

UEAPME¹ Reply to the second stage consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers

UEAPME takes note of the second stage social partners' consultation launched on 12 July 2016 by the European Commission and wishes to make the following comments.

Introduction

As indicated in the reply to the 1st stage consultation, 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.

The reconciliation of work and family life is an important issue to reach this objective and the existing EU legal framework shows that employers take it seriously, However the timing of the EC second stage consultation is not appropriate since it is interfering with the EU social partners agenda on promoting better reconciliation of work, private and family life and gender equality to reduce the gender pay gap. .

In the context of its global competitiveness and demographic developments, Europe cannot afford continuous women's under-representation in the labour market. Europe needs all its human capital, including the talents and skills of workers with children or other caring responsibilities. Leave arrangements combined with affordable childcare facilities and flexibility in working arrangements are the main pillars facilitating the reconciliation of work and family life. It is primarily up to Member States' responsibilities to introduce and develop effective policies and measures adjusted to their national labour market circumstances.

To repeat once more, in the Work Programme 2015-2017 of the European Social Partners, we have also clearly acknowledged that promoting better reconciliation of work, private and family life, and gender equality remains a challenge that needs to be addressed and that we will address together.

UEAPME's priorities to achieve these goals are

- Better understanding of the interaction between various leave policies within Member States;
- Development of support services;
- Provision of accessible and affordable care facilities;
- Education and professional career counselling;
- Tax and benefit (dis)incentives;
- Change of mind-set in the society and in particular of women and men notably when becoming parents

UEAPME's primary concern is that EU legislative action is the starting point for the Commission to address the complex issue of reconciliation of work and family life and participation of women on the labour market.

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

In the 1st stage consultation reply of UEAPME, we clearly indicated that any new European initiative should take into account the large diversity of national policies, tools and practices in this area and in particular avoid new European measures which would undermine the coherence of national policy frameworks on work-life balance. **In our view, the Commission has not sufficiently done so when presenting its list of possible actions.**

UEAPME is therefore critical of the consultation document:

- **UEAPME disagrees with the starting point of the Commission that the EU should take legislative action** to address a complex set of issues. Instead the Commission dedicated only one small paragraph to 'Possible avenues for EU non-legislative action'. UEAPME deems the main arguments for legislative action at EU level – level playing field and reduce inefficiencies in the EU labour market – insufficiently convincing to legitimise the legislative approach. All other reasons can be addressed at national level and the cultural aspects need to be given priority.
- In UEAPME's view, **the aim of increasing the participation of women on the labour market** cannot justify the creation of new legal rights for leaves. On the contrary, as explained in UEAPME's reply to the 1st phase consultation, in several Member States this has a rather adverse effect. In fact, the build-up of a multiplicity of leaves tends to further keep women away from the labour market. **Any measure to be taken should aim at facilitating a quick women return to the labour market and its impact should be thoroughly assessed in this view.**
- A stronger emphasis should be put **on support and guidance** for a quick and smooth return to work as well as tax and benefit systems.
- The **interaction between different forms of leave policies and flexible working arrangements** in the Member States is essential and should be better assessed. The complexity of national policy frameworks and the increasing blurring of different types of leaves are hardly compatible with legislation strictly distinguishing one right from another. Member States' policy frameworks are set in national labour market contexts and very often the result of arduous negotiations between social partners. Any new European initiative should avoid measures undermining the coherence of national policy frameworks.
- **The costs of introducing new rights for leaves are largely underestimated, especially with regard to SMEs and micro-enterprises.** These costs are not only for the short term as the consultation document indicates but are long lasting. Additional leaves will create new costs for employers, either directly – paying the salary of the employee on leave and those of the substitute employee – or indirectly through higher contributions to social insurance and other family benefits. It will also generate administrative burdens of adapting working arrangements for the organisation.
- As we are still facing high unemployment rates in most of the European countries, the Commission should avoid **creating more obstacles for companies to develop further and create jobs.** Complex and heavy employment legislation is among the main SME concerns with respect to hiring new employees.

Question 1: What are your views on the possible legislative avenues for EU action and the related parameters set out in section 5 of the document?

1. Maternity Leave

UEAPME believes that the current legislative framework for the protection of pregnant workers and workers who have recently given birth or are breastfeeding is sufficient. In view of the objective to increase female labour market participation, it is important to avoid disincentives for women for returning to the labour market. The current European duration of 14 weeks' maternity leave is sufficient.

With regard to protection from dismissal, UEAPME believes that current provisions are sufficient allowing Member States to prevent unfair dismissal and unequal treatment of pregnant workers. A prohibition of any preparatory steps for dismissal is unacceptable as it imposes the burden on employers to justify for all new hires that it does not concern replacement of a pregnant worker or one who recently gave birth.

Arrangements for breastfeeding mothers in relation to breaks and/or facilities for breastfeeding should be left at national level and possibly for approaches at company level. This is by no means an issue to be addressed at EU level.

2. Paternity Leave

UEAPME supports the objective of equal sharing of domestic tasks and of promoting the participation of men in childcare. At the same time, UEAPME considers that **the Parental Leave Directive gives sufficient leeway at national level for a better sharing of those responsibilities.** The introduction of a paternity leave different from the parental leave will not have a major impact on sharing of childcare responsibilities. Moreover, UEAPME disagrees that paternity leave can be planned well in advance. The exact date of birth and possible complications cannot be planned, rendering the time span in which the leave could be taken up uncertain.

As this concerns primarily an individual choice made by parents, **UEAPME does not consider legislation at EU level appropriate and objects to the costs inferred on employers if a paternity leave were to be introduced.**

3. Parental Leave

The Parental Leave Directive is a comprehensive piece of legislation covering a range of issues. UEAPME still believes that its **current design and content are flexible enough to be adapted at national level and allowing for the way it can be taken up.** This is already the practice in EU Member States.

Once more, UEAPME stresses that **too fragmented leave hampers the ability for small businesses to cope with an optimal organisation of the work process.** It should also remain easily workable for employers in order to be in the interest of both sides.

The level of allowance payable and the duration of payment should not infer high costs for Member States and employers. **In addition, investing in the provision of accessible and affordable childcare facilities is more efficient and greatly facilitates women's choice to return to work.**

Fathers should indeed be encouraged to participate more in domestic care tasks through a better share of parental leave. Payment of such leaves should be left to Member States and/or social partners.

4. Carers' Leave

Demographic change and age-related care challenges require indeed attention. However, UEAPME disagrees with **the introduction of a right for carers' leave at EU level**. As in other cases, leave arrangements need to be organised at company level, between employers and employees due to the impact on the work organisation especially in small companies. Moreover, UEAPME considers that the introduction of such a leave would create a new way for women to exit the labour market, as it is proven that women are more likely than men to take up such leaves. It would thus have an additional adverse effect on what the Commission acknowledges as a primary objective, namely to address the low participation of women in the labour market.

Member States should invest more in providing affordable elderly care facilities.

5. Flexible working arrangements

First of all it is crucial to stress that for any new pattern of flexible working time, agreement between employers and employees is necessary to take the needs of the company and individuals sufficiently into account.

It is important to draw attention to the fact that any kind of leave and flexible working arrangements infers at least administrative burdens, such as hiring substitutes and (re-)organising the work process, regardless of the possible additional financial costs. Especially in SMEs and micro-companies this has a comparatively large impact, for instance due to specific knowledge of the employee or tasks assigned to her/him. **Voluntary agreements between employers and employees on reduction of working time or different patterns of work are much more adequate and rather common in small enterprises.** For Crafts and SMEs, determination of the location and the amount of the working time is a key element in the planning capacity of the employer. UEAPME cannot support legal measures allowing for an absolute right for unilateral change of working time and obliging employers to grant leaves without any discretion.

Question 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 the document under Article 155 TFEU?

As already explained in the introduction, the UEAPME priority is to implement the European social partners work programme on reconciliation of work, private and family life. It will start with the organisation of a fact finding seminar. The final aim is to agree on joint conclusions, which could include guidance and other follow-up initiatives and, where appropriate, recommendations to public authorities.

Against this background, UEAPME does not see the need to enter negotiations and conclude an agreement under Article 155 TFEU at this stage.

30.09.16