

UEAPME¹ Position

Commission proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

Introduction

On 26 April 2017, the European Commission proposed a Directive of the European Parliament and of the Council on work-life balance for parents and carers, repealing Council Directive 2010/18/EU, which implemented the Framework Agreement of the European social partners on Parental Leave.

UEAPME agrees with the proposals' objective to increase female labour market participation, but disagrees with the approach taken with several legislative and non-legislative proposals put forward by the EU Commission. Contrary to the stated objectives of the initiative at EU level, these will not increase the participation of women on the labour market in the Member States but rather reduce the number of hours worked by women and men and meanwhile harm the competitiveness and functioning of small businesses.

Key messages

- UEAPME supports the objectives of promoting equality between men and women, increasing female labour market participation, and promoting a good work-life balance, but the approach taken by the Commission is the wrong one and will create serious obstacles for innovation and employment in SMEs.
- UEAPME is concerned by the financial costs related to the level of sick leave payment either as direct labour costs or indirectly through higher taxes for companies stemming from the proposal for paternity, parental, and carers' leaves. Adding on labour costs will hamper the capacity of companies to hire staff.
- UEAPME warns against the increasing burdens related to increased flexibility for working arrangements and leaves which will put pressure on small and micro-businesses as well as on entrepreneurs' work/life balance.
- The focus should be on investing in support services and care infrastructure for parents and carers.
- The cost-benefit analysis does not take into account the reality of small businesses, the impact on work organisation and hence employment opportunities and job creation.

¹ UEAPME subscribes to the EC's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

I. General comments

- **UEAPME's priorities for the European level** to aid in creating equal opportunities, a good work-life balance, and especially increasing female labour market participation are:
 - Better understanding of the interaction between various leave policies and their take-up within Member States;
 - Setting targets for and incentivise investment in the development of support services and care infrastructure, including the provision of accessible and affordable childcare facilities;
 - A focus on the role of education and training, including professional career counselling, in combating horizontal and vertical gender segregation in education;
 - Peer learning on the various tax and benefit (dis)incentives used in the Member States;
 - A focus on change of mind-set in the society and in particular of women and men notably when becoming parents
- UEAPME regrets the choice of the Commission in its initiative to increase opportunities for leaves and to substantially increase the costs for small businesses. This is the wrong approach for achieving the objective of increasing female labour market participation, and creates severe obstacles for employment and hence job creation in SMEs.
- As indicated in its replies to the two stages of the social partners' consultation on the challenges of work-life balance faced by working parents and caregivers², UEAPME supports the objective of promoting equality between men and women with regard to labour market opportunities and treatment at work and notably addressing the low participation of women in the labour market.
- Representing SMEs and micro-companies, UEAPME believes that a good work-life balance is in the interest of employers and employees. It is also true that in general, the challenges of an ageing and shrinking population increase the need to incentivise the workforce properly for having a successful reconciliation of work and private life.
- However, it is important to note that this does not pre-empt at which level the topic should be addressed. Having in mind the different interaction in the Member States between individual choices by parents and caregivers, existing leave policies, and labour market incentives, and the importance of the competitiveness, innovation and job creation of SMEs, UEAPME believes that the majority of these policies should be designed at national and company level.
- Rather than this legislative road, the European contribution to the promotion of equal opportunities and participation in caring tasks should focus on combating stereotypes from early education onwards and facilitating participation on the labour market for both women and men e.g. through setting targets for and incentivise investment in the development of support services, including the provision of accessible and affordable care facilities.

² http://ueapme.com/IMG/pdf/UEAPME_position_on_challenges_of_work-life_balance.pdf

- As a means to tackle the underrepresentation of women on the labour market, the Commission's initiative is a wrong approach. **The chosen policy options will effectively result in an increase of leave opportunities for both women and men across the board, with which companies, especially small businesses, will be confronted.** The accumulation of leaves, made even easier with proposals increasing the age limit of the child, will take people away from the labour market. UEAPME deplores the lack of attention for the different impact of the combined legislative proposals in the Member States.
- Given the questionable impact of the proposed combined leaves in the Member States on the various objectives, UEAPME regrets that the Commission has opted for such a far-reaching proposal that leaves no room for nuanced approaches in the Member States, or a well-balanced step-by-step approach enabling to assess the impact gradually. UEAPME believes that the Commission's purpose of providing flexibility is one-sided in the proposal. It does not respond to the need for flexibility for the employer, in particular that of a small business. In fact, in some cases the proposal will even restrict the free choice of individuals.
- UEAPME is overall critical of the Commission's decision for legislative proposals that go far beyond the balanced minimum standards of the Parental Leave Directive 2010/18/EU, which was based on the framework agreement of the European social partners on parental leave, dating back from 1995 and revised in 2009.
- In particular, **the financial component of leave arrangements is and should remain the strict competence of Member States and/or social partners.** In prescribing the level of payment for paternity, parental and carers' leave at the level of sick leave arrangements, the Commission oversteps its competences and does not respect the subsidiarity principle. The proposed levels of payment for the different leave arrangements imply huge additional direct or indirect costs for small businesses.

II. Costs for small businesses

- UEAPME strongly disapproves of and warns against the financial and practical costs to be born by both national budgets and SMEs stemming from the Commission proposal. UEAPME regrets in particular the low quality of the analysis on the impact for small businesses. **The Impact Assessment draws too general conclusions. It ignores the combined impact of the different leave and flexible working arrangements in small companies. Finally, it highly underestimates the risks of additional costs and loss of competitiveness which will be the end result.** Furthermore the financial component of leave arrangements is a strict competence of Member States and the social partners.
- With regard to the financial impact, especially on the short and medium term, **the direct financial costs of the various legislative proposals for small businesses are substantial and will harm their competitiveness.** Whether the payment is tax-based or financed through social security contributions, employers face a substantial increase in labour costs in particular through the proposals concerning parental leave. This relative cost is not proportionate and will be higher in small and micro companies due to the limited number of staff, which has been largely underestimated by the Commission. Increasing non-wage labour costs will have a negative effect on the employer's ability to employ additional staff.

- Also, the Commission's Impact Assessment does not distinguish sufficiently between short-term and long-term costs. The short-term costs are very high as in fact recognised by the Commission, but for small businesses this can already make a serious difference. **The Commission's broad impact assessment calculates an overall positive balance between costs and benefits on the long term, but in small enterprises including in start-ups, particularly in a fast changing environment, the horizon of the business model is much shorter and in any case does not reach until 2055.**
- In addition, the figures used by the Commission leave unclear how the various proposals will be financed in the Member States. **UEAPME requests more clarity on the different scenarios used for calculation of the costs of leave arrangements in the different Member States.**
- Crucially, in addition to the direct financial costs, there are **many other impacts of the current proposal that have hardly been assessed by the Commission.** The combination of the leave arrangements are potentially highly detrimental for many small and micro-businesses. They will create serious disruption of work organisation, resulting either in a reduction of activities, or more burdens on other employees or even the business owner, who will need to assess their own work-life balance. . It will result in a negative impact on competitiveness, an increase of administrative burdens for small and micro-business owners and new obstacles to employment and job creation.
- Small employers do not have staff reserves that can be used in a flexible way, especially if the employee (man or woman) taking leave is someone with specific professional skills. A small business, where a few employees simultaneously take leaves and without the financial and practical capacity to hire substitutes, will not only face a temporary loss of production, but at the same time will not be able to take any new orders, thereby risking loss of competitiveness³.
- Such financial and competitiveness impact, even if it is difficult to measure financially, is detrimental for small businesses and not at all taken into account by the Commission. Moreover, it seriously increases the risks when starting a business, and hence further increases obstacles for entrepreneurship, innovation and job creation. **Employing two-thirds of the European workforce, such legislative proposals, discouraging employment and job creation in SMEs should be rejected.**
- **The general and average figures in the Impact Assessment ignore the above depicted reality of small businesses.** Even more, in several cases it states that the policy options do not disproportionately affect the performance of SMEs without justification. Such statements, for instance in the case of the parental leave and the flexible working arrangement proposals, show serious disregard for the reality in small businesses and undermine the credibility of the Impact Assessment.

³ As opposed to the Impact Assessment's conclusion that "all options lead to a boost in competitiveness".

III. Multiple paid leaves will hamper the competitiveness of small businesses

1. Paternity Leave

- UEAPME considers that it is for the Member States to assess the most effective way to increase the participation of women on the labour market as well as to promote the equal participation of women and men in caring parental tasks. Introducing a paternity leave at European level is not considered appropriate.
- In combination with the other legislative elements in the proposal for a European directive on work-life balance, a paternity leave adds to the total of leave arrangements at the disposal of employees and causes burdens for enterprises.
- The proposed level of payment for any type of leave arrangement is not for the European level to decide. The competence of Member States and social partners in this regard needs to be respected. The payment at the level of sick leave will create substantial additional costs in several Member States and should therefore be rejected.

2. Parental Leave

- UEAPME regrets the Commission's proposal to repeal Directive 2010/18/EU which was based on an agreement of the European social partners. **The existing directive provides for solid minimum standards, allowing for Member States to design their own leave arrangements fitting the needs of workers and enterprises.**
- UEAPME opposes the one size fits all-approach taken by the Commission in its proposed number of months of parental leave. In reality, even if the total amount of months provided for is seemingly the same, it will result in an overall increase of possibilities for parents to take up leaves, which is **counterproductive of the Commission's objective of increasing female labour market participation**. In reality, many Member States will need to top-up the existing leave arrangements for men, rather than reduce those for women, which will not help.
- Even if the effect would be reached of reducing the total amounts of leave, it is not proven that the lower participation rate of women on the labour market is only due to the leave arrangements. In some Member States, the female employment rate is lower for women living in couples without children than for women living alone or women with children. It shows the importance of other factors than having children in decisions about participating on the labour market, and points to the need of balanced labour market incentives and focusing on combating gender segregation and change of mind-sets.

- The evidence used by the Commission is only based on simulations, not on solid data on the take-up of leave arrangements. Also, the country fiches only take into account formal leave arrangements in the Member States. However, in several Member States, additional arrangements exist to take up leave for caring purposes (e.g. Belgium's time credits, available for both parents). This adds once more to the existing leave arrangements and will in effect keep people away from the labour market. It proves once more the necessity to address the issue at Member State level according to their labour market configuration.
- The costs of the proposal to provide for four months of non-transferable parental leave for each parent, paid at the level of sick leave, are tremendous for national budgets and employers.
- **Once more, UEAPME strongly disagrees with the statement in the Impact Assessment that the policy options do not disproportionately affect the performance of SMEs.** First of all, whatever the cost, they are always relatively higher for small and micro-businesses as a share of turnover or current labour costs. Many small businesses have limited or insufficient financial capacity to substitute a person when taking parental leave. It is also worth noting that when one person in a small business goes on leave, the work comes down on others, including the employer, who will need to reflect on their own work-life balance.
- Secondly, the Commission's calculation of the cost on business over the period 2015-2055 ignores the difference between short-term and long-term costs which can already mean the end for individual businesses, and also completely ignores different types of businesses and sectors of the economy. **Aside from a 'loss of production', the long-term impact of absence of an employee with specific skills is entirely ignored.** Especially where work organisation depends on acquiring orders and not on steady consumer demand, or where the work depends on peaks in demand, there is a high risk of losses of profits and market shares.
- The right to take up parental leave up until the child reaches age 12 for both parents increases furthermore the uncertainty and difficulty in work planning. This poses new challenges for small businesses. The accumulation of leaves will be made even easier by increasing the age limit of the child. A parent of three children could take leaves for all of them at the same time, for a long period. This causes financial and administrative challenges for employers, problems for the work organisation, and a loss of skilled expertise for both employer and worker. **Fragmented leaves and one-sided flexibility means difficulties in organising work and hiring substitutes.**

3. Carers' leave

- Recognising the increasing importance of caring for relatives and dependents, especially in an ageing society, **UEAPME does not consider introducing a carers' leave at EU level the right approach.** It adds once again to the existing amount of leave arrangements at the disposal of employees, and also to many different leaves that already exist under different labels in most Member States. Even in the social partners' parental leave agreement, a 'force majeure' clause was already taken up providing for leave in particular circumstances. It is not the place for the European level to establish a specific carers' leave.
- Importantly, contrary to the Commission's objective of increasing the participation of women on the labour market, the proposed carers' leave will rather decrease this. Without prejudice, traditionally, women still tend to be the ones taking care of relatives and dependents. Therefore the majority of carers' leave will most likely be taken up by women.

- Instead of establishing legal rights, UEAPME prefers a non-legislative approach to improve the care infrastructure and facilitate the ability of workers to care for dependents. As in the case of child-care, Member States should invest in the development of support services, including the provision of accessible and affordable care facilities for elderly and others.
- UEAPME strongly opposes that the level of payment for carers' leave is defined at European level.

4. Flexible Working Arrangements: a key concern for small and micro-companies

- **UEAPME is against the proposal to establish a right to request Flexible Working Arrangements (FWA) where employers have the obligation to justify any refusal.** Such an unlimited right for flexible working arrangements until the age of 12 years of the child will create real disruptions in small and micro-businesses, and is not sufficiently justified. It is questionable whether children older than 8 would need constant supervision, and a mandatory approach allowing this is not feasible. Furthermore, it would increase the administrative burden of employers in small businesses and adds to the uncertainty and difficulty of business owners to plan the work. It will finally result in a loss of competitiveness in certain types of companies.
- When it comes to FWA, **UEAPME promotes voluntary arrangements at the workplace.** The employer and the employees, sharing the workplace in a small business, have a mutual interest in finding solutions that work on the ground, based on mutual understanding of the enterprises' and employees' needs.
- Relying strongly on their individual professional skills, the employer of a small business greatly values the well-being and possibility to respond to family needs of each employee. Indeed, as the Commission rightly analyses, FWA may lead to greater well-being in the company, reduced absenteeism, and reduced recruitment costs. However, the picture is very diverse. FWA for one employee also means added workload for the others or for the business owner him/herself, and the impact needs to be assessed on a case-by-case basis. Especially when it concerns specialised professional skills that cannot be missed, flexibility is required from both sides. This reality should be the determining factor for any decision to grant FWA.
- **The above depicted reality of the workplace requires voluntary arrangements based on mutual understanding enterprises' and workers' needs,** and not intervention by the EU Commission supported by a costs and benefit analysis based on average figures. For example, it is not adequate to compare the benefits that some companies will have as a result of this particular impact with the costs that many other companies will have in certain sectors, especially where work organisation depends on acquiring orders and not on steady consumer demand, or where the work depends on peaks in demand.
- It is also incorrect of the Commission to state that the policy options do not disproportionately affect the performance of SMEs, based only on calculation of the costs as a percentage of turnover, and the assumption that the employer still has a right to decline the request. In fact, this right implies also an increased administrative burden for the small business owner, as he/she will need to justify the refusal in writing. Also, it can create further discrimination between employees. Furthermore, assuming that the costs will be limited based on this right to refuse does not at all take into account the reality of the workplace, where the pressure to accept such requests will increase as a result of this right.

- Finally, UEAPME strongly rejects extending the right to request FWA for workers with children up to the age of 12 instead of 8. This adds strongly to the difficulty of planning the work in small businesses with just a few employees, and adds to the uncertainty for small business owners. **Fragmented leaves until a high age of the child, and one-sided, imposed flexibility, means difficulties in organising work and hiring substitutes.**

IV. Non-legislative initiatives

- **UEAPME considers the non-legislative measures and initiatives the most important part of any initiative at European level to improve** equality between men and women with regard to labour market opportunities and treatment at work, addressing the low participation of women in the labour market, and promoting a good balance between professional and private tasks and duties.
- As indicated above, UEAPME sees an important role for the European level to set targets and create benchmarks for the **improvement of care infrastructures**. In addition, it is important to assess how investments are made in the Member State for the development of support services and the provision of accessible and affordable care facilities. An important step would also be to assess and collect data to what extent existing financial support from the European Social Fund (ESF) and the European Regional Development Fund (ERDF) is used by Member States for the purpose of investing in care facilities.
- The European Fund for Strategic Investments (EFSI), finally, could also play an important role in stepping up the provision of care facilities in the Member States. **It is important to ensure that SMEs and micro-companies have sufficient access to available funding.**
- UEAPME sees also an important role for the European level to coordinate education and training policies between the Member States, and raise attention for the importance of tackling gender segregation in education and employment, both horizontal and vertical, from early education onwards. It is important to promote non-traditional career pathways to both women and men. Vocational Education and Training (VET) plays an important role in this respect, and cooperation between education and businesses at local and regional level can help in the promotion of certain career pathways.
- UEAPME welcomes the Commission's intentions on smoothening transitions between leaves and employment through mutual learning programmes. Concretely, with regard to provision of breastfeeding facilities at the workplace, UEAPME takes a cautious approach. The feasibility of such arrangements needs to be carefully assessed, in particular at the workplace of a small business.

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