

Proposal for an ETUC Position on the Second Stage Consultation of the social partners at European Level under Article 154 TFEU on possible action addressing the challenges of work-life balance faced by working parents and caregivers

Introduction

The ETUC responded extensively to the first phase consultation of social partners on the possible action addressing the challenges of work-life balance faced by working parents and caregivers as reflected in its position paper, adopted by the Executive Committee on the 17th of December 2015.¹

In it, the ETUC expressed the need for further legislative measures in order to help improve gender equality and help create a better work-life balance for women and men. ETUC clearly stated that the existing measures at European level had not substantially contributed to these goals. The view, that further legislative measures were necessary, was also supported by the public consultation that the Commission had launched in parallel with the first phase of the consultation of the EU social partners. A total of 61 per cent of the respondents saw the need for legislative measures in the area.

On 12 July 2016, the European Commission launched the second stage consultation of the European social partners on possible actions addressing the challenges of work-life balances of faced by working parents and caregivers. In the document, the Commission provided an overview of the responses of the European social partners to the first stage consultation, launched on 11 November 2015. In addition, the Commission called for the opinions of the European social partners as regards proposals for further actions at European level.

The Commission's consultation paper is accompanied by an analytical document, which summarizes the views of the social partners and other stakeholders, but focusses also on the current legislative and policy instruments in the Member States as well as possible avenues for EU action.

The ETUC welcomes the document as it clearly demonstrates not only the necessity for specific action at EU level, but also provides a balanced analysis of expected costs and benefits of possible actions as well. Furthermore, the document makes clear that the participation of men in possible leave arrangements is crucial to reaching the objectives of gender equality, improving the quality of employment for women and men and a better balance of professional and working life. The document concludes that "it is, nevertheless, clear that the relative cost of parenthood to women in terms of labour

¹ ETUC's position on the first stage consultation of the EU social partners on a 'New Start' for work-life balance.

market outcomes can be reduced and women's labour market participation can be increased by legislative measures".²

The European Commission's consultation document invites the EU social partners to express their views and make proposals on the possible legislative avenues for EU action and the related parameters set out in section 5 of the consultation document covering the areas of (1) maternity leave, (2) paternity leave, (3) parental leave, (4) carers' leave and (5) flexible working arrangements.

The ETUC has been calling for further legislative measures in the area of leave and reconciliation since 2007, in particular in the context of the second-stage consultation of the social partners at Community level on the reconciliation of professional, private and family life launched at that time.³

Therefore, the ETUC strongly welcomes the Commission's launch of the second-stage consultation of the EU social partners at European level under Article 154 TFEU on possible action addressing the challenges of work-life balance faced by working parents and caregivers, hoping that it will successfully tackle the shortcomings of the previous 2007 initiative.

The ETUC considers that it is high time to act and improve the legislative and non-legislative framework of leave provisions and care facilities at European and national levels. Despite the existing EU directives, namely the maternity leave directive and the parental leave directive, policies continue to be poorly developed in view of the goal of greater gender equality, evidenced inter alia, by greater and more equal participation of women in the labour market. The need to modernize the existing provisions has been underlined by the ETUC, as well as the European Parliament and a host of European NGOs such as the European Women's Lobby (EWL), Confederation of Family Organisations in the European Union (COFACE) and AGE Platform. Evidence suggests that there are important gaps in the existing legislation which hamper women's greater participation in the labour market as well as men's greater up-take of care responsibilities. Parental leave provisions in a number of member states also suggest that certain types of leave arrangements tend to reinforce traditional gender roles rather than help overcome them. Current provisions have not greatly improved the take-up of leave by fathers, be it in the form of paternity or parental leave. Data shows that no more than 10 per cent of the leaves in the EU is taken up by fathers while it is recognised that the men's participation in leave arrangements is key to improving gender equality and women's higher participation in the labour market.

KEY AREAS OF ACTIONS

² *European Commission Staff Working Document, Analytical document accompanying the 2nd Stage Consultation of the social partners at European level on possible action addressing the challenges of work-life balance faced by working parents and caregivers, (SDW (2016) 145 final, p. 73.*

³ <http://www.etuc.org/a/3195>

In order to address these issues, the ETUC calls for a balanced policy mix of legislative and non-legislative measures which complement and support each other. Measures and legislation must be part of a comprehensive and coherence policy approach which also promotes availability, access, and affordability of quality child and elderly and dependent care in all member states **supported by adequate budgetary allocations.**

The ETUC, therefore, proposes **the revision Council Directive 92/85/EEC** on the introduction of measures to encourage improvements in the safety and health of pregnant workers (**Maternity Directive**) by extending the length of statutory leave from **at least 14 to 18 weeks with full pay.**

Since 2007, the ETUC has asked for the introduction of a new **directive on paternity leave** and indicated its readiness to negotiate with the employers. ETUC considers such a directive essential in order to enable women and men to share their parental responsibilities more equally. Such a directive must **provide for an adequate period of paternity leave (from two weeks to a month), should be mandatory and be paid, ensure job protection and guard against the loss of social security and pension rights.**

The ETUC also proposes the **revision of the Parental Leave Directive 2010/18/EU**, based on the EU social partners' agreement. In particular the following elements should be addressed: ensuring payment of the leave, providing for greater flexibility of the leave arrangements and considering raising the age of children for which the leave is required.

As regards **flexible working time arrangements**, parents should be entitled to request more flexible working arrangements, which could include homeworking, working part-time, or reducing working hours. **While** ETUC stresses that workers need to have greater control over their working time, **flexible working arrangements should not, however, contribute to disadvantage women further in terms of working time reduction and reduction of pay.** Flexible working patterns could be taken up at EU level while the development of detailed solutions would be the task of collective agreements at the appropriate national levels. **They should not be seen as replacement for specific regulation designed to improve work-life balance.** But, as suggested by the Commissions' consultation this issue could be addressed within the context of the revision of the Parental Leave Directive.

In relation to **Carers' leave**, ETUC would welcome a proposal for a directive as a supplement to the provision of affordable professional care. An entitlement to leave similar to parental leave could be considered.

ETUC is pleased to know that the European Commission has shown commitment to address these issues with legislative measures in case the employers are not ready to enter into negotiations.

The ETUC also underlines that family related leaves and flexible working arrangements should be combined with the **availability, affordability, accessibility and quality of early childhood education, elderly and dependent care facilities.** **A proposal for a carers'**

leave directive should be designed so as not to reinforce existing gender stereotypes and practices. Investment in early childhood and care should be part of the European Investment Plan. Equally important would be the attainment of the Barcelona targets on childcare via the consistent application of the Country-specific recommendations and through the European Social Fund for example.

1. What are your views on the possible legislative avenues for EU action and the respective, related parameters set out in the consultation document?

1.1. ETUC's proposals regarding improvements of the Maternity Leave Directive

ETUC considers that there is an urgent need to upgrade Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health of pregnant workers. The upgrade should bring marked improvements, as proposed by the European Commission, in the areas of transition into work as well **protection against dismissal**.

ETUC favours an immediate legislative proposal by the Commission which should include the extension of the **length** of maternity leave from at least 14 to 18-week leave, which would not only be in line with ILO Recommendation 191, but would also reflect what is already practiced in a majority of member states, where only three member states continue to have a minimum provision of 14 weeks, while the average maternity leave is 23 weeks.

In order to attain the goal of reducing the persistent pay gap between women and men, it is crucial that the statutory period of maternity leave as proposed by ETUC is **100 per cent remunerated**. ETUC notes that almost half of the member states already compensate salaries of pregnant workers on statutory maternity leave with 100 per cent compensation whereas the average compensation allowance is around 90 per cent. As ETUC already pointed out in the first-phase consultation that only a full salary for the duration of the maternity leave provides those who have recently given birth with substantive equality and ensures that they are not economically penalised for having children. The ETUC is aware of the fact that the issue of pay was one of the most controversial ones during the previous attempt to revise the current Directive. However, ETUC believes that pay is a key issue to be tackled in order to pave the way towards full equality. Pay for maternity leave should be seen and treated as an investment for society. Moreover, a length of at least 18 weeks as proposed by the ETUC would constitute a worthwhile investment within reasonable limits.

Moreover, ETUC considers the current **protection against dismissal** as not strong enough and would argue, in line with the Commission proposal in the consultation paper, for a **prohibition of dismissal for at least half a year after returning from maternity leave/as well prohibition of any preparatory steps for dismissal before and after the birth of a child**. Such minimum provisions could help to protect the most vulnerable workers in the

labour market, in particular during times of economic downturns. The ETUC agrees with the analysis in the Analytical Document accompanying the second-phase consultation document that such provisions against dismissal would not only bring the directive in line with recent case law, but could help overcome discriminatory practices and thus help keep women on the labour market. **Moreover, the ETUC calls on strengthening the provisions regarding the shift of the burden of proof in cases of dismissal.**

ETUC is also strongly in favour of **strengthening the rights to adequate access to breastfeeding** facilities in order to enable recent mothers to continue to work and safeguard their health and that of the child.

Finally, the ETUC notes that a revised directive must provide the same rights to expectant or recent mothers working in atypical forms of employment, including domestic workers.

As the maternity directive is specific as to the measures to encourage improvements in the safety and health of pregnant workers, it is to be kept separate and distinct from other forms of parental leave. Therefore, new provisions for other types of parental leave are in order, such as paternity leave.

1.2. ETUC's Position regarding Paternity Leave Provisions

At the present moment, paternity leave provisions vary greatly among the member states of the European Union. There is ample evidence that their effectiveness in terms of improving work-life balance for women workers, reducing discrimination and providing for more gender equality, depends greatly on the take-up of paternity leave by men. The take-up, in turn, is dependent to a significant degree on the level of flexibility and pay associated with the parental leave. There is also evidence that suggests that well compensated paternity leave of at least 2 weeks has enormous leverage effects for the take-up by men when compared to member states where this is not the case. In addition, at least 23 member states have some type of paternity leave provisions of which 17 pay compensation allowances of 100 per cent.

For ETUC, the right to paternity leave is a long-standing issue, which has been part of the consultation with the social partners at Community level. In 2007 already, ETUC called for a legal instrument to regulate paternity leave at European level thus enabling a better sharing of parental responsibilities between male and female workers. ETUC is asking that **the paternity leave should be individual, non-transferable and mandatory**. To ensure that paternity leave can be taken by fathers at all wage levels, it should **paid** in the **same way as maternity leave is paid**⁴ and should carry with it the same job protection and job related rights and should not result in a loss of social security or pension rights after returning from paternity leave.

⁴Citing the analytical document, "where paternity leave exists, leave is always paid, in the majority of cases it is 100 per cent.

Creating a level-playing field for paternity leave at European level could considerably help reduce discrimination of female workers having given birth to a child or having adopted one and could help improve the participation of women in the labour market as pointed out by the European Commission.

1.3. ETUC's proposal regarding Parental Leave provisions

ETUC regards parental leaves as a priority issue to be tackled in the context of a work-life balance package. Parental leave provisions at the European level have been twice negotiated among the European social partners and could be further improved. While the existing legal provisions provide a basic framework for parental leave, it is not enough to tackle the persistent problems of adequate payment during parental leave. This is important in order to achieve the aim of reducing the gender pay gap as well as promoting the take up of parental leave by men. Evidence from member states where pay and flexibility is adequate suggest that parental leave take-up by men but also by women is considerably higher. Additionally, evidence also shows that compulsory take-up helps increase take up of parental leave by men. ETUC also notes that on average across the member states, the take-up of parental leave has not increased, but remains at a low of 10.1 per cent.

For these reasons, ETUC considers a revision of directive 2010/18/EEC necessary and would be ready to evaluate the EU social partners' agreement with the EU-employers and improve its provisions with regard to the issue of payment. Greater flexibility in the parental leave arrangements as well as the maximum age of the child could also be part of the assessment. Specifically, ETUC suggests to

- Ensure that there is adequate pay or salary replacement for parental leave preferably fully paid. At the moment, the average paid parental leave is 50 per cent of the last salary.
- Consider increasing the length of the individual right to parental leave from the current 4 (16 weeks) to 6 months (24 weeks) given that only one of the member states has less than 24 weeks⁵.
- Consider increasing the current, non-transferable period of the leave. This would be an additional incentive for men to take up parental leave as evidence suggest from a Eurofound study.⁶
- Consider raising the age of the child above the current limit of 8 years as several member states already provide for higher age.

⁵ Shortest parental leave provisions are in Cyprus which gives 18 weeks, followed by Bulgaria with 26 weeks.

⁶ Eurofound study, 2007.

- Increase the flexibility in take up, in particular in the form of part-time to be taken at different stages of the child's age.

1.4. ETUC's Proposal on Carers' Leave

As there are no legal provisions at European level, but a growing need for carers given the demographic trends, ETUC would welcome common minimum standards at European level. This type of leave could be regulated similarly as the parental leave. However, it should be framed in such a way so as to not reinforce traditional gender roles. In fact, it is currently mostly women who assume the role of carers. This in turn not only impacts on the quality of their employment, but carries negative consequences in terms of economic independence, pay as well as pension gap and contributes to discrimination and further inequalities. This is true in particular for female workers over the age 50 who struggle to remain or regain access to the labour market. Such a carers' leave directive should be seen as a complement to adequate provisions of quality and affordable professional care both private and public. Carers' leave provisions should also ensure adequate social security for those who do the caring. In particular long-term, formal public care should not be replaced by informal care arrangements by relatives and communities.

1.5. ETUC's Position on Flexible Working Arrangements

ETUC continues to stress the issue of flexibility in working time arrangements to ensure policy coherence between leave provisions and workers' greater control over their working time providing the necessary flexibility to better balance work and family life. However, flexible working arrangements should not reinforce gender biased practices such as women reducing their working hours and pay to accommodate caring responsibilities.

The Commission paper suggest to address this issue in relation to parents returning from parental leave. Enabling workers to structure their working time around their needs is fundamental to reconciling family and professional life. Working parents should be entitled to request flexible working arrangements, which can include homeworking, working part-time, or reducing working hours, but also be able to come back to full-time work (reversibility). Their social protection as well as pension rights should not be negatively affected by such temporary working arrangements. ETUC stresses that such flexible working patterns could be considered within any possible revision of the parental leave directive. However, the development of detailed solutions should remain to be the task of collective agreements at national levels.

Are the EU social partners willing to enter into negotiations with a view to concluding an agreement with regard to any of the elements set out in section 5 of this document under Article 155 TFEU?

As already indicated in its first reply to the EC Consultation, the ETUC is ready to start discussions and negotiations with employers' organisations at EU level to improve minimum standards of reconciliation policies in Europe.

On the basis of the second stage consultation, the ETUC would favour to start negotiations to improve the current parental leave agreement, provided that the employers are ready to address all the challenges by in the Commission's second stage paper (such as payment, length, age of the child, flexible working time arrangements for parents returning from parental leave, etc.).

ETUC would also be ready to negotiate an agreement on paternity leave, as this was one of the matters that we proposed to address in the context of the autonomous work-programme of the EU social partners 2015 - 2017.

With respect to carers' leave, this could be another agreement to be negotiated after the previous two are successfully concluded.

Concerning maternity leave, the ETUC would favour an immediate legislative initiative from the European Commission to upgrade the 1992 Directive.

Finally, ETUC would like to reiterate that in case EU social partners do not agree to negotiate none or just some of mentioned leave arrangements or in case negotiations would not lead to any successful outcome, we would urge the Commission to take the necessary initiatives and come up with legislative proposals.

