



# Position Paper

November 2017

## Work-life balance for parent and carers

### General preliminary remarks

The European Union is recognised to be one of the best places to live, to work, and to do business. Notably, in the realm of social policy, the EU is recognised as a global leader. The European social model is known for a high level of redistribution, more than 70 legislative acts in the social field, but also for a high level of social spending. Thus, it already provides a wide range of rights to employees.

On 26 April 2017, the European Commission adopted a proposal for a directive of the European Parliament and the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU COM (2017) 253. Two years after the withdrawal of the Maternity Leave Directive, the Commission wants to take a broader approach in order to take into account the development in society.

EUROCHAMBRES – the Association of European Chambers of Commerce and Industry, acknowledges that the European Union is facing demographic challenges, particularly due to an ageing population and a declining birth rate. EUROCHAMBRES believes this is why a set of actions is required to address future labour market requirements; among others by continuing to improve women participation in the labour market, and investing in lifelong learning, active ageing and the promotion of STEM skills and dual education through national education systems.

The Commission claims that with the proposal for a directive on work-life balance, it will address the principle of equality between men and women with regards to labour market opportunities and treatment at work. EUROCHAMBRES does not share the view that an additional leave entitlement is the solution to address equality issues. On the contrary, the aforementioned measures seem to be detrimental to society and economy.

EUROCHAMBRES favours a shift in approach to promote more investment in childcare and elderly care facilities and fiscal incentives for working parents. This will give parents and carers the confidence that their dependents are well cared for, while they focus on their careers and professional development.

EUROCHAMBRES believes that decisions relating to leaves for working parents and carers should be decided at a national level according to the respective member state's traditions and economic circumstances.

EUROCHAMBRES is concerned about the impacts that the proposed measures will have on Small and Medium Enterprises (SMEs) and particularly on Micro-enterprises. Operators employing a small number of employees will face numerous burdens. Colleagues will be faced with additional work-related stress while they take-over the responsibilities of the employee on additional leaves as proposed by this directive. Where it is not possible to transfer responsibilities to other colleagues, companies will be

required to incur a cost of employing temporary workers and invest in training, which considering the limited assignment, it may not yield a return on investment in terms of productivity and performance.

The proposed directive also suggests that paternity leave, parental leave and carers leave should be provided at least at the level of sick leave. It is unclear whether companies will be required to compensate for the additional leave requirements directly to the employee or indirectly through higher social contributions. Alternatively, if the onus is taken by the member states directly, leave compensation will still be an additional burden on public budgets.

EUROCHAMBRES considers the European Commission's predictions of a positive Eur840 million impact on GDP by 2055 and contribution towards the creation of 1.4 million jobs by 2050 as unrealistic. The combined options preferred by the Commission pretend to be associated with only minor costs for enterprises, mainly due to flexible working arrangements provided that they are used extensively; however, employers will decide voluntarily after examining the operational viability and impact on productivity.

Finally, EUROCHAMBRES strongly believes that in a modern labour market, work-life balance measures are most effective if dealt with at company level and in consultation with employees and their representatives. A one-size-fits-all solution at EU level neither responds to labour market and economic challenges in individual member states, nor to the aspirations of working parents and carers that require permanent solutions for their responsibilities, not short-term benefits.

## **Comments in detail**

### **Article 4 on paternity leave**

Due to the heterogeneity amongst member states when it comes to paternity leave, EUROCHAMBRES disagrees with the introduction of an additional EU-wide entitlement to paternity leave. This should remain a member state prerogative.

One must also recognize that a father's responsibility should not be attributed solely because of additional paid leave entitlement, but rather as a personal commitment towards the family, partner, and the child. Fathers can make use of alternative leave entitlements, such as annual personal leave to be close to the child. This can be planned well in advance.

More specifically, according to the draft proposal Member States should have the possibility to limit the paternity leave of 10 days to a certain period of time. In the proposed directive, it is stated: "fathers have the right to take paternity leave of at least ten working days on the occasion of the birth of a child". In our view, this is phrased too broadly.

While being against a generalised paternity leave entitlement, EUROCHAMBRES favours arrangements between employer and employee.

### **Article 5 on parental leave**

EUROCHAMBRES criticises the fact that with this proposal the 2010 Parental Leave Directive will be repealed. The directive was the outcome of European Social Partner agreements that created a balance between the interests of companies and employees.

The European Commission proposal suggests that the period in which working parents can avail the parental leave of at least four months per parent shall be extended from 8 to 12 years of age. Considering that the caring responsibilities are more needed at a younger age and that children become less dependent the more they grow, EUROCHAMBRES sees no valid reason to extend the time period.

An extension of the claim up until the child's 12th birthday could even be applied to every new contract of employment without the new employer being informed about it when recruiting the employee. Therefore, we are strictly against the extension of parental leave up to the child's 12th birthday.

According to paragraph 2, if Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that at least four months of parental leave cannot be transferred. According to the current parental leave directive the non-transferability is one month. We favour a compromise where the duration of non-transferability is between 1 to 4 months and decided at Member State level.

EUROCHAMBRES agrees with the provision allowing Member States to make the right to parental leave subject to a period of work qualification or a length of service qualification which shall not exceed one year.

### **Article 6 on carers' leave**

EUROCHAMBRES believes that an annual 5-day carers leave entitlement presents a disproportionate burden on companies while failing to solve the concern of employees caring for elderly family members with long-term serious illness or dependency.

### **Article 8 on adequate income**

As aforementioned, a compensation for people on leave as high as the sick pay means a high cost for companies and a budgetary burden.

EUROCHAMBRES reiterates its position that the provision of additional leave entitlements referred to in Articles 4, 5 or 6 should be the prerogative of member states, and best suited to be decided and granted at company level. The same way, it should be down to the Member States to decide how high the allowance should be, if any.

### **Article 9 on flexible working arrangements**

The proposed directive provides employees, who are carers or have children of the age of 12 and under, with the right to request flexible working arrangements. These allow for the reduction in working hours, flexible work schedules, and remote working possibilities.

EUROCHAMBRES disagrees with introducing a capping period up to which working parents can make flexible working requests. The fact that reduced working hours or part-time work is usually taken up by women must be considered. If the European Commission is serious about its intention to divide the care responsibilities more evenly between men and women, and to reduce the widening of the income gap, flexible working arrangement requests should be examined at company level on a case by case basis. The current parental leave directive provides the right balance on this matter, particularly Clause 6, which sees the necessity for an arrangement between employer and employee; however, does not mention the time until when this request must be made.

We believe that the worker's right to request flexible working arrangements to be met with the employer's obligation to respond will lead to additional bureaucratic burden for enterprises. Furthermore, unjust seems to be the right to request flexible working arrangements and benefit from a right to automatically return to an original work pattern. We support that the right to request a return to the original working pattern should apply in every occasion.

Considering the administrative burden for companies to acknowledge and replying to requests by employees, the frequency by which the employees request flexible work arrangements should be reasonable.

### **Article 10(3) on employment rights**

The sentence according to which member states can determine the status of the employment contract during the period of the above-mentioned leave and ensure that the employment relationship maintains during this period seems contradictory. This is why it would be better to cross out the last two clauses so that paragraph 3 of article 10 reads as follows:

“Member States shall define the status of the employment contract or employment relationship for the period of leave referred to in Article 4, 5 or 6, including as regards entitlements to social security, while ensuring that the employment relationship is maintained during that period.”

### **Article 12 on the protection from dismissal and burden of proof**

According to Article 12(1) Member States shall take the necessary steps to prohibit the dismissal and all preparations for dismissal of workers, on the grounds that they have applied for, or have taken, leave or have exercised the right to request flexible working arrangements. Especially confusing is the phrase “preparations for dismissal”, which also brings about legal uncertainty. Does this for example also include employing a substitute for the parent who is on leave? In our view this is not necessary, this is why we suggest the removal of this add-on.

According to Article 12(2) employers are forced to give written reasons for the dismissal, on the request of the employee. We question the legal basis of the clause in the proposed directive, which is Article 153 paragraph 1 lit i) (equal opportunities for men and women) since it also discusses Art. 153 paragraph 1 lit d) (protection of the employee in case of termination of the contract of employment). Acts based on Art. 153 paragraph 1 lit d) need to be adopted unanimously in Council. We strongly reject the shift in the burden of proof in connection with a dismissal due to the use of paternity, parental or carers' leave or flexible working arrangements.

*EUROCHAMBRES is following closely the discussions on the Work-life balance directive at both the Council and European Parliament.*

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