

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

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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, which was adopted by the Executive Committee on the 17th of December 2015.¹

In its paper, the ETUC expressed the need for further legislative measures to help improve gender equality and help create a better work-life balance for women and men. The ETUC stated clearly 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 action addressing the challenges of work-life balance 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 also focuses 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 it 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 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, particularly 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, and hopes that it will successfully tackle the shortcomings of the previous 2007 initiative.

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

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>

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 have not significantly contributed to improving gender equality, i.e. by increasing a 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 uptake 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. Current provisions have not greatly improved the take-up of leave by fathers, be it in the form of paternity or parental leave. Data show that no more than 10 per cent of the leave 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 action

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. Such measures and legislation must be part of a comprehensive and coherent 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 of Council Directive 92/85/EEC** on the introduction of measures to encourage improvements in the safety and health of pregnant workers (**Maternity Directive**) to extend the length of statutory leave from **at least 14** to 18 weeks with full pay.⁴

Since 2007, the ETUC has been asking for the introduction of a new **directive on paternity leave** and has indicated its readiness to negotiate with the employers. The ETUC considers such a directive essential to enabling 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 for 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 the ETUC emphasises that workers need to have greater control over their working time, flexible working arrangements should not, however, contribute to disadvantaging women further in terms of working time reduction and reduction of pay. Addressing 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. Having greater control over one's working time 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**, the 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.

⁴ *LO Denmark does not support any provisions for full pay and/or a specific level of remuneration (maternity/paternity/parental leave) as pay is negotiated through collective agreements in Denmark and is not regulated by law. It would be a fundamental breach with the Danish Labor Market Model to have any EU regulations/provisions concerning the level of payment.*

The ETUC is pleased that the European Commission has shown a commitment to addressing these issues via legislative measures in case the employers are not willing to enter into negotiations.

The ETUC also underlines that family-related leave and flexible working arrangements should be combined with the **availability, affordability, accessibility and quality of early childhood education, and care facilities for the elderly or for people otherwise in need of care**. 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. The ETUC's proposals regarding improvements to the Maternity Leave Directive

The 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 as **protection against dismissal**.

The ETUC favours an immediate legislative proposal by the Commission which should include an extension of the **length** of maternity leave from the minimum of 14 weeks to at least 18 weeks, 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 be remunerated **100 per cent**. The ETUC notes that almost half of the Member States already compensate pregnant workers on statutory maternity leave with 100 per cent of their salary whereas the average compensation allowance is around 90 per cent. As the ETUC already pointed out in the first-phase consultation, only a full salary for the duration of the maternity leave would provide those who have recently given birth with substantive equality and would ensure 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 during the previous attempt to revise the current Directive. However, the 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, maternity leave 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's proposal in the consultation paper, for the **prohibition of dismissal for at least half a year after returning from maternity leave/as well as the 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 for the strengthening of the provisions regarding the shift of the burden of proof in cases of dismissal.

The 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 for paternity leave.

1.2. ETUC's Position regarding Paternity Leave Provisions

At present, 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 female workers, reducing discrimination and providing for more gender equality, depends greatly on the uptake of paternity leave by men. The uptake 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 the 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, the ETUC called for a legal instrument to regulate paternity leave at European level to enable a better sharing of parental responsibilities between male and female workers. The ETUC is requesting that **paternity leave be individual, non-transferable and mandatory**. To ensure that paternity leave can be taken by fathers at all wage levels, it should be paid at the same rate as earnings-related maternity pay or earnings-related income replacement for women on maternity leave,⁵ 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 the paternity leave is taken.

Creating a level playing field for paternity leave at European level could help considerably to reduce discrimination of female workers who have given birth to a child or have 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

The ETUC regards parental leave 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 negotiated twice 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 inadequate payment during parental leave. This is important in order to achieve the aim of reducing the gender pay gap as well as promoting the uptake of parental leave by men. Evidence from Member States where pay and flexibility are adequate suggests that parental leave uptake by men and women is considerably higher. Additionally, evidence also shows that making it compulsory take-up helps increase take up of parental leave by men. The ETUC also notes that on average across the Member States, the uptake of parental leave has not increased, but remains at a low of 10.1 per cent.

For these reasons, the 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 parental leave arrangements as well as the maximum age of the child could also be part of the assessment. Specifically, ETUC suggests the following:

- 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 months (16 weeks) to 6 months (24 weeks), given that only one of the Member States has less than 24 weeks⁶.
- 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 suggests from a Eurofound study.⁷
- Consider raising the age of the child above the current limit of 8 years as several Member States already provide for higher age.
- Increase the flexibility in uptake, in particular in the form of part-time to be taken at different stages of the child's development.

⁵Citing the analytical document, "where paternity leave exists, leave is always paid, in the majority of cases it is 100 per cent.

⁶ Shortest parental leave provisions are in Cyprus which gives 18 weeks, followed by Bulgaria with 26 weeks.

⁷ Eurofound study, 2007.

1.4. The 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, the ETUC would welcome common minimum standards at European level. This type of leave could be regulated in a similar way to the parental leave. However, it should be framed in such a way so as not to reinforce traditional gender roles. In fact, it is currently mostly women who assume the role of carers. This in turn not only impacts 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 of 50 who struggle to remain in 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. It is very important for Member States to implement the Working Time Directive in order to give every person with caring responsibility a possibility to keep a genuine work-life balance.

1.5. The ETUC's Position on Flexible Working Arrangements

The ETUC continues to stress the issue of flexibility in working time arrangements to ensure coherence in policy between leave provisions and workers' greater control over their working time so as to enable the necessary flexibility to better balance work and family life. However, flexible working arrangements should not reinforce gender-biased practices.

The Commission paper suggests addressing 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 should also be able to return to full-time work (reversibility). Their social protection as well as pension rights should not be negatively affected by such temporary working arrangements. The 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 the task of collective agreements at national levels

2. 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 commencing negotiations to improve the current parental leave agreement, provided that the employers are ready to address all the challenges 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.).

The 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.

As regards maternity leave, the ETUC would favour an immediate legislative initiative by the European Commission to upgrade the 1992 Directive.

Finally, the ETUC would like to reiterate that in case EU social partners do not agree to negotiate any or just some of the leave arrangements mentioned, or in case negotiations do not lead to a successful outcome, we would urge the Commission to take the necessary initiatives and come up with legislative proposals.