive<sup>168</sup> and the Employment Equality Directive<sup>169</sup>, both of which have been transposed in Kosovo.<sup>170</sup>

## **Penalties**

Effective, proportionate and dissuasive penalties must be applied for infringements of the WLB Directive.<sup>171</sup> As a number of concepts are new to the Kosovo legal framework, new corresponding penalties will be necessary. Currently, a number of legal acts are relevant for employment-related sanctions.<sup>172</sup> Penalties under the Labour Law grant significant discretion when imposing fines as the baseline of €100 is available regardless of how much the upper limits

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employment-related anti-discrimination framework should be addressed and the forms of leave and arrangements foreseen by the WLB Directive should be explicitly protected.

<sup>162</sup> WLB Directive, Article 12.2.

<sup>163</sup> LL, Article 72.1. This appears to also apply to trial work, although the notice period is reduced to seven days (LL, Article 15.3).

<sup>164</sup> LL, Article 70.3.

<sup>165</sup> WLB Directive, Article 12.3. Note that this principle does not need to be applied in proceedings where it is for the court or competent body to investigate the facts of the case nor in criminal proceedings (Articles 12.5 - 12.6).

<sup>166</sup> LPD, Article 20. Criminal proceedings are excluded.

<sup>167</sup> WLB Directive, Article 14.

<sup>168</sup> Directive [2006/54/EC](#) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 24.

<sup>169</sup> Directive [2000/78/EC](#) on establishing a general framework for equal treatment in employment and occupation, Article 11.

<sup>170</sup> The prohibition of victimisation is transposed in the LGE (Articles 3.1.19 and 4.1.6) and the LPD (Articles 4.1.5 and 4.2). The LPD is directly applicable in employment relationships by virtue of LL, Article 5.5.

<sup>171</sup> WLB Directive, Article 13.

<sup>172</sup> See in particular: LL, Article 92; Administrative Instruction No. [07/2012](#) on the determination of fines and specific amounts for violation of the provisions of labour law; Law [2002/09](#) on the Labor Inspectorate of Kosovo, Article 5.5(b); LGE, Article 23; LPD, Article 23.

rise to reflect the severity of an offence.<sup>173</sup> As noted above, the employment-related anti-discrimination framework requires revision as currently there are overlapping sanctions for the same offences but with differing fines. The severity and consistency of sanctions should be monitored to assess whether this system is effective, proportionate, and dissuasive in practice.

## Social Protection

This section outlines several forms of support for parents derived from social protection. Within EU law, although the EU holds certain limited competences for coordinating social protection systems, Member States hold exclusive competence in the organisation of their social protection systems such as for the setting-up, financing, and management of systems and the level, substance, and delivery of benefits, the level of contributions and conditions for access.<sup>174</sup> For this reason, social protection systems vary considerably across the EU.

Kosovo's social protection expenditure is low compared to regional and European levels.<sup>175</sup> As noted above, Kosovo does not have typical social insurance schemes; social protection expenditure is therefore primarily financed from government revenue, with a minority being financed from mandatory pension savings, private health insurance, user fees, other out-of-pocket payments for healthcare, and international donations.<sup>176</sup> Government revenue is largely constituted from consumption tax (85%) such as value added tax, import excises and fees on government services.<sup>177</sup>

## Social Assistance

There is no universal scheme of allowances for children in Kosovo.<sup>178</sup> Expenditure on family benefits is generally low, including transfers to families with children with permanent disabilities, transfers to families for accommodating orphaned or abandoned children, and maternity leave.<sup>179</sup> Kosovo also does not have a typical unemployment protection programme.<sup>180</sup>

The existing social protection expenditure in Kosovo is not well positioned for reducing poverty and inequality.<sup>181</sup> The primary social assistance programme in Kosovo, and the sole programme targeted at poverty reduction, is the Social Assistance Scheme ("SAS").<sup>182</sup> The World Bank reports that although overall spending on social protection has increased in Kosovo

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<sup>173</sup> Administrative Instruction No. [07/2012](#) on the determination of fines and specific amounts for violation of the provisions of labour law, Articles 2, 4 and 5.

<sup>174</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed ([2019/C 387/01](#)) Recital 35.

<sup>175</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, "Financing social protection: Kosovo" ([2019](#)), p. 8.

<sup>176</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, "Financing social protection: Kosovo" ([2019](#)), p. 6; Spasova, S. and Ward, T. for the European Social Policy Network, "Social protection expenditure and its financing in Europe: A study of national policies" ([2019](#)), p. 55.

<sup>177</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, "Financing social protection: Kosovo" ([2019](#)), p. 8.

<sup>178</sup> *Ibid*, p. 11.

<sup>179</sup> *Ibid*.

<sup>180</sup> *Ibid*, p. 12.

<sup>181</sup> *Ibid*, p. 17.

<sup>182</sup> Law No. [2003/15](#) on the Social Assistance Scheme in Kosovo, as amended by Law No. [04/L-096](#).



over the past decade, relative spending on SAS has decreased.<sup>183</sup> This decrease in targeted social assistance spending “goes against a worldwide trend.”<sup>184</sup> Increases in overall social protection spending were primarily attributed to increases in old-age and war veteran pensions.

The potential of the SAS to protect against poverty has declined consistently owing to inadequate and outdated eligibility criteria, low and declining benefit levels, and limited coverage.<sup>185</sup> The design of the SAS discourages beneficiary employment as “[w]orking formally and receiving SAS exclude one another.”<sup>186</sup> Families may only qualify for SAS where (1) all family members are “dependent”<sup>187</sup> and none are employed or (2) where one family member is able to work and at least one child of the household is under five years of age or is an orphan in permanent care under the age of 15.<sup>188</sup> The World Bank, in making a series of recommendations for reforming the SAS in 2019, commented that these criteria “serve as inexact proxies of poverty, powerful exclusion filters, and drivers for seeking the status of dependent ... family member”.<sup>189</sup>

A reorganisation of the SAS system is currently under consideration, including reform of the above criteria. A poverty test is proposed, including a minimum income means test of all household members and a proxy means test based on asset ownership, housing conditions and certain demographic characteristics.<sup>190</sup> A more generous equivalence scale for calculating monthly benefits and increased child allowance for children under 18 are also proposed, together with an entitlement for beneficiaries to engage in public employment programmes, vocational training, internships, salary subsidies, or other government employment programmes while continuing to receive SAS benefits for a certain period of time.<sup>191</sup> These reforms are consistent with the World Bank’s 2019 recommendations and will transform the system towards a more universal benefit system.<sup>192</sup>

## Childcare

The WLB Directive encourages states to consider that “the equal uptake of family-related leave between men and women ... depends on other appropriate measures, such as the provision of accessible and affordable childcare.”<sup>193</sup> The non-binding European Pillar of Social Rights states that “children have the right to affordable early childhood education and

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<sup>183</sup> World Bank, “Kosovo Social Assistance Scheme Study Assessment and Reform Options” ([March 2019](#)) p. 7.

<sup>184</sup> Ibid.

<sup>185</sup> Haxhikadrija, A. for the European Social Policy Network, “Kosovo moves towards a strengthening of the Social Assistance Scheme” (ESPN Flash Report [2020/62](#)) p. 1.

<sup>186</sup> World Bank, “Kosovo Social Assistance Scheme Study Assessment and Reform Options” ([March 2019](#)) p. 9.

<sup>187</sup> “Dependant” is defined as an individual who is: (i) over 18 years of age and has a permanent and severe disability rendering them unable to work; (ii) over 65 years of age; (iii) a full-time carer of a person with (a) a permanent disability, or (b) over 65 years of age needing full-time care, or (c) of a child under the age of five; (iv) up to 14 years of age; (v) between 15 and 18 inclusive and in full-time secondary education; or (vi) a single parent with at least one child under the age of 15 (Law No. [2003/15](#) on the Social Assistance Scheme in Kosovo, Article 2.7).

<sup>188</sup> Law No. [2003/15](#) on the Social Assistance Scheme in Kosovo, as amended by Law No. [04/L-096](#), Article 4.4 – 4.5.

<sup>189</sup> World Bank, “Kosovo Social Assistance Scheme Study Assessment and Reform Options” ([March 2019](#)) p. 7.

<sup>190</sup> Haxhikadrija, A. for the European Social Policy Network, “Kosovo moves towards a strengthening of the Social Assistance Scheme” (ESPN Flash Report [2020/62](#)) p. 1.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid, p. 2.

<sup>193</sup> WLB Directive, Recital 12.

care of good quality” and emphasises that “children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.”<sup>194</sup> Affordable childcare, particularly for children under four, is key to facilitating parents returning to work.<sup>195</sup>

The European Council, in recognition of the need for increased measures directed at reconciling family life and working life, particularly through the creation of services for caring for children and other dependents, set the “Barcelona Objectives” in 2002 (the provision of childcare for 90% of children between three years old and the mandatory school age, and for 33% of children under three).<sup>196</sup> While the target for children under three has been reached within the EU block, the target for children from 3 to mandatory school-going age has not yet been reached,<sup>197</sup> and childcare practices vary widely across the EU.<sup>198</sup> While most European countries have committed to guaranteeing early childhood education and care for all children, there are significant differences in the ages at which children qualify<sup>199</sup> and costs.<sup>200</sup> Good quality early childhood education and care for children under three years of age is not available in many European countries.<sup>201</sup>

Access to early childhood education and care in Kosovo is well below Western Balkan and EU levels,<sup>202</sup> and the provision of free public childcare is “almost non-existent”.<sup>203</sup> Free childcare is reserved for families accessing social assistance, and on condition that the child is

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<sup>194</sup> European Pillar of Social Rights, Principle 11. To facilitate interpretation of this Principle, the Council adopted a Recommendation on High Quality Early Childhood Education and Care Systems in 2019 ([2019/C 189/02](#)), consolidated around five essential dimensions: access; workforce; curriculum; monitoring and evaluation; and governance and funding.

<sup>195</sup> ETUC, “Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive” ([2019](#)) p. 9.

<sup>196</sup> European Council, Presidency Conclusions - Barcelona 15 and 16 March 2002 ([SN 100/1/02 REV 1](#)) p. 12 and 47.

<sup>197</sup> European Commission, Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Barcelona Objectives ([COM\(2018\)273 final/3](#)).

<sup>198</sup> Eurostat reports that in 2019, close to half of all children under three years of age were exclusively cared for by their parents, but figures in individual EU Member States ranged from 21.2% to 69.9%. More than one third of the same age group received formal childcare, with approximately one in five children in formal childcare receiving 30 hours per week. Around a quarter of all children in the same age group received other types of childcare (professional child-minder at the child’s home or at the child-minders’ home as well as care provided by grandparents, other household members, other relatives, friends or neighbours) (Eurostat, “Living conditions in Europe - childcare arrangements” ([2021](#))).

<sup>199</sup> European Commission, Key Data on Early Childhood, Report Education and Care Education and Training in Europe ([2019](#)) p. 45. EIGE has commented that “the Barcelona targets ... would benefit from being revised to include qualitative elements of service provision, such as quality, accessibility and affordability” (EIGE, “Gender inequalities in care and consequences for the labour market” ([2021](#))).

<sup>200</sup> Ibid, p. 56. The Report notes that “most families have to pay fees for ECEC [early childhood education and care] for the youngest group of children. The availability of ECEC free of charge increases noticeably at age 3 and this trend continues with each year of age, becoming almost universal across Europe during the last year before compulsory primary education starts” (p. 54).

<sup>201</sup> Ibid, p. 9.

<sup>202</sup> Haxhikadrija, A. for the European Social Policy Network, “Kosovo plans expanded access to early childhood education and care” (ESPN Flash Report [2019/30](#)) p. 1.

<sup>203</sup> Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” ([2019](#)) p. 12.

enrolled in a public kindergarten,<sup>204</sup> which are of limited availability.<sup>205</sup> In 2015, the World Bank reported that affordability is a key barrier to childcare use in Kosovo.<sup>206</sup> It concluded that:

[a] well-developed childcare sector not only helps generating economic participation opportunities for women but also implies potential improvements in the school readiness for children via better coverage of early childhood education.<sup>207</sup>

...comprehensive policies that target both the supply and availability while making services more affordable particularly for women who have potential to join the labor market, are expected and likely to have a high employment impact.<sup>208</sup>

Other issues include limited subsidised places for children from vulnerable groups, such as the unemployed, and “a dominant policy (and public) view that pre-school education is a care service for employed parents rather than a child’s right and entitlement for care and education”.<sup>209</sup> Childcare provision is also reported to be unequal between municipalities, with a clear rural-urban divide being observable in access to early childhood education.<sup>210</sup>

Research by the Kosovo Women's Network in 2016 outlined several options that could contribute to expanding childcare availability in Kosovo, but, given the extensive level of need, suggested that individual municipalities, businesses, and donors “select which model or combination of models would work best with their specific target group, based on local needs, opportunities, and available resources.”<sup>211</sup> The proposed models included expanded state-funded public care; public-private partnerships; encouraging private co-financing of childcare through employers, municipalities leasing public property in support of private care centres or offering incentives to private actors to increase childcare availability; and expanding community-based care centres. These recommendations remain valid today, amid ongoing shortages in care services.

Universal inclusion in pre-primary education was an aim of the Kosovo National Development Strategy 2016 – 2021.<sup>212</sup> Activities included increasing the number of public kindergartens, increasing inclusion in private institutions and optimising teaching personnel by reallocation from higher education levels. The Strategy on the Rights of the Child 2019 – 2023 contains a strategic objective focused on the inclusion of children in integrated services for early childcare and development.<sup>213</sup> Targets include ensuring, by 2030, that all children “have access to quality early childhood development, care and pre-primary education so that they are ready for primary education”, substantially increasing the supply of qualified teachers, and eliminating

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<sup>204</sup> Ibid.

<sup>205</sup> UNICEF, “Analysis of the situation of children and women in Kosovo” (2017) p. 61.

<sup>206</sup> World Bank, “Why should we care about care? The role of childcare and eldercare in Kosovo” (2015) p. 22.

<sup>207</sup> Ibid, p. 37.

<sup>208</sup> Ibid, p. 38.

<sup>209</sup> UNICEF, “Analysis of the situation of children and women in Kosovo” (2017) p. 61.

<sup>210</sup> Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” (2019) p. 12.

<sup>211</sup> Farnsworth, N. et. al. for the Kosovo Women's Network, *Who Cares? Demand, Supply, and Options for Expanding Childcare Availability in Kosovo* (2016), p. 39.

<sup>212</sup> Kosovo National Development Strategy 2016 – 2021 (2016) p. 11.

<sup>213</sup> Office of the Prime Minister, Office of Good Governance, Strategy on the Rights of the child 2019 – 2023, p. 30.

gender disparities in education and ensuring equal access to all levels of education for vulnerable groups.<sup>214</sup>

The Strategy on the Rights of the Child 2019 – 2023 also sought to review the Law on Preschool Education during 2019 and 2020.<sup>215</sup> A replacement draft law on early childhood education<sup>216</sup> aims to improve access to public kindergartens through means-tested fees and to facilitate the licensing and work of pre-school education, with a particular focus on community-based and public-private partnership kindergartens.<sup>217</sup> The draft law is expected to “help reduce the current enrolment gap between the poorest and wealthiest quintiles in Kosovo”, but commentators note a need for the expansion to be well-planned as “fast growth could affect the quality of services.”<sup>218</sup>

## Long-term Care

“Long-term care” refers to “services supporting people who need help in performing activities of their daily living over a protracted period of time due to chronic conditions of physical or intellectual disability.”<sup>219</sup> Where formal long-term care arrangements are lacking, many people with dependent relatives, most often women, take on informal caring roles.<sup>220</sup> This may lead to long absences or complete departure from the labour market. As life expectations rise, social protection systems will increasingly need to provide for persons requiring long-term care.<sup>221</sup> To this end, the non-binding European Pillar of Social Rights provides that everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.<sup>222</sup> Nonetheless, “formal long-term care services are very under-developed in many Member States, to the detriment of women’s employment.”<sup>223</sup>

In Kosovo, there are accessibility issues, both in terms of location and capacity, for residential eldercare centres.<sup>224</sup> Residential and at-home private care options are generally very expensive and dependant on retirement pensions, which are often inadequate, thereby increasing the use of informal care amongst families.<sup>225</sup> Social norms and cultural perceptions that the family will care for its own may contribute to Kosovo having fewer publicly provided

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<sup>214</sup> Ibid, p. 38 – 39.

<sup>215</sup> Law No. [02/L-52](#) on Preschool Education.

<sup>216</sup> Ministry of Education, Science and Technology, Draft Concept Paper for Early Childhood Education 0 - 6 years ([2018](#)) [in Albanian].

<sup>217</sup> Haxhikadrija, A. for the European Social Policy Network, “Kosovo plans expanded access to early childhood education and care” (ESPN Flash Report [2019/30](#)) p. 2.

<sup>218</sup> Ibid.

<sup>219</sup> European Platform for Rehabilitation, “Analytical paper on Long Term Care: Older People and Disability” ([2018](#)) p. 1.

<sup>220</sup> European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#)), p. 40.

<sup>221</sup> Council of the European Union, Key conclusions on 2021 Long Term Care Report of the Social Protection Committee and the European Commission ([2021](#)), p. 2.

<sup>222</sup> European Pillar of Social Rights, Principle 18.

<sup>223</sup> European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#)), p. 40.

<sup>224</sup> World Bank, “Why should we care about care? The role of childcare and eldercare in Kosovo” (2015) p. 29.

<sup>225</sup> Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” ([2019](#)) p. 12 - 13.

long-term care services.<sup>226</sup> Infrastructure, safety, hygiene and staff qualifications were identified by the World Bank as key problems in eldercare centres.<sup>227</sup> The World Bank also observed:

...formats such as day-care centers or home-based formal eldercare are viewed more positively [than residential care] by Kosovars, both urban and rural, as they are seen to be more compatible with the norms that emphasize the well-being of the elderly. However it is understood that accessibility of such services are at best limited and unsystematic.<sup>228</sup>

Therefore, the provision of day-care at-home support policies over institutionalisation and long-term care in medical institutions should be prioritised.<sup>229</sup> More broadly, “quality provision of formal eldercare can potentially improve health outcomes of the elderly through prevention, early detection, and consistent maintenance of chronic diseases, which may imply long-term cost savings in the health care sector.”<sup>230</sup>

Issues are also identifiable with long-term care services for persons with disabilities in Kosovo. In the European Commission’s 2020 Kosovo Country Report, it was highlighted that “[p]eople with disabilities in Kosovo experience exclusion due to limited support and inadequate health and social services.”<sup>231</sup> Many of the support services required for facilitating independent living of adults with disabilities are not available in Kosovo.<sup>232</sup> Issues with capacity are identifiable within long-term care and accommodation institutions.<sup>233</sup> Some day care options are provided by NGOs. Analysis of the situation of children with disabilities is difficult as data is limited.<sup>234</sup> This is in part owing to multiple definitions of disability being in use by multiple institutions and stakeholders.<sup>235</sup> Day-care services for children with disabilities are provided by NGOs as there is a lack of municipal financing for social services.<sup>236</sup> Most NGOs’ activities are based on project funding and are not financially sustainable owing to their dependency on donor financing.<sup>237</sup>

The European Commission has noted that “[t]he lack of childcare and elderly care facilities hinders female employment” in Kosovo.<sup>238</sup> In addition to the personal impacts that

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<sup>226</sup> World Bank, “Job Diagnostic Kosovo” (2017) p. 34; Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” (2019) p. 14.

<sup>227</sup> World Bank, “Why should we care about care? The role of childcare and eldercare in Kosovo” (2015) p. 32.

<sup>228</sup> Ibid, p. 34.

<sup>229</sup> Ibid, p. 38.

<sup>230</sup> Ibid, p. 37.

<sup>231</sup> European Commission, Kosovo 2020 Country Report (SWD(2020) 356 final) p. 36.

<sup>232</sup> Bytyçi, A. on behalf of Caritas Kosova, “Policy Paper and Recommendations on social inclusion of people with disabilities and mental disorders in Kosovo” (2019) p. 4. For example, specialised rehabilitation services such as psychologists, speech therapists and physiotherapists are provided by civil society organisation with very limited capacities due to financial restraints.

<sup>233</sup> Ibid.

<sup>234</sup> Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” (2019) p. 14.

<sup>235</sup> UNICEF, “Situation Analysis: Children with Disabilities in Kosovo” (2017) p. 107.

<sup>236</sup> Haxhikadrija, A., Mustafa, A. and Loxha, A. for the European Social Policy Network, “In-work poverty in Kosovo” (2019) p. 14.

<sup>237</sup> European Centre for Social Welfare Policy and Research, “Decentralization of Social Services in Kosovo – Policy Challenges and Recommendations”, Policy Brief, 2018/5, p. 8.

<sup>238</sup> European Commission, Kosovo 2020 Country Report (SWD(2020) 356 final), p. 57.

sequential caregiving may have on carers' careers, health, income and pensions<sup>239</sup> research in Kosovo has identified households with a person who has a disability as at a higher risk of experiencing catastrophic health expenditures.<sup>240</sup> Developing appropriate formal care systems in Kosovo is therefore "strongly compatible with the short and long term objectives of economic growth and poverty reduction and savings objectives."<sup>241</sup>

## Healthcare

The ILO highlights that "[e]ffective access to free, or at least affordable, and appropriate antenatal and postnatal health care and services for pregnant women and mothers with newborns is an essential component of maternity protection."<sup>242</sup> More broadly, the provision of adequate and sustainable healthcare protects families against risks and enables individuals to "participate fully in employment and more generally in society."<sup>243</sup> In this regard, the European Pillar of Social Rights recognises that everyone has the right to "timely access to affordable, preventive and curative health care of good quality."<sup>244</sup>

The Kosovo Law on Health provides that all citizens and residents have the right to equal access to healthcare.<sup>245</sup> The Law establishes the "provision of the necessary conditions for ... pregnant women and women after childbirth, and healthy development of children and youth."<sup>246</sup> Public healthcare amounts to approximately 60% of total health expenditure in Kosovo<sup>247</sup> and is financed from the state budget. Essential drugs are provided for free. Private healthcare is funded by individual payments, private insurance and government programmes for treatment outside of the public system.<sup>248</sup> "Out-of-pocket" payments represent a high share of total health expenditure and current healthcare financing "does not provide well targeted financial risk protection for the poorest segment of the population."<sup>249</sup>

A 2018 study on the healthcare system in Kosovo recommended revisiting pharmaceutical policies, as currently a high level of out-of-pocket expenses are incurred from medicines,<sup>250</sup> and strengthening the institutional referral system for treatment on the basis that out-of-pocket expenses may be attributable to "physician induced demand in the absence of common treatment guidelines and a robust information system".<sup>251</sup> Research from 2016

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<sup>239</sup> Gardiner, C. et. al., "Equity and the financial costs of informal caregiving in palliative care: a critical debate" [2020] 19(71) BMC Palliative Care 3 – 4.

<sup>240</sup> Qosaj, F. et. al., "Catastrophic expenditures and impoverishment due to out-of-pocket health payments in Kosovo" [2018] 16(26) Cost Effectiveness and Resource Allocation 8.

<sup>241</sup> World Bank, "Why should we care about care? The role of childcare and eldercare in Kosovo" (2015) p. 37.

<sup>242</sup> ILO, World Social Protection Report 2017 – 2019 (2017) p. 33.

<sup>243</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Launching a consultation on a European Pillar of Social Rights (COM(2016) 127 final), 3.1.

<sup>244</sup> European Pillar of Social Rights, Principle 16.

<sup>245</sup> Law No. 04/L-125 on Health, Article 4.

<sup>246</sup> Article 12.1.10.

<sup>247</sup> Qosaj, F. et. al., "Catastrophic expenditures and impoverishment due to out-of-pocket health payments in Kosovo" [2018] 16(26) Cost Effectiveness and Resource Allocation 2.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid, 11.

<sup>250</sup> Qosaj, F. et. al., "Catastrophic expenditures and impoverishment due to out-of-pocket health payments in Kosovo" [2018] 16(26) Cost Effectiveness and Resource Allocation 9. The authors suggest this may be a result of the limited essential list of drugs provided for free and a lack of pricing regulation in the large private market.

<sup>251</sup> Ibid.



highlighted the need for awareness raising of the healthcare system and which services can be obtained, including family planning information, targeted as residents of rural areas and women in particular.<sup>252</sup>

A further recommendation is to enhance programs targeting the poor. In particular, the introduction of mandatory health insurance premiums as a new source of financing for healthcare may improve quality of care and increase the availability of drugs and accessibility to services, especially for the poor.<sup>253</sup> To this end, a Law on Health Insurance was adopted in 2014 but remains to be implemented.<sup>254</sup> The Law foresees the provision of basic health care services<sup>255</sup> and the establishment of a public health insurance institution, the Health Insurance Fund. Healthcare would be financed from employment-related contributory social insurance payments and the Kosovo budget.<sup>256</sup> The Law provides that certain services will be provided regardless of health insurance status, namely: emergency services, healthcare for children under 18, essential healthcare services for pregnant women and women after childbirth and other essential healthcare services as determined by the Health Insurance Fund.<sup>257</sup>

Certain persons are exempt from paying premiums under the Law, including: persons on social assistance; individuals who are living in state institutions, and children in foster care and guardianship; the elderly and persons with disabilities sheltered in residential institutions; and victims of domestic violence.<sup>258</sup> Other categories of persons may be exempt depending on a means test, including elderly persons, persons with disabilities, and students.<sup>259</sup>

The Law attracted some controversy in part because of the inclusion of war veterans, former political prisoners and their spouses and children, as well as close family members of civilian victims of war, as persons who may be exempt from contributions depending on a means test, which “many feared ... would imply a further unjustifiable burden on the national budget.”<sup>260</sup> Further criticisms included a number of potential negative consequences, such as increased spending on public wages through employer contributions, low funding from employment contributions due to the low employment rate, the exclusion of unemployed persons not officially classified as poor through the means test, and funds being used to pay private health service providers.<sup>261</sup> In the alternate, Haxhikadrija and Mustafa have suggested that:

...the model of a National Health Insurance financed by government revenues could be more feasible for Kosovo in the short and medium term. According to this model, access to healthcare would be governed by citizenship, and it would cover any spending on a list of services and drugs by individuals above a defined limit. At the same time, citizens could further utilise voluntary private health insurance. This model is closer to the

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<sup>252</sup> Farnsworth, N., Goebbels, K. and Ajeti, R. for the Kosovo Women's Network, “Access to Healthcare in Kosovo” (2016) p. 64.

<sup>253</sup> Qosaj, F. et. al., “Catastrophic expenditures and impoverishment due to out-of-pocket health payments in Kosovo” [2018] 16(26) Cost Effectiveness and Resource Allocation 3.

<sup>254</sup> Law No. 04/L-249 on Health Insurance.

<sup>255</sup> As defined under Article 14.

<sup>256</sup> Article 21.

<sup>257</sup> Article 7.

<sup>258</sup> Article 11.2.

<sup>259</sup> Article 11.3.

<sup>260</sup> Haxhikadrija, A. and Mustafa, A. for the European Social Policy Network, “Financing social protection: Kosovo” (2019), p. 15.

<sup>261</sup> Ibid, p. 17.

existing culture and public expectations of healthcare than is typical of mandatory health insurance.<sup>262</sup>

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<sup>262</sup> Ibid, p. 19.



## Key Recommendations

### **Paternity Leave**

- Amend LL Article 50.2 to provide for at least 10 days paid leave for fathers and equivalent second parents on the birth or adoption of their child. Reframe the article as “paternity leave”, by reference to the WLB Directive definition.
- Amend LL Article 51.1 to allow fathers to take paternity leave in the event of a miscarriage or stillbirth.
- Retain full pay for the extended 10-day paternity leave period.
- Provide an entitlement for one-parent and other diverse families to nominate a person to use paternity leave rights.

### **Parental Leave**

- Introduce a new article in the LL to provide parental leave as an individual right of both parents for at least four months, to be taken at any time before the child reaches the age of 12. Provide that the entire period of parental leave is non-transferrable.
- Include an option for workers to request to take parental leave in flexible ways (“full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways”).
- Provide for full compensation while on parental leave to facilitate the take-up of leave by both parents. At minimum, match the compensation rate for maternity leave under LL Article 49.3 (70% of basic salary).

### **Equivalent Second Parents**

- Define “equivalent second parent” inclusively in the updated LL to explicitly extend paternity and parental leave entitlements to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities.

### **Adoptive Parents**

- Clarify the position of adoptive parents in the updated law by ensuring equal access to family leave entitlements.

### **Maternity Leave**

- Consider whether the design of maternity leave should be amended while non-transferable parental leave for women is being integrated into the framework, taking into account the interaction and cumulation of both leaves.

### **Carers’ Leave**

- Provide for 12 working days of carers’ leave per year for all workers, or five at a minimum, to care for “close family members” (as defined in LL, Article 3.1.6) in a new provision under the LL.
- Consider providing full pay for carers’ leave.

### **Time Off Work on Grounds of Force Majeure**

- Broaden LL Article 39.1.2 to allow for time off for urgent family reasons in the case of illness

or accident.

### **Self-employed Workers**

- In accordance with the Self-Employment Directive, ensure that the status of self-employed parents regarding maternity, paternity and parental rights is equal to that of parents who are employees.

### **Informal Employment and Unemployment**

- Consider the feasibility of a system of maternity cash assistance for women who do not meet the qualifying conditions for maternity benefit entitlement. Such a scheme might take the form of social assistance for unemployed women under a new Law on Social Assistance; the use of adapted social insurance mechanisms to extend maternity protection coverage to workers in the informal economy; full or partial government subsidies; or a combination of contributory and non-contributory mechanisms.

### **Compensation while on Leave**

- Consider developing a contributory social insurance system in order to transition away from the current employer liability model of financing leave. In particular, consider using such a scheme to:
  - rebalance the financial costs of maternity leave,
  - fund paid paternity leave, and
  - fund paid parental and carers' leave.

### **Flexible Working Arrangements**

- Replace LL Article 52 with a new provision on flexible work arrangements. Include:
  - A right of all parents or guardians to request flexible work arrangements until their child reaches 12 years of age. Require any refusal to be in writing and based on objective reasons relating to the employer's resources or operational capacity to offer flexible working arrangements;
  - A right of carers to request flexible working arrangements for caring purposes. Require any refusal to be in writing and based on objective reasons relating to the employer's resources or operational capacity to offer flexible working arrangements; and
  - A right of parents with children who have special health care needs to access flexible working arrangements. Provide that such requests cannot be refused.
- Reframe LL Article 48 as "protection of parents" and provide the within protections to all parents, including adoptive and equivalent second parents, irrespective of gender.

### **Workers' Protection**

- **Framework structure:** Review the employment-related anti-discrimination framework to ensure a clear delineation between the scope and application of the LGE, LPD and LL.
- **Returning to work:** Move LGE Article 17.2 into the LL. Redraft for clarity and to ensure the inclusion of persons returning from paternity, maternity, parental and carers' leave.
- **Discrimination:** Ensure that paternity, parental and carers' leave, as well as flexible work arrangements and time off for urgent family reasons, are explicitly included as protected grounds for all workers, in addition to maternity and pregnancy (LPD Article 1.1 and LGE Article 4.1).

- **Dismissal:** Amend LL Article 53 to include paternity, parental and carers' leave as protected categories from termination for all workers, and to protect those who have accessed flexible working arrangements.
- **Penalties:** Introduce corresponding offences for new provisions added to the LL. Review the severity and consistency of existing sanctions (LL Article 92; AI No. 07/2012 Article 2, 4, 5; LGE Article 23; LPD Article 23).

## Works Cited

### I. Kosovo

[Constitution of the Republic of Kosovo](#)

Code No. [06/L-074](#) Criminal Code of the Republic of Kosovo

Law No. [02/L-52](#) on Preschool Education

Law No. [03/L-149](#) on the Civil Service

Law No. [03/L-212](#) on Labour

Law No. [04/L-096](#) on Amending and Supplementing the Law No. 2003/15 on Social Assistance Scheme in Kosovo

Law No. [04/L-125](#) on Health

Law No. [04/L-249](#) on Health Insurance

Law No. [05/L-020](#) on Gender Equality

Law No. [05/L-021](#) on the Protection from Discrimination

Law No. [2002/09](#) on the Labor Inspectorate of Kosovo

Law No. [2003/15](#) on the Social Assistance Scheme in Kosovo

Law No. [2004/32](#) Family Law of Kosovo

Administrative Instruction No. [07/2012](#) on the Determination of Fines and Specific Amounts for Violation of the Provisions of Labour Law

Regulation No. [06/2011](#) on Civil Servants Leave

Kosovo National Development Strategy 2016 – 2021 ([2016](#))

Office of the Prime Minister, Office of Good Governance, Strategy on the Rights of the child [2019 – 2023](#)

Ministry of Education, Science and Technology, Draft Concept Paper for Early Childhood Education 0-6 years ([2018](#)) [in Albanian]

Ministry of Labour and Social Welfare, Project Law on Leave ([2018](#))

### II. EU

Council of the European Union, Key conclusions on 2021 Long Term Care Report of the Social Protection Committee and the European Commission ([2021](#))

Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed ([2019/C 387/01](#))

Council Recommendation on High Quality Early Childhood Education and Care Systems in 2019 ([2019/C 189/02](#))

Directive [92/85/EEC](#) 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](#) on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

Directive [2000/78/EC](#) on establishing a general framework for equal treatment in employment and occupation

Directive [2006/54/EC](#) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Directive [2010/18/EU](#) implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

Directive [2010/41/EU](#) 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

Directive [2019/1158](#) on work-life balance for parents and carers and repealing Council Directive 2010/18/EU  
ECJ Case [C-411/96 Boyle and Others](#)

European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Launching a consultation on a European Pillar of Social Rights ([COM\(2016\) 127 final](#))

European Commission Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([COM\(2017\) 253 final](#))

European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#))

European Commission, Indicators for monitoring the Employment Guidelines including indicators for additional employment analysis, [2010 compendium](#)

European Commission, Key Data on Early Childhood, Report Education and Care Education and Training in Europe ([2019](#))

European Commission, Kosovo 2020 Country Report ([SWD\(2020\) 356 final](#))

European Commission, Study on the costs and benefits of possible EU measures to facilitate work- life balance for parents and care givers ([2017](#))

European Commission, Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Barcelona Objectives ([COM\(2018\)273 final/3](#))

European Council, Presidency Conclusions - Barcelona 15 and 16 March 2002 ([SN 100/1/02 REV 1](#))

European Parliament, Press Release: 'Right to disconnect' should be an EU-wide fundamental right, MEPs say ([21 January 2021](#))

[European Pillar of Social Rights](#)

Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part (OJ L 71, [2016](#))

### **III. Other**

Ackermann, K., "The Future of Working Time Management in Global Competition: A Microeconomic Perspective" in Strzezińska, H. and Bednarski, M. (eds.) Working Time Trends and Prospects in the New Economy (2014)

Caritas Kosova (Bytyçi, A. on behalf), "Policy Paper and Recommendations on social inclusion of people with disabilities and mental disorders in Kosovo" ([2019](#))

COFACE, "Assessment of the EU Work-life balance Directive" ([2019](#))

COFACE, "Assessment of the European Commission Work-Life Balance package" ([2017](#))

de la Porte, C., Larsen, T. P., and Szelewa, D., "A Gender Equalizing Regulatory Welfare State? Enacting the EU's Work-Life Balance Directive in Denmark and Poland" [[2020](#)] The Annals of American Academy of Political and Social Science 84–103

Democracy for Development (Boshnjaku, A. and Ryan, D.), "Parental Rights in Kosovo: Legal analysis regarding the proposed amendments to maternity and parental leave" ([2019](#))

EIGE, "Gender inequalities in care and consequences for the labour market" ([2021](#))

ETUC, "Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive" ([2019](#))

ETUC, "Rebalance: Trade unions' strategies and good practices to promote work-life balance" ([2019](#))

Eurofound (Aumayr-Pintar, C), "Parental and paternity leave – Uptake by fathers" ([2019](#))

Eurofound (Riedmann A., Bielenski H., Szczurowska T. and Wagner, A. for), "Working time and work-life balance in European companies" ([2006](#))

Eurofound, Industrial Relations Dictionary, Right to disconnect ([22 October 2019](#))

Eurofound, "Telework and ICT-based mobile work: Flexible working in the digital age" ([2020](#))

European Centre for Social Welfare Policy and Research, "Decentralization of Social Services in Kosovo – Policy Challenges and Recommendations", Policy Brief, [2018/5](#)

European Confederation of Independent Trade Unions, "Priorities: Proposal for a Directive on work-life balance for parents & carers ' " ([2017](#))

European Platform for Rehabilitation, "Analytical paper on Long Term Care: Older People and Disability" ([2018](#))

European Social Policy Network (Haxhikadrija, A. and Mustafa, A), "Financing social protection: Kosovo" ([2019](#))

European Social Policy Network (Haxhikadrija, A., Mustafa, A. and Loxha, A.), "In-work poverty in Kosovo" ([2019](#))

European Social Policy Network (Haxhikadrija, A.), "Kosovo moves towards a strengthening of the Social Assistance Scheme" (ESPN Flash Report [2020/62](#))

European Social Policy Network (Haxhikadrija, A.), "Kosovo plans expanded access to early childhood education and care" (ESPN Flash Report [2019/30](#))

European Social Policy Network (Spasova, S. and Ward, T.), "Social protection expenditure and its financing in Europe: A study of national policies" ([2019](#))

European Women's Lobby, "The EWL Assessment of the recently adopted Directive on work-life balance for parents and carers" ([2019](#))

Eurostat, "Living conditions in Europe - childcare arrangements" ([2021](#))

Gardiner, C. et. al., "Equity and the financial costs of informal caregiving in palliative care: a critical debate" [[2020](#)] 19(71) BMC Palliative Care 3

Glowacka, M., "A little less autonomy? The future of working time flexibility and its limits" [[2020](#)] European Labour Law Journal 19

ILO Convention No. 183 concerning the Revision of the Maternity Protection Convention (Revised) 1952

ILO, Social protection for maternity: Key policy trends and statistics (Social Protection Policy Papers, Paper 15, [2015](#))

ILO, Social Protection Policy Paper 15, [2015](#)

ILO, World Social Protection Report 2017 – 2019 ([2017](#))

ILO (Addati, L., Cassirer, N. and Gilchrist K.), “Maternity and Paternity at work: Law and Practice across the World” ([2014](#))

ILO, “Maternity cash benefits for workers in the informal economy” ([2016](#))

Koslowski, A., Blum, S., Dobrotić, I., Kaufman, G. and Moss, P., “International Review of Leave Policies and Research” ([2020](#))

Kosovo Agency of Statistics, Labour Force Survey [Q1 2018](#)

Kosovo Agency of Statistics, Labour Force Survey [Q3 2020](#)

Kosovo Women's Network, Letter to Members of Parliament dated [14 June 2019](#)

Kosovo Women's Network (Banjska, I. et. al.), “Gender-Based Discrimination and Labour in Kosovo” ([2019](#))

Kosovo Women's Network (Banjska, I., Rrahmani, G. and Farnsworth, N.), “Striking a Balance” ([2016](#)).

Kosovo Women's Network (Cleff le Divellec, S. and Miller, K.), “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” ([2017](#))

Kosovo Women's Network (Farnsworth, N. et. al.), “Who Cares? Demand, Supply, and Options for Expanding Childcare Availability in Kosovo” ([2016](#))

Kosovo Women's Network (Farnsworth, N., Goebbels, K. and Ajeti, R.), “Access to Healthcare in Kosovo” ([2016](#))

Kosovo Women’s Network (Cleff le Divellec, S. and Miller, K.), “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” ([2017](#))

Lundqvist, A., *Transforming Gender and Family Relations. How Active Labour Market Policies Shaped the Dual Earner Model* (Edward Elgar, 2017)

OECD, “Be Flexible! Background brief on how workplace flexibility can help European employees to balance work and family” ([2016](#))

OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” ([2018](#))

Oliveira, Á., De la Corte-Rodríguez, M., Lütz, F. “The new Directive on work-life balance: towards a new paradigm of family care and equality?” [[2020](#)] 45(3) European Law Review 295-323

Qosaj, F. et. al., “Catastrophic expenditures and impoverishment due to out-of-pocket health payments in Kosovo” [[2018](#)] 16(26) Cost Effectiveness and Resource Allocation 3

RAND Europe (van Belle, J.), “Paternity and parental leave policies across the European Union” ([2016](#))

Saxonberg, S. “From Defamilialization to Degenderization: Toward a New Welfare Typology” [[2013](#)] 47(1) Social Policy & Administration 26-49

UNICEF, “Analysis of the situation of children and women in Kosovo” ([2017](#))

UNICEF, “Situation Analysis: Children with Disabilities in Kosovo” ([2017](#))

Winter, B. *The Political Economy of Same-Sex Marriage: A Feminist Critique* (Routledge, 2021)

Women Economic Forum, Letter to Members of Parliament dated [12 June 2019](#)

World Bank Group, “Jobs Diagnostic Kosovo” (Job Series, Issue No. 5, [2017](#))

World Bank, “Kosovo Social Assistance Scheme Study Assessment and Reform Options” ([March 2019](#))

World Bank, “Maternity Leave and Women’s Labor Market Status in Kosovo: Five Key Messages” ([2015](#))

World Bank, “Maternity, Paternity, and Parental Leaves in Europe: Comparison of Family-Related Leave Policies and Key Legal Provisions with Implications for Kosovo” ([2019](#))

World Bank, “Why should we care about care? The role of childcare and eldercare in Kosovo” ([2015](#))

## Annex 1. Transposition Table: EU Directive 2019/1158

### 1. The title of the EU legal act, the subject and the aim of legal act

Directive [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 (the “**WLB Directive**”).

The WLB Directive “lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers” (WLB Directive, Article 1).

### 2. The titles of the national legal acts, the subjects and the aims of the legal acts

(1) Law No. [03/L-212](#) on Labour (“**LL**”).

The LL aims “at regulating the rights and obligations deriving from employment relationship[s]” (LL, Article 1).

(2) Law No. [05/L-021](#) on the Protection from Discrimination (“**LPD**”).

The LPD establishes “a general framework for prevention and combating discrimination ... in order to implement the principle of equal treatment” [sic] and is “in accordance with” the Racial Equality Directive,<sup>263</sup> the Employment Equality Directive,<sup>264</sup> the Gender Goods and Services Directive<sup>265</sup> and the Recast Directive<sup>266</sup> (LPD, Article 1).

(3) Law No. [05/L-020](#) on Gender Equality (“**LGE**”).

The LGE seeks to “guarantee, protect and promote equality between genders as a basic value of democratic development of society” and is “in accordance with” CEDAW,<sup>267</sup> the Employment Equality Directive, the Recast Directive, the Gender Social Security Directive,<sup>268</sup> the Self-employment Directive<sup>269</sup> and the Gender Goods and Services Directive (LGE, Article 1).

(4) Law No. [03/L-149](#) on the Civil Service (“**LCS**”) and Regulation No. [06/2011](#) on Civil Servants Leave (“**CS Leave Regulation**”).

The LCS regulates the status of civil servants and the terms and conditions of their employment relationship with the institutions of the central and municipal administrations of the Republic of Kosovo. The CS Leave Regulation defines the rules and procedures for using leave by civil servants in accordance with the Civil Service Law.

<sup>263</sup> Directive [2000/43/EC](#) on implementing the principle of equal treatment between persons regardless of racial or ethnic origin.

<sup>264</sup> Directive [2000/78/EC](#) on establishing a general framework for equal treatment in employment and occupation.

<sup>265</sup> Directive [2004/113/EC](#) on implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

<sup>266</sup> Directive [2006/54/EC](#) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

<sup>267</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women ([18 December 1979](#)).

<sup>268</sup> Directive [79/7/EC](#) on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

<sup>269</sup> Directive [2010/41/EU](#) 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.

<b>3. The level of transposition</b>  There is no legal act in Kosovo that transposes the WLB Directive or its predecessor, the Parental Leave Directive. <sup>270</sup> A number of concepts are entirely new to the framework (such as parental leave or carers' leave) while existing concepts (such as paternity leave) require significant expansion and increased detail. As such, a substantial level of reform will be necessary to approximate the law. This table adopts the following colour coding system:				
The relevant requirements are adequately transposed in the Kosovo legal framework.				
Relevant provisions exist in the Kosovo legal framework but require amendment.				
No provision exists in the Kosovo legal framework.				
4. The provisions and requirements of the WLB Directive (article, paragraph)	5. The provisions of the national legislation (part, chapter, article, point, etc.)	6. Proposed amendments to national legislation	7. The reasons for partial conformity, non-conformity or non-applicability	8. National authority responsible for transposing
<b>Paternity Leave</b>				
<b>Definitions, Article 3.1(a)</b>  For the purposes of this Directive ... <b>'paternity leave'</b> means leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care.	Not transposed.	Transpose the WLB Directive definition into the LL.	No definition of "paternity leave" is provided in the LL. The LL uses the language "rights of [the] child's father" which should be updated.	Ministry of Labour and Social Welfare ("MLSW").

<sup>270</sup> Directive [2010/18/EU](#) implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [repealed by Article 19 of the WLB Directive with effect from 2 August 2022].



	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p><b>Paternity leave, Article 4.1</b></p> <p>Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.</p> <p><b>Recital 19</b></p> <p>...paternity leave should be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of providing care. Member States are also able to grant paternity leave in the case of a stillbirth. ...</p>	<p><b>LL, The rights of [the] child's father, Article 50.2</b></p> <p>The father of the child has the right to:</p> <ul style="list-style-type: none"> <li>2.1. two (2) days paid leave at the birth or upon adoption of the child;</li> <li>2.2. two (2) weeks unpaid leave after the birth or upon adoption of the child, at any time before the child reaches the age of three (3). The employee must inform the employer of his intention to take leave at least ten (10) days in advance.</li> </ul> <p><b>LL, Paid absence from work, Article 39.1.3</b></p> <p>An employee is entitled to a paid absence from work with the compensation of salary, up to ... three (3) days for the birth of a child.</p> <p><b>CS Leave Regulation, Parental leave, Article 12.8</b></p> <p>Male civil servants are entitled to three (3) days of paternity leave for the birth of each child. At the request of male civil servants there may be given additional unpaid paternity leave, to a maximum of fourteen (14) days.</p>	<p>Amend LL Article 50.2.1 and CS Leave Regulation Article 12.8 to provide for at least 10 working days paid leave for fathers on the birth or adoption of their child. Reframe the articles as "paternity leave", by reference to the above definition. Retain the option for additional unpaid leave. Retain the option for additional leave to be taken flexibly.</p> <p>In recognition of the diversity of families, consider providing the same leave rights as above to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities.</p> <p>Should a minimum 10 days paid paternity leave be introduced into Kosovo law, consider addressing the duplication in LL Article 39.1.3. This provision currently appears to be an error as it provides fathers with more favourable leave than the paternity leave provision,</p>	<p>The current provision for two days paid paternity leave under LL Article 50.2.1 or three days for civil servants under CS Leave Regulation Article 12.8 is insufficient to meet the 10-day standard of the WLB Directive.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>LL, Maternity leave in the case of the death of the infant, Article 51.1</p> <p>If an employed woman gives birth to a dead infant or if the child dies before the expiry of maternity leave, she is entitled to maternity leave after doctor's recommendation, until the recovery from birth and the psychical condition caused with the loss of the infant for no less than forty-five (45) days, during which period she shall be entitled to all entitlements under the maternity leave. [sic]</p> <p>CS Leave Regulation, Parental leave for special care or loss of child, Article 13.2</p>	<p>thereby making Article 50.2.1 redundant.</p> <p>Under LL Article 51.1 and CS Leave Regulation Article 13.2, women are currently entitled to take leave in the event of a stillbirth. In accordance with Recital 19, extend this entitlement to fathers and equivalent second parents. Consider also allowing such leave to be taken in the event of a miscarriage.</p>		
	<p><b>Payment or allowance, Article 8.2</b></p> <p>With regard to paternity leave as referred to in Article 4(1), such payment or allowance shall guarantee an income at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law. Member States may make the right to a payment or an allowance subject to periods of previous employment, which shall not exceed six months immediately prior</p>	<p>If the civil servant's baby is born dead, or the child dies before the end of maternity leave, according to the doctor's ascertainment, she is entitled to maternity leave as long as she needs to recover from birth and psychological condition caused by the loss of the child, but not less than forty five (45) days of leave.</p>	<p>Retain full pay for the initial paternity leave period.</p> <p>Consider developing an employment-related contributory social insurance scheme to fund paid paternity leave.</p>	<p>The initial paternity leave period is currently fully paid and is not subject to a period of previous employment. These standards should be maintained.</p> <p>The obligation to pay an employee on paternity leave currently falls on the employer. Unusually, Kosovo does not have a contributory social insurance scheme which facilitates funding for compensation while on leave. The</p>	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	to the expected date of the birth of the child.			development of such a scheme for parental, paternity, maternity and carers' leave would decrease the financial burden on employers and may thereby encourage equal hiring practices.	
	<b>Paternity leave, Article 4.2</b>  The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.	Not applicable.	No amendment needed.	There is currently no period of work qualification or a length of service qualification for fathers to take paternity leave. This position should be maintained.	MLSW.
	<b>Paternity leave, Article 4.3</b>  The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.	Not applicable.	No amendment needed.	The current rights of fathers to take leave on the birth or adoption of their child is not dependant on marital or family status. This position should be maintained.	MLSW.
<b>Parental Leave</b>					
	<b>Definitions, Article 3.1(b)</b>  For the purposes of this Directive ... <b>'parental leave'</b> means leave from work for parents on the grounds of	Not transposed.	Transpose the WLB Directive definition into the LL.	No definition of "parental leave" is provided in the LL.	MLSW.

4. The provisions and requirements of the WLB Directive (article, paragraph)	5. The provisions of the national legislation (part, chapter, article, point, etc.)	6. Proposed amendments to national legislation	7. The reasons for partial conformity, non-conformity or non-applicability	8. National authority responsible for transposing
the birth or adoption of a child to take care of that child.				
<p><b>Parental Leave, Article 5.1</b></p> <p>Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.</p> <p><b>Recital 21</b></p> <p>A minimum period of four months of parental leave is guaranteed under this Directive to workers who are parents. Member States are encouraged to grant the right to parental leave to all workers who exercise parental responsibilities in accordance with national legal systems.</p> <p><b>Parental Leave, Article 5.2</b></p>	<p><b>LL, Paid absence from work, Article 39.1.3</b></p> <p>An employee is entitled to a paid absence from work with the compensation of salary, up to ... three (3) days for the birth of a child.</p> <p><b>LL, Maternity leave, Article 49.7</b></p> <p>The father of the child may assume the [maternity leave] rights of the mother if the mother dies or abandons the child before the end of the maternity leave.</p> <p><b>LL, Maternity leave, Article 49.8</b></p> <p>The rights from paragraph 4 and 5 of this Article [the latter half of the maternity leave period] may be conveyed to the father of the child in agreement with the mother.</p> <p><b>CS Leave Regulation, Parental leave, Article 12.9</b></p> <p>The rights under paragraphs 2.2 and 2.3 of this article [the latter half of the maternity leave period] can be transferred to the father, in agreement with the mother.</p>	<p>Recalling that the WLB Directive only sets minimum standards, introduce a new article in the LL to provide parental leave as an individual right of both parents for at least four months, to be taken at any time before the child reaches the age of 12. Provide that the entire period of parental leave is non-transferrable.</p> <p>As with paternity leave, consider providing the same leave rights as above to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities.</p> <p>There is an entitlement under LL Article 32.4 to two additional days leave for mothers with children up to three years of age. This provision is likely to be superseded by the more favourable parental leave entitlements above. However, if the provision is retained in addition to the parental leave</p>	<p>The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.</p> <p>Currently, leave rights under the LL vest almost exclusively in the mother. Maternity leave rights may be transferred to the father where the mother dies; “abandons” the child; gets sick; or, following six months of the 12-month maternity leave period, where the latter six months are conveyed to the father by agreement.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p>Member States shall ensure that two months of parental leave cannot be transferred.</p>	<p><b>LL, The rights of [the] child's father, Article 50.1</b></p> <p>The rights defined under Article 49 of this Law [maternity leave] may be exercised by the father of the child too, in cases of the mother getting sick, abandoning of the child by the mother and/or death of the mother.</p> <p><b>CS Leave Regulation, Parental leave, Article 12.7</b></p> <p>The child's father can take the rights of the mother, if the mother dies or abandons the child before the end of maternity leave.</p> <p><b>LL, Annual leave, Article 32.4</b></p> <p>Mothers with children up to three (3) years of age and single parents as well as persons with disabilities are entitled to additional two (2) working days off.</p>	<p>entitlements, it should be amended to be applicable to all parents.</p>		
	<p><b>Payment or allowance, Article 8.3</b></p> <p>With regard to parental leave as referred to in Article 5(2), such payment or allowance shall be defined by the Member State or the social partners and shall be set in such a way as to facilitate the take-up of parental leave by both parents.</p>	<p>Not transposed.</p>	<p>Provide for full compensation for all forms of parental leave to facilitate the take-up of leave by both parents. At a minimum, match the compensation rate for maternity leave under LL Article 49.3 (70% of basic salary).</p>	<p>The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.</p> <p>As noted above, Kosovo does not have a contributory social insurance scheme which facilitates</p>	<p>MLSW.</p>

4. The provisions and requirements of the WLB Directive (article, paragraph)	5. The provisions of the national legislation (part, chapter, article, point, etc.)	6. Proposed amendments to national legislation	7. The reasons for partial conformity, non-conformity or non-applicability	8. National authority responsible for transposing
<p><b>Recital 26</b></p> <p>Studies demonstrate that Member States that provide a significant portion of parental leave to fathers and that pay the worker a payment or allowance during that leave at a relatively high replacement rate, experience a higher take-up rate by fathers and a positive trend in the rate of employment of mothers. It is therefore appropriate to allow such systems to continue provided that they meet certain minimum criteria, instead of providing the payment or allowance for paternity leave as provided for in this Directive.</p>		<p>Consider developing an employment-related contributory social insurance scheme to fund paid parental leave.</p>	<p>funding for pay while on leave. The development of such a scheme for parental, paternity, maternity and carers' leave would decrease the financial burden on employers and may thereby encourage equal hiring practices.</p>	
<p><b>Parental Leave, Article 5.3</b></p> <p>Member States shall establish a reasonable period of notice that is to be given by workers to employers where they exercise their right to parental leave. In doing so, Member States shall take into account the needs of both the employers and the workers.</p> <p>Member States shall ensure that the worker's request for parental leave</p>	<p>Not transposed.</p>	<p>LL Article 37.3 currently provides for 15 days' notice to take annual leave while LL Article 50.2.2 provides for 10 days' notice to take additional unpaid paternity leave before a child reaches three years of age. The latter more favourable notice period should be adopted as the notice period for parental leave.</p>	<p>The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	specifies the intended beginning and end of the period of leave.				
	<p><b>Parental Leave, Article 5.4</b></p> <p>Member States may make the right to parental leave subject to a period of work qualification or to a length of service qualification, which shall not exceed one year. In the case of successive fixed-term contracts within the meaning of Council Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.</p>	Not transposed.	<p>There are no minimum work qualifications or length of service qualifications for maternity or paternity leave in the LL. No period should be introduced for parental leave.</p> <p>LL Article 10.5 currently provides that fixed-term contracts only convert to permanent contracts after 10 years of renewals. In order to curtail fixed-term contracts being used to avoid fulfilling leave rights, a number of amendments are necessary:</p> <ul style="list-style-type: none"> <li>• Reduce the period for successive fixed-term contracts to convert to permanent contracts from 10 years to three years;</li> <li>• Require objective reasons for any fixed-term appointment; and</li> <li>• Clarify the meaning of “successive” contracts to prevent short gaps between fixed-term appointments</li> </ul>	The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.	MLSW.



	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
			being used to circumvent employees becoming permanent.		
	<p><b>Parental Leave, Article 5.5</b></p> <p>Member States may establish the circumstances in which an employer, following consultation in accordance with national law, collective agreements or practice, is allowed to postpone the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer. Employers shall provide reasons for such a postponement of parental leave in writing.</p>	Not transposed.	<p>Limit any postponement of parental leave to a maximum of three months.</p> <p>In order to prevent unjustified postponing of parental leave, provide a non-exhaustive definition of what amounts to “serious disruption” to a business. This definition could be based on examples drawn from the original 1995 framework agreement on parental leave (implemented by Directive <a href="#">96/34/EC</a>), which included: where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, or where a specific function is of strategic importance.</p> <p>Require written reasons for postponing parental leave.</p>	The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<b>Parental Leave, Article 5.7</b>  Member States shall take the necessary measures to ensure that when considering requests for full-time parental leave, employers shall, prior to any postponement in accordance with paragraph 5, offer, to the extent possible, flexible ways of taking parental leave pursuant to paragraph 6.	Not transposed.	Provide that where an employer seeks to postpone a request for full-time parental leave, the employer must offer flexible options (in accordance with the below) to the employee prior to any postponement.  Allow employees to refuse any flexible options offered in favour of postponed full-time leave.	The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.	MLSW.
	<b>Parental Leave, Article 5.6</b>  Member States shall take the necessary measures to ensure that workers have the right to request that they take parental leave in flexible ways. Member States may specify the modalities of application thereof. The employer shall consider and respond to such requests, taking into account the needs of both the employer and the worker. The employer shall provide reasons for any refusal to accede to such a request in writing within a reasonable period after the request.  <b>Recital 23</b>	Not transposed.	Adopt the language of Recital 23 (“full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways”) to illustrate what may be requested but allow for alternative flexibility as needed.  Provide that requests for full-time parental leave cannot be refused and may only be postponed in accordance with the above requirements. Require any refusal of other modalities of leave to be based in “serious disruption” to the business, as defined above.	The concept of parental leave, within the meaning of the WLB Directive, is new to Kosovo law.	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p>Given that flexibility makes it more likely that each parent, in particular fathers, will take up their entitlement to parental leave, workers should be able to request that parental leave be granted on a full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways. The employer should be able to accept or refuse such a request for parental leave in ways other than on a full-time basis. Member States should assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations.</p>		<p>Require any refusal to be in writing.</p>		
	<p><b>Parental Leave, Article 5.8</b></p> <p>Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.</p>	<p><b>LL, The rights of [the] child's father, Article 50.2</b></p> <p>The father of the child has the right to:</p> <ul style="list-style-type: none"> <li>2.1. two (2) days paid leave at the birth or upon adoption of the child;</li> <li>2.2. two (2) weeks unpaid leave after the birth or upon adoption of the child, at any time before the child reaches the age of three (3). The employee must inform the employer of his</li> </ul>	<p>Ensure that appropriate parental, maternity and paternity leave entitlements are equally accessible for adoptive parents.</p> <p>Provide additional protection for persons with disabilities, single parents and parents with children with special health care needs by providing that requests for the above flexible modalities</p>	<p>The rights of adoptive parents in the LL are currently ambiguous and are completely absent from the CS Leave Regulation. For clarity, adoptive parents should be granted equal access to parental leave rights.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>intention to take leave at least ten (10) days in advance.</p> <p><b>LL, The rights of [the] child's father, Article 50.3</b></p> <p>Protection, the rights under paragraph 1 of Article 49 [maternity leave], respectively may be used by the adopter of the child, the one looking after the child, respectively in cases of the death of both parents or if parents abandon the child. [sic]</p> <p><b>LL, Annual leave, Article 32.4</b></p> <p>Mothers with children up to three (3) years of age and single parents as well as persons with disabilities are entitled to additional two (2) working days off.</p>	<p>of parental leave cannot be refused.</p> <p>Provide parents of children with special health care needs with the entitlement to access their parental leave rights until the child reaches 18 years of age.</p> <p>Amend LL Article 32.4 to include persons with children who have special health care needs. As noted above, the entitlement of all mothers with children up to three years of age to leave under this provision is likely to be superseded by more favourable parental leave entitlements however, if retained, the provision should be made applicable to all parents.</p>	<p>While some additional protection for persons with disabilities and single parents is found under LL Article 32.4, persons with children who have special health care requirements could also be included in this protection.</p>	
<b>Carers' Leave</b>					
	<p><b>Definitions, Article 3.1(c)</b></p> <p>For the purposes of this Directive ... 'carers' leave' means leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same</p>	<p>Not applicable.</p>	<p>Transpose the WLB Directive definition into the LL.</p>	<p>The concept of carers' leave is new to Kosovo law.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State.				
	<b>Definitions, Article 3.1(d)</b> For the purposes of this Directive ... <b>'carer'</b> means a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State.	Not applicable.	Transpose the WLB Directive definition into the LL.	The concept of carers' leave is new to Kosovo law.	MLSW.
	<b>Definitions, Article 3.1(e)</b> For the purposes of this Directive ... <b>'relative'</b> means a worker's son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership. <b>Recital 27</b> ... Member States are encouraged to make the right to carers' leave available with regard to additional relatives, such as grandparents and siblings.	<b>LL, Definitions, Article 3.1.16</b> <b>Close Family Members</b> - spouse, marital and extramarital children, adopted children, brothers, sisters and parents;	Expand the definition under LL Article 3.1.16 to include grandparents and persons who live in the same household. Reference this definition in new provisions on carers' leave.	The LL definition of "close family member" is broader than the definition in Article 3.1(e) of the WLB Directive by including siblings. However, the definition could be expanded further in accordance with Recital 27.	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p><b>Carers' leave, Article 6.1</b></p> <p>Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.</p> <p><b>Recital 32</b></p> <p>Although Member States are free to decide whether to provide a payment or an allowance for carers' leave, they are encouraged to introduce such a payment or an allowance in order to guarantee the effective take-up of the right by carers, in particular by men.</p>	<p>Not transposed.</p>	<p>Provide for at least five working days of carers' leave per year to care for "close family members" in a new provision under the LL. Consider providing a higher standard of at least 12 working days per year so that carers who care for persons with regular support needs may have at least one day per month.</p> <p>Consider including a payment or allowance for carers' leave. As noted above, the development of an employment-related contributory social insurance scheme could assist in funding paid carers' leave.</p>	<p>The concept of carers' leave is new to Kosovo law.</p>	<p>MLSW.</p>
	<p><b>Carers' leave, Article 6.2</b></p> <p>Member States may allocate carers' leave on the basis of a reference period other than a year, per person</p>	<p>Not transposed.</p>	<p>A monthly accrual system currently exists for annual leave under LL Article 36. A similar position could be adopted for carers' leave.</p>	<p>The concept of carers' leave is new to Kosovo law.</p>	<p>MLSW.</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	in need of care or support, or per case.				
<b>Time Off from Work on Grounds of <i>Force Majeure</i></b>					
	<b>Time off from work on grounds of force majeure, Article 7</b>  Member States shall take the necessary measures to ensure that each worker has the right to time off from work on grounds of <i>force majeure</i> for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable. Member States may limit the right of each worker to time off from work on grounds of <i>force majeure</i> to a certain amount of time each year or by case, or both.	<b>LL, Paid absence from work, Article 39.1.2</b>  An employee is entitled to a paid absence from work with the compensation of salary, up to ... five (5) days in case of the death of a close member of family.  <b>CS Leave Regulation, Compassionate leave, Article 11.1.2</b>  Paid compassionate leave is granted ... Five (5) days in case of a close family member death.	Broaden LL Article 39.1.2, and CS Leave Regulation Article 11.1.2 to allow for time off for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable.	While the LL and CS Leave Regulation provide for compassionate leave, the provisions needs to be broadened to account for other urgent family reasons.	MLSW.
<b>Flexible Work Arrangements</b>					
	<b>Definitions, Article 3.1(f)</b>  For the purposes of this Directive ... ' <b>flexible working arrangements</b> ' means the possibility for workers to adjust	Not applicable.	Transpose the WLB Directive definition into the LL.	No definition of "flexible work arrangements" is provided in the LL.	MLSW.



	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.				
	<p><b>Flexible work arrangements, Article 9.1</b></p> <p>Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.</p> <p><b>Recital 34</b></p> <p>In order to encourage workers who are parents, and carers to remain in the work force, such workers should be able to adapt their working schedules to their personal needs and preferences. To that end and with a focus on workers' needs, they have the right to request flexible working arrangements for the purpose of adjusting their working patterns, including, where possible, through the use of remote working arrangements,</p>	<p><b>LGE, Obligations of employer in employment relationships, Article 17.1.15</b></p> <p>[E]mployers are obliged to take all necessary measures to enable women and men to correspond to both their professional and family obligations.</p> <p><b>LL, Absence from work due to special care for the child, Article 52</b></p> <p>1. A child that necessarily requires special care due to poor health conditions, a child with permanent disabilities in the context of provisions of health insurance, respectively, shall enable one of the parents to work part-time, after the expiry of maternity leave, until the child becomes two (2) years old.</p> <p>2. Protection and the rights under paragraph 1 of this Article may be exercised by the caretaker of the child in the case of the death of both parents or if one of the parents abandon the child.</p>	<p>Replace LL Article 52 with a new provision on flexible work arrangements with reference to the above definition so as to emphasis forms of flexible work other than part-time work. Include in the new article:</p> <ul style="list-style-type: none"> <li>• A right of all parents or guardians to request flexible work arrangements until their child reaches a specified age. Set the specified age to be at least eight years of age. Require any refusal to be in writing and based on objective reasons relating to the employer's resources or operational capacity to offer flexible working arrangements;</li> <li>• A right of carers to request flexible working arrangements for caring</li> </ul>	<p>Although Kosovo law foresees flexible work arrangements to some extent, the relevant provisions of the LGE lack detail and the provision in the LL is too narrow in scope.</p> <p>The law currently foresees certain extra supports for parents with children who have special health care needs. An increased level of protection for such parents should be maintained.</p> <p>LL Article 52 only foresees part-time work arrangements and only applies to parents and guardians with children who have special health care needs up to the age of two. Other flexible work arrangements are not</p>	<p>MLSW.</p>

4. The provisions and requirements of the WLB Directive (article, paragraph)	5. The provisions of the national legislation (part, chapter, article, point, etc.)	6. Proposed amendments to national legislation	7. The reasons for partial conformity, non-conformity or no-applicability	8. National authority responsible for transposing
<p>flexible working schedules, or a reduction in working hours, for the purposes of providing care.</p> <p><b>Recital 35</b></p> <p>In order to address the needs of both workers and employers, it should be possible for Member States to limit the duration of flexible working arrangements, including any reduction in working hours or any remote working arrangements. While working part-time has been shown to be useful in allowing some women to remain in the labour market after having children or caring for relatives with care or support needs, long periods of reduced working hours can lead to lower social security contributions and thus reduced or non-existing pension entitlements.</p> <p><b>Recital 36</b></p> <p>When considering requests for flexible working arrangements, employers should be able to take into account, inter alia, the duration of the flexible working arrangements requested and the employers' resources and operational capacity to offer such arrangements. The employer should</p>	<p>3. The form and procedure of exercising the rights from paragraph 1 and 2 of this Article, shall be conducted according to provisions of the Law on Financial Care for Families and Children with Disabilities [Law No. <a href="#">03/L-022</a> on material support for families of children with permanent disability].</p> <p><b>CS Leave Regulation, Parental leave for special care or loss of child, Article 13.1</b></p> <p>The child who necessarily needs special care due to serious health condition, respectively the child who is permanently disabled, one of the parents with the expiry of maternity leave has the right to work part-time until the child turns two (2) years.</p> <p><b>LL, Protection of motherhood, Article 48</b></p> <p>1. An employed woman during pregnancy, a mother with a child under three (3) years of age, shall not be obliged to work longer than the full-time working hours and night shifts.</p> <p>2. Single parent, with a child under the age of three (3), and/or a child with serious disability, shall not be obliged to work</p>	<p>purposes. Require any refusal to be in writing and based on objective reasons relating to the employer's resources or operational capacity to offer flexible working arrangements;</p> <ul style="list-style-type: none"> <li>• A right of parents with children who have special health care needs to access flexible working arrangements. Provide that such requests cannot be refused; and</li> <li>• A requirement that the employer must respond to the above requests within one week.</li> </ul> <p>Reframe LL Article 48 as "protection of parents" and provide the within protections to all parents, irrespective of gender.</p>	<p>foreseen and there is only limited applicability for carers.</p> <p>LL Article 48 and CLS Article 36.3 currently provides certain protections to mothers with children under three. These provisions should be expanded to all parents.</p>	

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	be able to decide whether to accept or refuse a worker's request for flexible working arrangements. Specific circumstances underlying the need for flexible working arrangements can change. Workers should therefore have the right not only to return to their original working pattern at the end of a mutually agreed period, but should also be able to request to do so earlier where required on the basis of a change in the underlying circumstances.	longer than full-time working hours and nights shifts.  3. The rights under paragraph 1 of this Article, may be used by an adopting parent, another persons looking after a child, respectively, in cases of the death of both parents of the child or if parents abandon it.  <b>LCS, Working Hours, Article 36.3</b>  Pregnant women, mothers with children up to three (3) years old and disabled Civil Servants shall not be required to work night shift and more than forty (40) hours per week.			
	<b>Flexible work arrangements, Article 9.2</b>  Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.				
	<b>Flexible work arrangements, Article 9.3</b>	<b>LGE, Obligations of employer in employment relationships, Article 17.1.16</b>	Adopt Article 9.3 of the WLB Directive into the LL as part of	While LGE Article 17.1.16 covers some of the material points of Article 9.3 of the	Office of the Prime Minister –

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.	The time schedule, in accordance with the needs of the employer and the family needs of the employee must be organized in such a way that male/female employers can return to their previous posts after maternity leave, parental leave, abortion leave, sick leave or after the time spent out of the place of work due to family emergencies or professional training.	the new provisions on flexible work arrangements.	WLB Directive, a dedicated provision in the LL under the new provisions on flexible work arrangements would be preferable.	Agency for Gender Equality, MLSW.
	<b>Flexible work arrangements, Article 9.4</b>  Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.	Not transposed.	Ideally there should not be a period of work qualification or to a length of service qualification to request flexible work arrangements. Should such a period be introduced, a similar position could be adopted to LL Article 35.1, which currently provides that an employee starting an employment relationship for the first time is entitled to annual leave after six months.	Although Kosovo law foresees flexible work arrangements to some extent, the relevant provisions of the LGE lack detail and the provision in the LL is too narrow in scope.	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
			In order to curtail fixed-term contracts being used to avoid fulfilling workers' rights, amend LL Article 10 in accordance with the previously noted recommendations.		
<b>Employment Rights</b>					
	<b>Employment rights, Article 10.1</b> Rights that have been acquired or that are in the process of being acquired by workers on the date on which leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave] or time off from work provided for in Article 7 [ <i>force majeure</i> ] starts shall be maintained until the end of such leave or time off from work. At the end of such leave or time off from work, those rights, including any changes arising from national law, collective agreements or practice, shall apply.	<b>LL, Continuity of employment, Article 12.1.1</b> The continuity of an employee's employment shall not be considered as interruption of employment relationship, in the following cases: ... after annual leave, sick leave or maternity leave or any other leave taken in accordance with this Law.	No amendment needed.	LL Article 12.1.1 will adequately capture new concepts such as parental and carers' leave owing to the recognition of "any other leave". Nonetheless, the protection for paternity, parental and carers' leave, as well as time off for urgent family reasons, would be clearer if explicitly included.	MLSW.
	<b>Employment rights, Article 10.2</b> Member States shall ensure that, at the end of leave provided for in Articles 4 [paternity leave], 5 [parental leave]	<b>LGE, Obligations of employer in employment relationships, Article 17.2</b> Every person after parental leave shall be entitled, according to conditions which are	Move LGE Article 17.2 into Chapter VI of the LL. Redraft for clarity. Explicitly protect persons who have taken carers',	LGE Article 17.2 is poorly drafted and mixes gender neutral and gender specific language. The concept of parental leave is not defined	Office of the Prime Minister – Agency for

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	and 6 [carers' leave], workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave.	no less favourable to her and to benefit from good working conditions to which she is entitled during her absence including possibilities of advancement. [sic]  <b>CS Leave Regulation, Return to the previous position, Article 14</b>  Female civil servant shall return to the previous working position after the use of maternity leave.	paternity, maternity and parental leave.  Amend CS Leave Regulation Article 14 to be applicable to all parents and carers.	in the LGE. The reference to parental leave in the provision should be broadened to account for other forms of leave protected under the WLB Directive.  For clarity, this right should be placed with the family leave rights to which it relates in the LL.  CS Leave Regulation Article 14 is drafted with gender specific language. The provision should be amended to be applicable to all parents and carers.	Gender Equality, MLSW.
	<b>Employment rights, Article 10.3</b>  Member States shall define the status of the employment contract or employment relationship for the period of leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave], or time off from work provided for in Article 7 [ <i>force majeure</i> ], including as regards entitlements to social security, including pension contributions, while	<b>LL, Continuity of employment, Article 12.1.1</b>  The continuity of an employee's employment shall not be considered as interruption of employment relationship, in the following cases: ... after annual leave, sick leave or maternity leave or any other leave taken in accordance with this Law.	Amend LGE Article 16.2.7 for clarity. Explicitly protect carers', paternity, maternity and parental leave, as well as time off for urgent family reasons.	LL Article 12.1.1 provides that taking leave does not interrupt the employment relationship. As noted above, this provision is likely to be adequate but could be further clarified by explicitly including other forms of leave protected under the WLB Directive.	Office of the Prime Minister – Agency for Gender Equality, MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	ensuring that the employment relationship is maintained during that period.	<p><b>LGE, The prohibition of gender discrimination in social security schemes at work, Article 16.2.7</b></p> <p>Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, for ... suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer. [sic]</p>		LGE Article 16.2.7 is poorly drafted however its effect is to prohibit the interruption of any occupational social security scheme for employees on maternity leave “or leave for family reasons”. This provision should be clarified, and other forms of leave protected under the WLB Directive should be explicitly included. For clarity, consideration should be given to consolidating all employment-related issues such as this within the Labour Law.	
<b>Discrimination</b>					
	<p><b>Discrimination, Article 11</b></p> <p>Member States shall take the necessary measures to prohibit less favourable treatment of workers on the ground that they have applied for, or have taken, leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave] or time off from work provided for in Article 7</p>	<p><b>LGE, Prohibition of gender discrimination, Article 4.1</b></p> <p>It is prohibited the direct or indirect gender discrimination, including less favourable treatment of women for reasons of pregnancy and maternity, marital status ... or any other basis defined by law or</p>	<p>Review the employment-related anti-discrimination framework to ensure a clear delineation between the scope and application of the LGE, LPD and LL.</p> <p>Ensure that paternity, parental and carers' leave, as well as flexible work arrangements and</p>	The employment-related anti-discrimination framework in Kosovo has not been drafted harmoniously. Relevant provisions in the LGE, LPD and LL overlap but attract differing penalties. This	<p>LGE: Office of the Prime Minister – Agency for Gender Equality.</p> <p>LL: MLSW</p>



	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p>[<i>force majeure</i>], or that they have exercised the rights provided for in Article 9 [flexible working arrangements].</p>	<p>agreement and international instruments into force. [sic]</p> <p><b>LL, Prohibition of all forms of discrimination, Article 5.1</b></p> <p>Discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force. [sic]</p> <p><b>LL, Prohibition of all forms of discrimination, Article 5.5</b></p> <p>Provisions of the Law No.2004/3 against Discrimination [replaced by the LPD] shall be directly applicable with regards to employment relationship concluded between the employee and employer. [sic]</p> <p><b>LPD, Purpose, Article 1.1</b></p> <p>The purpose of this law is to establish a general framework for prevention and combating discrimination based on ... family or marital status, pregnancy, maternity ... or any other grounds, in order to implement the principle of equal treatment.</p>	<p>time off for urgent family reasons, are explicitly included as protected grounds in addition to maternity and pregnancy.</p>	<p>incongruity should be addressed.</p> <p>Moreover, the relevant provisions do not explicitly recognise protection from less favourable treatment for taking paternity, parental or carers' leave, as well as flexible work arrangements and time off for urgent family reasons.</p>	<p>LPD: Office of the Prime Minister (Office on Good Governance and Legal Office).</p>

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or no-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>LPD, Purpose, Article 2.1</p> <p>This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to:</p> <p>conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the professional hierarchy, including promotions;</p> <p>conditions of employment and working conditions, including discharge or termination of the contract and salary.</p> <p>LCS, Basic Principles of the Civil Service, Article 5.1.2</p> <p>Non discrimination - no one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.</p>			

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>LCS, Right to Equal Treatment and Career Development Opportunities, Article 43.1</p> <p>Civil Servant have the right to be treated to receive fair and equitable treatment in all aspects of personnel management career development, rewards, compensation and legal protection, without regard to sex, race, religious affiliation or belief, political affiliation, physical disability, conditions, marital status, age and ethnic origin</p>			
<b>Protection from Dismissal and Burden of Proof</b>					
	<p><b>Protection from dismissal and burden of proof, Article 12.1</b></p> <p>Member States shall take the necessary measures to prohibit the dismissal and all preparations for the dismissal of workers, on the grounds that they have applied for, or have taken, leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave], or have exercised the right to request flexible working arrangements referred to in Article 9.</p>	<p><b>LL, Prohibition on termination of contract, Article 53</b></p> <p>During pregnancy, maternity leave and absence from work due to special care for the child, the employer shall not terminate the contract with the employee and/or make a transfer to another post, except in cases of termination of the contract according to Article 76 of this Law [collective dismissals].</p> <p><b>LL, Termination of employment contract by the employer, Article 70.3</b></p>	<p>Amend LL Article 53 to include paternity, parental and carers' leave as protected categories from termination, and to protect those who have accessed flexible working arrangements.</p> <p>Amend LL Article 53 to also prohibit termination on the basis that leave or flexible work arrangements were taken or requested.</p>	<p>LL Article 53 does not account for the forms of leave recognised by the WLB Directive. It additionally only prohibits termination while on leave, rather than on the basis that someone chose to take leave.</p> <p>As noted above, the inharmonious nature of the employment-related anti-discrimination framework should be addressed, and amendment will be needed to explicitly protect the</p>	<p>MLSW.</p>
	<p><b>Protection from dismissal and burden of proof, Article 12.2</b></p>	<p>The employer should hold a meeting with the employee to explain termination of an employment contract or for the purpose of</p>			

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p>Workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave], or have exercised the right to request flexible working arrangements as referred to in Article 9, may request the employer to provide duly substantiated reasons for their dismissal. With respect to the dismissal of a worker who has applied for, or has taken, leave provided for in Article 4, 5 or 6, the employer shall provide reasons for the dismissal in writing.</p>	<p>issuing a warning, the employee is entitled to be accompanied by a representative of his or her choice.</p> <p><b>LL, Procedure Prior to the Termination of the Contract, Article 72.1</b></p> <p>The decision to terminate an employment contract shall be issued in writing and shall include the grounds for the dismissal.</p> <p><b>LGE, Prohibition of gender discrimination in employment relationships, Article 15.1.2</b></p> <p>It is prohibited the direct or indirect discrimination on grounds of sex, marital or family status, pregnancy, birth, parenting and each custody form in the public or private sectors, in relation to ... employment and working conditions, including dismissals, as well as pay.</p> <p><b>LPD, Purpose, Article 1.1</b></p> <p>The purpose of this law is to establish a general framework for prevention and combating discrimination based on ... family or marital status, pregnancy, maternity ... or any other grounds, in order to implement the principle of equal treatment.</p> <p><b>LPD, Purpose, Article 2.1.6</b></p>		<p>forms of leave and arrangements foreseen by the WLB Directive.</p>	

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to ... conditions of employment and working conditions, including discharge or termination of the contract and salary.			
	<b>Protection from dismissal and burden of proof, Article 12.3</b>  Member States shall take the measures necessary to ensure that where workers who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for in Articles 4 [paternity leave], 5 [parental leave] and 6 [carers' leave] establish, before a court or other competent authority, facts capable of giving rise to a presumption that they have been dismissed on such grounds, it shall be for the employer to prove that the dismissal was based on other grounds.	<b>LPD, Burden of proof, Article 20</b>  1. When persons who consider that the principle of equal treatment has not been applied to them, submits before an administrative authority or a competent court, proofs from which it may be presumed that there has been direct or indirect discrimination.  2. Burden of proof shall be upon the respondent, who should prove that there has been no breach of the principle of equal treatment. [sic]	No amendment needed. Ensure any revision to the anti-discrimination framework retains the shared burden of proof under LPD Article 20 for cases of discrimination in the employment context.	The shared burden of proof is transposed in the LPD. As noted above, the anti-discrimination legal framework requires revision for clarity.	Office of the Prime Minister (Office on Good Governance and Legal Office).
	<b>Protection from dismissal and burden of proof, Article 12.4</b>				

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Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to workers.				
<b>Protection from dismissal and burden of proof, Article 12.5</b>  Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or competent body to investigate the facts of the case.				
<b>Protection from dismissal and burden of proof, Article 12.6</b>  Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member States.	<b>LPD, Burden of proof, Article 20.3</b>  Paragraph 1. of this Article shall not apply to criminal and offense proceedings.	No amendment needed.	No amendment needed.	Office of the Prime Minister (Office on Good Governance and Legal Office).
<b>Penalties</b>				
<b>Penalties, Article 13</b>  Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, or	<b>LL, Fines, Article 92</b>  1. Any natural or legal person who disregards the provisions of this Law, in a legal procedure, shall be fined from one	Introduce corresponding offences for new provisions added to the LL. Ensure consistency across offence type.	As a number of concepts in the WLB Directive are new to the Kosovo legal framework, new penalties will have to be added to the LL. Reform should ensure a	MLSW.

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
	<p>the relevant provisions already in force concerning the rights which are within the scope of this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.</p> <p><b>Recital 43</b></p> <p>Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the rights which are within its scope. Such penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.</p>	<p>hundred (100) up to ten thousand (10,000) Euro.</p> <p>2. Where the offence is committed against an employee who is under eighteen (18) years of age, the employer shall be liable to twice the height of the fine specified in paragraph 1 of this Article.</p> <p>3. Any person who discriminates against a person seeking employment or an employed person in violation of Article 5 [Prohibition of all Forms of Discrimination] of this Law, shall be liable to triple the height of the fine specified in the paragraph 1 of this Article. ...</p> <p><b>Administrative Instruction No. <a href="#">07/2012</a> on the determination of fines and specific amounts for violation of the provisions of labour law</b></p> <p>See generally.</p> <p>A fine of €100 - €7,000 is imposed for (Article 2):</p> <ul style="list-style-type: none"> <li>• Article 10, contracts of employment;</li> <li>• Article 12, continued employment; and</li> <li>• Article 39, absence from work with pay.</li> </ul>	<p>The current system grants significant discretion when imposing fines as the baseline of €100 is available regardless of the upper limit. The severity and consistency of sanctions should be monitored to assess whether this system is effective, proportionate and dissuasive in practice.</p> <p>Review the anti-discrimination framework to ensure a clear delineation between the LGE, LPD and LL.</p>	<p>consistent approach by applying similar fines for similar offences.</p> <p>As noted above, the employment-related anti-discrimination framework requires revision as currently there are overlapping sanctions for the same offences but with differing fines.</p>	



	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>A fine of €100 - €9,000 is imposed for (Article 4):</p> <ul style="list-style-type: none"> <li>• Article 50, the rights of the father of the child;</li> <li>• Article 51, maternity leave for the loss of a child; and</li> <li>• Article 52, absence from work for special care of the child.</li> </ul> <p>A fine of €100 - €10,000 is imposed for (Article 5):</p> <ul style="list-style-type: none"> <li>• Article 5, the prohibition of all forms of discrimination;</li> <li>• Article 32, annual leave;</li> <li>• Article 48, protection of maternity;</li> <li>• Article 49, maternity leave; and</li> <li>• Article 53, prohibition of contract termination, during pregnancy, maternity leave, absence from work due to the special care of the child.</li> </ul> <p>Law <a href="#">2002/09</a> on the Labor Inspectorate of Kosovo, Article 5.5(b)</p> <p>In performing their duties, labor inspectors have the power ... To issue written notice about irregularities found and to set the</p>			

	<b>4. The provisions and requirements of the WLB Directive (article, paragraph)</b>	<b>5. The provisions of the national legislation (part, chapter, article, point, etc.)</b>	<b>6. Proposed amendments to national legislation</b>	<b>7. The reasons for partial conformity, non-conformity or non-applicability</b>	<b>8. National authority responsible for transposing</b>
		<p>time limit within which they must be eliminated ...</p> <p><b>LGE, Offence provisions, Article 23</b></p> <p>See generally. Fines range from €300 - €900, depending on the offence and the perpetrator.</p> <p><b>LPD, Punitive Provisions, Article 23</b></p> <p>See generally. Fines range from €400 - €1,350, depending on the offence and the perpetrator.</p>			
<b>Protection against Adverse Treatment or Consequences</b>					
	<p><b>Protection against adverse treatment or consequences, Article 14</b></p> <p>Member States shall introduce measures necessary to protect workers, including workers who are employees' representatives, from any adverse treatment by the employer or adverse consequences resulting from a complaint lodged within the undertaking or any legal proceedings for the purpose of enforcing compliance with the requirements laid down in this Directive.</p>	<p><b>LL, Prohibition of all forms of discrimination, Article 5.5</b></p> <p>Provisions of the Law No.2004/3 against Discrimination [replaced by LPD] shall be directly applicable with regards to employment relationship concluded between the employee and employer.</p> <p><b>LPD, Types of unequal treatment, Article 4.1.5</b></p> <p>Types of unequal treatment are as follows: ... <b>Victimization</b> - is deemed discrimination on the grounds set out in Article 1 of this Law, and occurs when a person suffers an</p>	No amendments necessary.	<p>Article 14 of the WLB Directive is similar to the prohibition of victimisation under the Recast Directive (Article 24) and the Employment Equality Directive (Article 11).</p> <p>As the LPD is directly applicable under the LL, this protection is adequately provided for. Protection from victimisation is also provided under the LGE.</p>	<p>LL: MLSW</p> <p>LPD: Office of the Prime Minister (Office on Good Governance and Legal Office).</p> <p>LGE: Office of the Prime Minister – Agency for</p>

	<p>adverse or negative consequences in response to a complaint or non-complaint (started procedures) or actions in order to apply the principle of equal treatment or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination.</p> <p><b>LPD, Types of unequal treatment, Article 4.2</b></p> <p>Violation of the principle of equal treatment of basis mentioned in Article I, of this Law shall be deemed to be discrimination.</p> <p><b>LGE, Definitions, Article 3.1.19</b></p> <p>Terms used in this Law shall have the following meaning ... <b>Victimization</b> - occur when a person suffers an adverse or negative consequences in response to a complaint (started procedures) or actions in order to apply the principle of equal treatment, as defined in Article I of this law, and/or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination.</p> <p><b>LGE, Prohibition of gender discrimination, Article 4.1.6</b></p> <p>There will be no victimization of persons involved in filing or processing of complaints of discrimination, harassment or sexual harassment filed based on this law.</p>			Gender Equality.
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Equality Bodies				
<b>Equality bodies, Article 15</b>  Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, Member States shall ensure that the body or bodies designated, pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, are competent with regard to issues relating to discrimination falling within the scope of this Directive.	<b>LGE, Agency for Gender Equality, Article 7</b>  Agency for Gender Equality is an Executive Agency (hereinafter the Agency), which acts within the Office of the Prime Minister (OPM).  <b>LGE, Functions and responsibilities, Article 8.1.1.1</b>  The Agency within its scope has the following responsibilities: ... takes adequate measures to promote equal gender treatment in cooperation with the social partners, through the development of social dialogue for employees and employers on issues of particular importance which relate to the realization of their rights arising from employment, social wellbeing and other professional issues.	No amendment needed.	No amendment needed.	Office of the Prime Minister – Agency for Gender Equality.
Other Provisions				
<b>Definitions, Article 3.2</b>  The reference to working days in Articles 4 [paternity leave] and 6 [carers' leave] shall be understood as referring to the full-time working pattern, as defined in the Member State in question.  A worker's entitlement to leave may be calculated proportionally to the	<b>LL, Setting Working Hours, Article 20</b>  1. Working hours means a period of time, during which, the employee performs labour or services for the benefit of the employer.  2. Full time working hours shall be forty (40) hours per week, unless it is defined otherwise by this Law.	No amendment needed.	No amendment needed.	MLSW.

	worker's working time, in accordance with the working pattern specified in the worker's contract of employment or employment relationship.	3. Full time working hours for an employee, under eighteen (18) years of age, shall not exceed thirty (30) hours per week.			
	<b>Dissemination of information, Article 17</b>  Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are brought to the attention of workers and employers, including employers that are SMEs, by all appropriate means throughout their territory.	Not applicable.	Ensure that the information requirements under Article 17 of the WLB Directive are met after transposition. A similar process to that under LPD Article 25 could be adopted (a promotional campaign, a programme on public awareness and publications on the websites of relevant public bodies).	The requirements of Article 17 of the WLB Directive will be engaged after the transposition process.	MLSW.
	<b>Level of protection, Article 16</b>	<i>Not relevant to this analysis.</i>			
	<b>Reporting and review, Article 18</b>	<i>Not relevant to this analysis.</i>			
	<b>Repeal, Article 19</b>	<i>Not relevant to this analysis.</i>			
	<b>Transposition, Article 20</b>	<i>Not relevant to this analysis.</i>			
	<b>Entry into force, Article 21</b>	<i>Not relevant to this analysis.</i>			
	<b>Addressees, Article 22</b>	<i>Not relevant to this analysis.</i>			

