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**Unveiling the Politics of Gender in the European Union  
Working-Time Regulation – a Recipe for Social  
Reproduction in Crisis or Crisis in Social Reproduction?**

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## **1. Introduction**

The regulation of working hours is fundamental to society. It was one of the original trade union demands, and now lies at the heart of Social Europe. It is a key aspect of health and safety in the workplace, and recognizes that allowing working people time to raise their families ('the short-term and long-term reproduction of the labour force') is vital to the interests of workers, societies and economies. And it is crucial to achieving gender equality at work.<sup>1</sup>

Standard working-time norms have been a key element in the standard employment relationship (SER)<sup>2</sup>. In many advanced market economies of Europe, these norms have been based on traditional gender contracts and have played a significant role in entrenching labour market exclusion, segregation and inequality (Fudge and Cossman 2002, Fudge 2005). Nonetheless, at the height of the Keynesian welfare state, elements of the SER such as the family wage also ensured support for social reproduction, while in other contexts social reproduction was maintained through institutional provisions, which also enabled women to participate in the labour market to varying degrees.<sup>3</sup> In pre-transition Poland, for instance, state/enterprise run childcare facilities, generous maternity and parental leaves, job guarantees, and other forms of social support enabled women's full participation in standard work despite traditional gender contracts which prevailed in the private sphere. Since 1989, however, these institutional supports have been largely dismantled through a series of aggressive neo-liberal policies that have characterized the Polish political-economic transition process.<sup>4</sup> This sudden collapse of the social infrastructure and withdrawal of state support occurred without significant adjustment in the Polish working-time norms, thus putting increased pressures on women combining work and care responsibilities. Coupled with an increasing economic precariousness and a highly insecure labour market, these changes have contributed to a growing crisis

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<sup>1</sup> ETUC, *Reconciling professional, private and family life: a key objective for the European trade union movement*. Newsletter.

<sup>2</sup> See page 6 for definition of SER.

<sup>3</sup> Different forms of welfare state which developed in Europe in the post war period enabled different levels of women's labour market participation, albeit in most that participation was historically limited to part-time work and other forms of "non-standard" work. See Esping-Andersen 1990, and Lewis 1992 for the gender critique of the welfare regimes approach.

<sup>4</sup> For an excellent analysis of the last 20 years of Polish transition and its effects on various institutions including the labour market, education system and economy, and detrimental results from gender and social security perspectives see: J. Majmurek and P. Szmulewicz, *Stracone Szanse? Bilans transformacji 1989-2009*. (Difin: Warszawa, 2009) [*Lost Chances? Summing up Polish Transformation 1989-2009*, own translation].

in social reproduction evidenced, in part, by the post-transition plunge in fertility rates.<sup>5</sup> Although the Polish fertility rate has shown a moderate increase in the last year, it continues to be one of the lowest in EU-27, and nearly half of what it was in 1989.<sup>6</sup> From a social reproduction perspective<sup>7</sup>, this demographic trend is a sign that the system currently in place is flawed and highly unsustainable.

In this context, the European Union's (EU) endorsement and protection of non-standard and more flexible forms of work organization as means of promoting better reconciliation of work and family and more equal access to the labour market for workers who are primary care providers could be particularly promising.<sup>8</sup> However, the extent to which these policies can also promote more equal redistribution of paid work and care responsibilities is questionable given the lack of coherence in the current EU approach to working time and the firm grounding of this approach in business/economic efficiency rationales.<sup>9</sup> The relationship between gender equality and working time has received extensive treatment in comparative social policy literature and sociology.<sup>10</sup> Certain aspects of EU regulation of working time, such as regulation of part-time work and parental leaves, have also been considered in comparative legal literature.<sup>11</sup> However, there has been no comprehensive assessment and analysis of the EU working time law and policy, particularly the Working Time Directive (WTD)<sup>12</sup>, from the perspective that is attentive to its potential impact on gender equality. This paper critically analyses the instruments and policies that comprise the EU "working time regime" (WTR) and the political discourse within which they have been situated to determine whether they actually move beyond the SER and can lead to more gender equality in

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<sup>5</sup> Statistics indicate that the Polish fertility rate has fallen from 2.4 prior to transition, to levels as low as 1.24 most recently (Kotowska et al., 2007). Although in 2008 the fertility rate had risen to 1.39 (GUS, Demographic Yearbook of Poland, 2009, available online at: <<http://www.stat.gov.pl>>), it continues to be one of the lowest fertility rates in Europe (Eurostat, Fertility Statistics, available online at: <[http://www.epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Fertility\\_statistics](http://www.epp.eurostat.ec.europa.eu/statistics_explained/index.php/Fertility_statistics)>).

<sup>6</sup> *Ibid.*

<sup>7</sup> See section 2, pages 4-5, for the definition and discussion of the concept social reproduction.

<sup>8</sup> EU's commitment to activating women into the labour market and improving the interface between work and family has been espoused by EU employment policy documents as well as part of a broader equality/gender mainstreaming strategy. See for instance, the Framework agreement and Directive on Part-time, the Framework agreement and Directive on Parental Leave, Roadmap to Equality between Women and Men (European Commission, 2006), the European Pact on Gender Equality (European Council, 2006), European Commissions consultation of the social partners on the Reconciliation of the Professional Private and Family life (October 2006).

<sup>9</sup> Work family reconciliation policies and activation of women into the labour market are also a part of the strategy to increase employment levels and competitiveness and efficiency of the European economy, in part through mechanism such as promotion of flexible, non-standard forms of work. While the social and the economic dimensions are presented as compatible and reconcilable, there have been significant critiques. See for instance: Scharpf 2002, Figart and Mutari 1998, Walker 2005, Keener 1999, Hoskyns 1996.

<sup>10</sup> Some examples include: Fagan 1996, 2001; Figart and Mutari 2000, Rubery et. al. 1998, 1999; Gornick and Myers 2003, Lewis 2006b, Tomlinson 2006, Perrons 1999, Steinmetz and Matysiak 2006.

<sup>11</sup> Sciarra *et. al.*, 2004, McGlynn 2005.

<sup>12</sup> Dir 93/104/EC Working Time Directive (OJ 1993 L307/18), Dir 2003/88/EC of the European Parliament and of the Council (OJ L 299, 18.11.2003).

the labour market and to a more sustainable WTR in contexts such as Poland, or whether they continue to be based on gendered assumptions and merely accommodate women's employment in ways that are advantageous from an economic perspective alone. Using Poland as an example, this paper demonstrates some of the shortcomings of the current EU approach to working-time regulation from a gender equality perspective and points out the dangers of this approach from the perspective of social reproduction.

The paper proceeds by first explaining the relationship between working time and social reproduction by reference to key concepts in feminist political economy and gender regimes theory. Next, it turns to the EU WTR by assessing the extent to which gender equality and work family reconciliation goals have figured in the key directives dealing with various aspects of working time: the WTD, the Directive on Part-time Work<sup>13</sup>, and the Parental Leave Directive<sup>14</sup>. In the final section, the paper turns to considering the actual and potential impact of the EU WTR on the Polish working-time norms and the process of social reproduction therein.

## **2. Gender, Working Time Regimes and Social Reproduction**

Persistent inequalities in the labour market, difficulties in reconciliation of work and family obligations, and the impeding demographic crisis in most European economies, including Poland, are all related to the process of social reproduction. More precisely, they are related to the specific manner in which social reproduction has been historically organized, and to its relative subordination to the processes of economic production and accumulation under the conditions of capitalism.

A key concept in feminist political economy, social reproduction – the process of the daily and generational maintenance of the working population – is also one of the crucial mechanisms necessary for the maintenance of economy, culture, society and humanity (Laslett & Brenner 1989, Fudge & Cossman 2002, Luxton 2006, Bakker & Gill 2003, Bakker & Silvey 2008). However, as feminist political economists have demonstrated, despite its importance and the interdependence which exists between the productive and socially (re)productive processes, the two have been segregated and the latter has been largely subordinated to the process of capitalist accumulation (Picchio 1993, Fudge and Cossman 2002). As a result, when social reproduction is insufficiently supported, it tends towards crisis.

Because biological propagation of species constitutes one of the key elements of this process, social reproduction is necessarily gendered. While the family is the main institution within which the tasks involved in social reproduction are carried out, the state also plays an important role in organizing it, mediating the tensions inherent in it and ensuring its continuation (Fudge and Cossman 2002). Unlike the family (mainly female family members), which carries the most significant burden

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<sup>13</sup> Dir 97/81/EC concerning the Framework Agreement on part-time work (OJ 1998 L14/9).

<sup>14</sup> Dir 96/34/EC Parental Leave Directive (OJ 1996 L 145/4).

of this process, the state's provisioning role has been often residual (particularly in liberal market economies), although in some forms of political economy such as the Polish state-Socialism, the state assumed a more direct role in provisioning. Post-transition Poland provides an unfortunate example of the detrimental effects that a sudden withdrawal of the state from this function can have on the standard of living and social reproduction of the population.

Aside from its provisioning role, another crucial role for the state, has been in organizing the process through stabilizing a particular set of gender relations in the society (Fudge and Cossman 2002, Connell 2005, Walby 2004). The state does this by institutionalizing a specific *gender regime* in key social sites such as the family, the labour market or the school. While these regimes are subject to change and renegotiation because the underlying gender relations are always dynamic, stability of the gender order can be achieved when a specific *gender contract* is institutionalized in those key sites (Fudge 2004, Vosko 2010: 6-9). At one historical juncture, the dominant gender contract in most market economies was that of a male breadwinner/female caregiver (Fudge 2004: 267, Supiot 2001, Rubery, 1998: 23). Even if not universal, this model was sufficiently dominant to form the basis for employment regulation and enabled the raise of the standard employment relationship (SER): an employment relationship based on full-time, continuous employment on employer's premises (Bosch 2004, Mühlenberger 1989). In socialist Poland, on the other hand, SER-like employment relations for all adult citizens, men and women alike, were enabled/ensured by existence of state supports to social reproduction such as subsidized child care, job protected maternity leaves, and a series of other social provisions.<sup>15</sup>

Standard working-time norms – part and parcel of the SER – have historically been based on the presumption of exclusive engagement in the sphere of paid work and have been supported by, while simultaneously reinforcing, the male breadwinner/female caregiver model of the family.<sup>16</sup> Although cultural and

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<sup>15</sup> Unlike in the market economies of Europe, the baseline for employment regulation in Poland was the citizen/adult-worker. Consequently, prior to transition, the Polish government officially subsidized social reproduction because its goal was to promote full employment of all adults. As such, women were seen in their roles as producers (as well as mothers) and necessary accommodations – including subsidized child care, often at the enterprise level, and reintegration into the labour market after child-birth through guaranteed jobs on return from maternity leave – were made in order to support their dual roles. This strategy was quite successful in bringing women into employment – it resulted in high levels of labour market participation among women - much higher than in many Western states, although not as high as in other CEE countries such as East Germany. Nonetheless, by the late 1980s women constituted a 46% of all labour force, a marked increase from the 30% in 1950s (Glogosz 2000, Polish Statistical Yearbook 1998, 2000).

<sup>16</sup> It is widely believed that the modern organization of work – including the concept of *standard* working time emerged during the historic transition from household to industrial production (Thompson 1976, Schor 1992, Lee and McCann 2006, Lee *et al.* 2007). The raise of industrial discipline, long hours and increased tempo of work and the shift to new spaces of production such as factory floors made the work of care –which is time intensive – increasingly incompatible with paid employment (Leete 2000). Eventually as the long hours of work became reduced, specific working time standards crystallized and particular working time regimes became institutionalized across Europe. These WTRs, however were based on the notion of exclusive engagement and made it increasingly difficult for women with a caring responsibilities to partake in paid employment.

institutional differences have over time given rise to distinct WTRs, and relations of class and race have made women's labour market engagement more or less possible or necessary even at the height of the Keynesian welfare state, women's work was historically considered to be mainly supplementary and thus the subject of regulation in most contexts remained the quintessential male breadwinner. Even in Poland, where women's labour market participation was encouraged and assumed, women's income was often considered supplementary as well and most of the protective measures meant to support social reproduction were directed at women thereby reinforcing the notion that care and maintenance were women's natural duties.

This model has been very persistent and even with women's *en masse* labour market activation in the last couple of decades, most contemporary WTRs continue to bear the imprint of that traditional model based on an unencumbered (male) worker (Fagan 1996, 2001). This, of course, represents a problem when the new subjects of regulation are workers-*carers* – be they young parents or adult children looking after their aging relatives. While institutional supports such as affordable child or elder care are important ways of easing the dual pressures of professional and family obligations, as the example of Poland demonstrates, they do not necessarily guarantee more thorough change at the societal level. In pre-transition Poland, for instance, the official ideology of egalitarianism and state support for social reproduction coexisted with very traditional gender contracts in the private sphere which not only the state's policies failed to transform but very often manipulated depending on the particular economic or social needs.<sup>17</sup> This meant that women's full labour market participation, although enabled by state provisions, did not lead to more equal distribution of responsibilities for residual unpaid work but rather led to a rise in the dual earner/female double burden model of a family – a flawed model the negative consequences of which have been even more apparent since transition.

That institutional supports alone are not sufficient to foster more equality or to promote the sustainability of the social reproduction process is also confirmed by

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<sup>17</sup> Polish sociologists and gender scholars have shown how the Polish state manipulated the traditional gender contract and recast women's social responsibility as producer-mother or mother-producer, depending on the economic or demographic needs (Heinen and Wator 2006, Steinmetz and Matysiak 2006). There is also significant research that indicates that the labour market in pre-transition Poland was segmented by gender – both vertically and horizontally (Portet 2005, 305). Aside from the numerous types of jobs which were out of reach for women because of protective legislation, the jobs which women had access to – mainly in the public sector – were paid less than those of men. The wage gap during the entire period hovered around 30% - still lower than in Western Europe, but significant given the egalitarian ideology of the state (Reading 1992, 40 in Zajicek and Calasanti 1995, 182, Lobodzinska 1995: 41). Similarly, time use in Poland – both during the transition and since – also demonstrate that women spent more time in combined work because they have and continue to devote more time to domestic tasks (Plomien 2006, 260 citing Woycicka *et al.* 2003, Zajicek and Calasanti 1995, 186). The double burden, therefore, is not a new phenomenon in Poland and was particularly significant during periods of economic crisis (when women had to carry out even more provisioning) or in lower-income families where women's labour was stretched to the maximum.

research on the social policy and economy of care. This research demonstrates that because of its unique affective and relational aspects, not all of this work can or *should be* outsourced as it is crucial to the wellbeing and building effective functionings of both sides of the caring relation and to both, men and women (Himmelweit 2000, Lewis 2007, Lewis 2006, Lewis & Guilliari 2005, Picchio 2003, Chiappero-Marinetti 2007). Thus, making the time for care and acknowledging its social utility is as necessary from an equality perspective as is activating and opening the labour market to an ever increasing number of participants and creating the institutional supports that enable it. It is also crucial from the perspective of social reproduction.

The extent to which making the time for care for both men and women is possible depends on the specific WTR that exists in the given context. Working time regimes are crucial predictors of equality in the labour market because they are composed of particular standards or regulations of work hours and patterns *and* the normative assumptions about the appropriate organization of the unpaid work of social reproduction (Figart & Mutari 2000, Fagan 2001). As such, they have significant impact on how men and women allocate their time between paid and unpaid work and among each other. While individual preferences and choices are no doubt important,<sup>18</sup> it has been suggested that, from the equality perspective, the universal citizen/carer (Fraser 1997) or equal carer/equal worker (Gornick & Myers 2003) models are the best policy choices for the most egalitarian distribution of responsibilities for work and family responsibilities between men and women. It would follow, then, that those WTRs which tend to, at the very least, enable, and, at the very best, encourage these more egalitarian gender contracts, are most advantageous from the equality perspective. An equality-based approach, in turn, would require rethinking regulations in a way that does not take for granted caring obligations, but instead acknowledges them directly. As I will demonstrate below, although within EU policy there has been a positive trend towards taking issues of reconciliation of work and family obligations seriously, the overall thrust of EU working time policy continues to bear some imprint of the traditional, SER-centric model and lacks overall coherence.<sup>19</sup> This approach, I argue is problematic from an equality perspective and contributes to socially undesirable working time trends

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<sup>18</sup> See Hakim 1997, 2000. For a good discussion of some problematic aspects of the preference or choice theory in working time see: Fagan 2001. For a move towards a more meaningful iteration of the preferences that accounts for the relational nature of choices and preferences see the “working time capability” approach developed by Lee and McCann 2006. See also Lewis 2007, Lewis 2006, Lewis and Guilliari 2005 for discussion of what it means for men and women to have *genuine* choices with respect to their involvement in paid and unpaid care work and other work.

<sup>19</sup> In the context of EU policy, Stratigaki, for example, has referred to the process of co-optation of gender concepts, such as work-family reconciliation. Co-optation occurs when “the concept itself is not rejected, but its initial meaning is transformed and used in the policy discourse for a different purpose than the original one” (Stratigaki 2004: 36). Thus critics have pointed out that feminist concepts of gender equality and equal opportunities, have been framed in a way that fits within the dominant economic frame of wider Community-building project (as, for instance, strategies aimed at increasing women’s labour market participation) (Hoskyns 1996). Similarly, work-family reconciliation policies, have also been “co-opted”: they became detached from equal opportunities discourse and increasingly tied to the goals of combating unemployment, workplace flexibility and increasing fertility rates.

and further exacerbates the critical situation that social reproduction faces in transition countries such as Poland.

### 3. Features of the Current EU Working-Time Regime

The EU WTR is composed of several instruments regulating various aspects of working time. My focus here will be on the Directive concerning certain aspects of the organization of working time (the Working Time Directive/WTD)<sup>20</sup> and the framework agreements and directives on part-time work<sup>21</sup> and parental leave<sup>22</sup>. As I consider these instruments in turn and with reference to the wider context of EU employment policy discourse, particularly those which speak to work-family reconciliation, I will ask *whether, to what extent, and how* the goals of gender equality have been incorporated into these regulations. Answering these questions, in turn, sheds some light on the underlying normative assumptions – including those about the appropriate sharing of responsibilities for paid and unpaid work of care – which are an integral part of any WTR, including that which has emerged at the level of the EU.

#### *The Working Time Directive*

Originally adopted in 1993, the Working Time Directive (WTD) is the key working time instrument at the European level. Justified as a health and safety instrument, the directive sets out *minimum* standards by prescribing maximum permissible weekly hours of work, weekly rest periods and vacations.<sup>23</sup> Even in the most traditional labour regulation sense, the directive is by no means a ground breaking instrument – the standards contained therein are by and large lower than those legislated or collectively agreed to in many of the member states, with the most obvious exception being the United Kingdom (the UK).<sup>24</sup> Yet, despite being relatively innocuous, the WTD has perhaps been one of the most contentious pieces of EU regulation introduced thus far. From its adoption amid political controversy due to UK's fervent opposition and dispute over its legality, to last year's revision debacle,<sup>25</sup> the directive has been a rather limited victory for Social Europe. Although

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<sup>20</sup> *Supra* note 12.

<sup>21</sup> *Supra* note 13.

<sup>22</sup> *Supra* note 14.

<sup>23</sup> Specifically the directive sets minimum standards including: (1) a weekly 48-hour-maximum averaged over 17-week period (can be varied to 52 weeks by collective agreement) – individuals can opt-out of this limit; a minimum rest break period after a six consecutive hours of work and 11 hours daily with a maximum 14 day reference period; minimum four weeks paid annual leave with no opt-out; night workers provision of a maximum eight hour shift in an average 24 hours. Aside from the individual opt out, there are also a number of derogations and exemptions for various occupational groups.

<sup>24</sup> Prior to the Working Time Regulations 1998 which transposed the WTD in the UK, the UK had no legislation on working hours, rest and vacation periods. These matters were left to collective bargaining. However, after union density had severely decreased during the Thatcher administration, very few employees were covered by collective agreements. The WTD and the WTR were welcomed by unions, unorganized employees and labour scholars, as the much needed change in the very unregulated UK labour market.

<sup>25</sup> The original Directive was highly disputed by the UK Conservative government which, threatening to stall the negotiation process, insisted on the inclusion of the individual opt-out provision, art. 18(1)(b). Highly controversial, the opt out essentially allows to override the allowable maximum working hours by



its introduction was an important and symbolic statement of commitment to building Europe's social dimension, the inclusion of the individual opt-out provision at the insistence of the UK government, the possible extension of the reference period to a year by collective agreement, and the many derogations for specific sectors, have resulted in an instrument that not only fails to encourage higher standards and practices, but in fact opens the doors to working time extensions and lowering of existing standards in those member states where they have historically been more robust. These fears have not been groundless. Although initially the UK was the sole member state to take advantage of the individual opt-out provision in its Working Time Regulations, currently many EU states, Poland included, are utilizing the provision, albeit, in most, it has been introduced into domestic legislation with the narrow application to the health care sector post the SIMAP and Jaeger judgments of the European Court of Justice (ECJ).<sup>26</sup> The Court's redefinition of working time, along with the still contentious opt-out and annual reference period, were at stake in the recent round of renegotiations of the directive. Despite the staggering support that the proposed removal of the opt-out garnered from the European Parliament, the conciliation procedure failed late in 2009 putting to end a nearly seven year revision process.

The potential to extend working hours aside, another troubling (and related) aspect of the WTD is its apparent lack of engagement with gender and lack of recognition of the connection between working time and gender inequality, both in the labour market and society more broadly. The text of the original 1993 directive makes no mention of gender nor does it refer to goals of work-family reconciliation. This stands in stark contrast to the framework agreements and directives on part-time work and parental leave which followed a few years later and which make such references, and which I will discuss below. Although the language of work-family reconciliation began to slowly make its way into the subsequent Commission proposals,<sup>27</sup> and the social partners on both sides of the spectrum have begun to utilize the work-family reconciliation language in their submissions and communications on the WTD,<sup>28</sup> the same cannot be said for the principle of gender equality or any other gender language. Thus far, only the ETUC has made a clear link between gender equality and working time in its recent publications.<sup>29</sup>

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individual agreement with the employer. The UK government later unsuccessfully challenged the Council in court over the Directive's legality, disputing the treaty base for its adoption (protection of health and safety): Case C-84/94 *UK v. Council of the EU* [1996] ECR I-5755. The opt-out continues to be a disputed matter. Most recently, the negotiations over an amendment to the Directive led to an impasse in the negotiations between the EP and the Council, with the main issue of contention being the Parliament's proposal for the removal of the "opt out". See: E. Vucheva, *Talks to revise EU working time bill fail*. EU Observer online: < <http://euobserver.com/851/28024> [accessed on July 17, 2009]. The conciliation procedure failed late last year after a nearly a 7 year negotiation and revision process.

<sup>26</sup> *Sindicato de Medicos de Asistencia Publica v. Consellaria de Sanidad y Consumo de la Generalidad Valenciana*, European Court Reports 2000, Case C-303/98 (SIMAP); *Landeshauptstadt Kiel v. Norbert Jaeger*, European Court Reports 2003, Case C-151/02 (Jaeger).

<sup>27</sup> See the 2004 Commission Proposal for the Directive of the European Parliament and the Council amending the Directive 2003/88/EC concerning certain aspects of the organization of working time.

<sup>28</sup> See the 2004 position papers of the ETUC and UNICE.

<sup>29</sup> *Ibid.*

Unlike the WTD, the Directives on part-time work and parental leave – also elements of the EU WTR – have grown out of framework agreements negotiated and agreed to by the social partners, and which they essentially implement. Both directives invoke the Council’s 1994 statement of commitment, in its Resolution of 6 December 1994 on certain aspects for a European Union social policy, to economic and social convergence in the Union.<sup>30</sup> As a result, these instruments directly invoking social policy goals, were nonetheless not subject to the same legal and political limitations and controversies that made the WTD so contentious. As I will argue later, however, the lack of controversy and more apparent *gendering* of these instruments is not just a result of their different legal status and politics; it also stems from the SER-centric approach to employment regulation and working time in particular.

#### *Framework Agreement and Directive on Part-time Work*

Adopted at the end of 1997, the Part-Time Work Directive implements the framework agreement on the protection and promotion of part-time work concluded by the social partners on 6 June 1997. The *social* policy thrust of the directive is evident in the preamble which invokes the principles of improvement of living and working conditions, elimination of all forms of discrimination and promotion of equal opportunities by reference to the *Community Charter of the Fundamental Social Rights of the Workers* and the conclusions of the Essen European Council.<sup>31</sup> This language echoes that of the framework agreement which also makes use of those same principles and additionally lists “facilitating access to part time work for men and women” in context of retirement, reconciliation of work and family life and continuing education/retraining, as one of the general considerations. Thus, the directive is an active attempt at the promotion of part-time work as a solution for workers seeking a better balance between work and other responsibilities and for the employers seeking a more flexible deployment of labour based on the needs of their business. That the latter is of utmost importance is clear from references to “employment intensiveness”, “flexibility” and “requirements of the competition”<sup>32</sup>, all hallmarks of the economic efficiency and growth through employment activation of previously inactive workers, including workers with caring responsibilities, most of whom are women.

On the positive note, the protective and non-discrimination principles are meant to address the well demonstrated fact that part-time work is often associated with low pay, few advancement opportunities, marginalization and a series of other problems which predominantly affect women workers. And although the directive clearly speaks to equality between men and women and appears to promote part-

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<sup>30</sup> OJ C 368, 23. 12. 1994, p. 6.

<sup>31</sup> The latter also stressed the need to take measures to promote equal opportunities for men and women but did so within the context of “measures with a view to increasing the employment intensiveness of growth in particular by a more flexible organization of work in a way that fulfills both the wishes of the employees and the requirements of the competition.”

<sup>32</sup> See the Directive on part-time work.

time work regardless of gender, part-time work is predominately a female phenomenon and these are the workers to whom the directive would most frequently apply. While promoting and protecting part-time work on the principles of equal treatment and work-family reconciliation would not seem to be problematic in itself, the problem becomes evident when this approach is juxtaposed with the seemingly “gender blind” approach of the WTD, wherein possibilities for working time extensions abound (in particular sectors via derogations, through collective agreement via annual reference period or through individual agreement via the opt-out). When taken together, the two instruments seem to create a bifurcated approach to working time and one which encourages a regime characterized by the polarization of working hours – precisely the sort of WTR that does not promote gender equality and that is desirable from the perspective of work family reconciliation for all workers with caring responsibilities.

#### *Framework Agreement and Directive on Parental Leave*

If the bifurcation of working time discussed above serves as one illustration that EU policy seems to be replicating a WTR consistent with a standard, if somewhat modified employment relationship, and the underlying breadwinner model of a family, the directive on Parental Leave takes a more egalitarian approach through a more explicit concern with gender equality and social change. Like the directive on Part-Time Work, the Parental Leave Directive and the framework agreement which it implemented, also cite the *Charter of Fundamental Social Rights of Workers* and invoke principles of equal treatment and reconciliation of “occupational and family obligations”.<sup>33</sup> As already noted, even more emphasis is placed on ensuring that the directive applies to men and women equally. This interpretation is supported, for instance, by the non-transferability clause<sup>34</sup> as well as several references to guaranteeing equal opportunities for both men and women to take advantage of the leave provisions. This gender equality-based approach is an important step, although one which continues to be limited to parents of young children.

Without diminishing its importance, from a perspective of working time, or the general discourse within which working time has been regulated at the European level, however, the Parental Leave Directive is another example of a somewhat selective engagement with gender. While equality principles make their way into certain, clearly “gendered” areas, such as part-time work or parental leave for instance, they somehow get omitted in the *key* instrument dealing with working time, the WTD, as if the standard work week which is at best protected by the WTD, and the long-hours culture which is at worst enabled by it, were not themselves gendered.

What can explain this obvious bifurcation? Why has the WTD been so tenuously or not at all connected with the goals of gender equality when those goals have so prominently featured in other regulations dealing with specific aspects of

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<sup>33</sup> See the preamble.

<sup>34</sup> See clause 2(2), Parental leave directive.

working time? There are several possible explanations for this bifurcated approach to various aspects of working time. First, since the WTD was introduced and justified as a health and safety instrument to take advantage of the qualified majority rule, any mention of gender equality or similar “social” rationales would have met with loud opposition from the already reluctant UK and other states which sought to limit the social aspects of the European project. Another likely reason for the absence of gender focus – and one which probably would have kept gender language out of the text even if the political reasons for doing so didn’t exist – was the historically SER-centric nature of employment policy and regulation. Standard working-time norms, even those most progressive from a social/worker protection perspective, have generally been embedded in the SER and set on the presumption of exclusive engagement, with the subject of regulation being an unencumbered (male) employee. Consequently, regulations dealing with standard norms of working time – the daily and weekly limits – have not been seen as explicitly gendered as was the case with the WTD. It is only when this “inexplicit” approach is juxtaposed with the explicitly gendered thrust of part time work and parental leaves directives, that the SER-centric aspect becomes really apparent. The bifurcated approach that results demonstrates that the existing working-time regime at the EU level, rather than re-think the subject of regulation in the increasingly feminized labour market, has attempted to “fit” and *accommodate* women into the male patterns of employment and merely *adapt* legal standard based on these patterns. While this approach involved some acknowledgement of the needs of the workers with caring responsibilities (predominantly women), it failed to reconceptualise regulation from the perspective that would place those workers at the centre, not at the fringe of employment regulation.

Although the Directive’s future is uncertain and there is a concern about further erosion of this already limited instrument, it is also ripe with possibilities given the more pronounced shift towards work family reconciliation in EU policy and increased focus on redressing the effects the demographic shifts and preventing the demographic crisis. Perhaps with some luck and the possibility of finding another treaty base,<sup>35</sup> the WTD can become part and parcel of a more coherent approach to working time at the EU level, one which would fully acknowledge the essentially gendered nature of working time and the necessity of refashioning working-time standards to achieve gender equality in the workplace, society and more sustainable working time arrangements from the perspective of social reproduction.

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<sup>35</sup> In a recent series of interviews that I conducted in Brussels, finding a new treaty base to justify the WTD has emerged as a potential direction for the new WTD revision proposal. This opinion was voiced by officials of the European Commission DG Employment whose names I have agreed to not identify, and has been also anticipated by trade union representatives and members of the EP with whom I had a chance to talk on this subject.

#### 4. EU Norms and the Working Time Regime in Poland

What effect can the EU working time regime have in the Polish context? Particularly, to what extent could the model promoted at the level of the EU encourage the emergence of a more sustainable working-time regime than that which is currently in place in Poland?

As I noted above, the unsustainability of the Polish WTR lies in the fact that the SER-centric regulation of working time and the predominance of long hours among all Polish employees currently exist alongside an extremely trim (thin) public-care sector and an unaffordable and relatively underdeveloped private care sector. Historically, the Polish WTR approximated that of most European market economies, with the significant difference being that the subject of regulation was the adult worker, and, thus, the state's role in social reproduction was crucial to the sustenance of that model. Like its counterparts in the advanced market economies, the post-war WTR in Poland was also based on a working time standard of 8hrs/day and 46hrs/ week. As such, the hours of work were actually longer than in most Western states with 40 hours per week standards. Poland did not reduce its weekly maximums until 1984, when they were lowered to 42hrs/week and then to 40hrs/week in 1996. Since the transposition of the WTD into the Polish Labour Code (PLC), 8hrs/day and 40hrs/week continues to be the maximum, although there are some derogations for specific industries and provisions are made for extended daily maximums (up to 12hrs) and extended weekly hours up to the maximum of 48 with reference period ranging from 4, 6 to 12 months depending on the industry. Current statistics demonstrate that the average working time in Poland is 41.5 hours per week, which is one of the longest in EU-27 (Eurostat LFS). While there is some difference between the working hours of men and women, this difference is marginal and Poland has one of the lowest differentials between men's and women's working time in EU25 (Eurostat LFS).

For several reasons, ranging from strong work-orientation among women<sup>36</sup> (despite traditional attitudes towards private gender contracts) to simple economic necessity, part-time work is a rarely utilized solution to the problem of balancing employment with care responsibilities.<sup>37</sup> As a result, workers, particularly women with caring responsibilities, experience severe stress and time poverty as they

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<sup>36</sup> Surveys have shown that Polish women continue to have a strong work/career orientation and most would chose to continue working in full capacity even if their spouse was earning sufficiently to single-handedly support the family. Only a small proportion of women stated that they would prefer to work a reduced schedule in order to accommodate their unpaid work within the home (Chinowska, 2000).

<sup>37</sup> Historically, part-time work has been uncommon in Poland, with very few part-time opportunities being offered and this option being rarely utilized due to low remuneration and lack of advancement potential (Sokolowska 1978). In 1970s, for example, only 6% of all employed women worked part-time, with nearly half being women between ages 60-64 (Sokolowska 1978). At the time of transition, the part-time rates among women hovered around 12% and 7.6% among men (Steinmetz and Matysiak 2003). Most recently the rates of part time work have risen, particularly among women, but continue to be much lower than in most western European countries. In 2008, for instance, the part-time work rate in Poland was 9.3%, with 14.1% among employed women, and 5.3% among employed men (OECD Stats).

attempt to reconcile their professional and familial obligations.<sup>38</sup> This conflict, in turn, makes them less desirable for employers in an already highly competitive and discriminatory job market. While this certainly is not the sole explanation for the rapid drop in the Polish fertility rate, lack of sufficient family-friendly solutions (both in the workplace and in terms of social infrastructure) for those who already have dependants and the fear of discrimination based on potential or actual maternity, have most certainly contributed to this phenomenon.

How does the EU working time policy affect this situation? I argue, that rather than encourage creating more employee friendly and gender sensitive working-time solutions for workers attempting to reconcile work with caring obligations, as many of EU policy documents appear to suggest, the bifurcated EU model is problematic in the Polish context because its lack of coherence tends to exacerbate the “long” hours end of the spectrum. The language of flexibility, so prominent in the EU employment policy discourse, has also found its way into the Polish policy vocabulary. However, in this context, “flexible” solutions are more likely to be associated with extended and irregular hours of work to suit the employer’s business needs (without much regard for the needs of the employees) or short term contracts, independent contracts or singular commission contracts, all of which make it possible for employers to sidestep the PLC protections, including those on working time. In this context, possibility of further extensions to working time via EU law, is particularly problematic.

Poland’s position on the revision of the WTD, particularly the individual opt-out provision and the recently adopted anti-crisis legislation amending the PLC,<sup>39</sup> demonstrate the effect that the EU approach to working time has had in Poland. With respect to the former, Poland was one of the states that supported the maintenance of the individual opt-out clause in the recent efforts to revise the WTD. Although Polish support for the opt-out was mainly prompted by the ECJ’s reinterpretation of the definition of working time through SIMAP and Jaager in the health care sector, and the opt-out introduced through domestic legislation regulating that sector alone,<sup>40</sup> there exists a possibility that, under the “right” political and economic circumstances and with the agreement of the Tripartite Commission, the opt-out could well make it into the PLC on a more permanent basis. The current context of “crisis” has certainly contributed to some working time extensions already. The so called “Anti-crisis” bill negotiated by the social partners in the Tripartite Commission introduced the 12 month reference period into the PLC. Although meant to be a temporary amendment designed to combat the effects of the crisis and assist employers during this difficult period, discussion on the permanent revision of the PLC to include the annual reference period is already on

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<sup>38</sup> Given the uneven division of labour within the household demonstrated by time-use studies (Chinowska, 2000), Polish women experience the “double-shift” that is exacerbated by the fact that there are few arrangements for flexible working in Poland.

<sup>39</sup> Ustawa o łagodzeniu skutków kryzysu, adopted by the Tripartite Commission in 2009.

<sup>40</sup> The opt out has so far only been introduced in the statute addressing working organization in the health care sector. It was introduced mainly to override the ECJ interpretation of working time to include “on-call” work. The opt out has also been adopted by an increasing number of EU member states for the very same reason.

the agenda of the Labour Law group of the Tripartite Commission. As the current balance of power within the Tripartite Commission falls in favour of the employer organizations and the powerful discourse of a country/economy “on the make” and “making up for lost time” is widely used as a rationale for pro-business solutions, shifting these temporary changes into the PLC on a permanent basis is very likely. These pressures would create additional incentives to extend the already long working hours of many Polish employees, thus further straining people’s working conditions and their ability to look after their families. Nonetheless, under the current economic conditions and given the competitive nature of the Polish labour market, employee resistance to such increases would be unlikely. Given the unequal division of responsibilities for the private sphere of the household this will have a most detrimental effect on women workers – either by putting them in an even more precarious position in terms of combining work and care, or by pushing them out of the labour market when they are unable to fulfill both in a satisfactory manner. Finally, further extension of working time cannot possibly assist the processes of social reproduction; processes which are already quite strained in Poland if we are to take the low fertility as one indicator of the stress on the biological portion of the process.

## **5. Conclusion**

As I hope to have demonstrated above, the issue of working time is crucial to the long term social and economic sustainability of European economies, including that of Poland. It is also crucial to achieving more gender equality. Although there has been a significant shift towards work-family reconciliation in European employment policy and regulation, the selective nature of this engagement has led to a policy which lacks coherence and appears to perpetuate the SER-centric model of employment which is no longer viable. Moreover, it is troublesome that along with the “social” goals noted above, working-time flexibility has *also* been cast at the EU-level as a key ingredient of the economic strategy that promotes business efficiency and is employer friendly. While economic efficiency goals are important, grounding working-time policy in business efficiency rationales is unlikely to lead to progressive solutions. The recent debacle of the revision efforts of the 2003 Working Time Directive may shift the debate away from the more progressive social proposals, while the current context of “crisis” may, as has been the case in Poland, further contribute to strengthening the economic rationales. At the same time, some hope remains that the failure of the “health and safety” rationale for the directive may open doors to a more prominent engagement with gender and reconciliation agendas thereby creating a more coherent approach to working time at the EU level. Only this type of coherent approach which is based in a thorough re-thinking of working-time standards from the perspective of a worker-carer, can lead to more sustainable working time regimes and avert the impending crisis in social reproduction in transition economies such as Poland.

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