

Opinion of the German Association for Public and Private Welfare regarding the proposal for a Directive on work-life balance for parents and carers

The opinion (DV 08/17) was adopted by the Executive Committee of the German Association for Public and Private Welfare on 12 September 2017.

**Deutscher Verein für öffentliche und private Fürsorge e.V.
(German Association for Public and Private Welfare) – the forum
for the social sector since 1880.**

The German Association for Public and Private Welfare (Deutscher Verein für öffentliche und private Fürsorge e.V.) is the joint forum of municipalities and non-statutory social welfare organisations and their social services in Germany, the Länder (federal states) and academia in all fields of social work and social policy. Through its experience and expertise, it monitors and shapes policy and legislation in relation to children, young people and families, the social insurance system, social assistance, assistance for the elderly, care and rehabilitation, social volunteering, the planning and management of social work and social services as well as international and European social policy and social legislation.



Deutscher Verein
für öffentliche
und private Fürsorge e.V.

Inhalt

1. Preliminary note	3
2. Legal basis	3
3. The terms “parental leave”, “caregiving leave” and “paternity leave”	4
4. Parental leave, Art. 5 DD	4
4.1 Duration of parental leave and transferability of parental monthly entitlement	4
4.2 Extension of entitlement up until the age of 12	5
4.3 Amount of adequate income, Art. 8 DD	7
5. Caregiving leave, Art. 6 DD	7
6. Paternity leave, Art. 4 DD	8

1. Preliminary note

This initiative¹ by the European Commission aims to reduce the under-representation of women in the labour market. The difference between the employment rates of men and women aged between 20 and 64 throughout the whole of Europe was almost 12 % in 2015 (men: 75.9 %, women: 64.3 %). It was almost 18 % when based on full-time positions. The European Commission believes the main cause of this difference is the unequal distribution of childcare duties and caring responsibilities between men and women within the family. Its proposed Directive therefore aims to provide incentives for men to take time off work or reduce their working hours to the same extent as women for the purpose of caring for children or caring for a relative. The opinion of the German Association for Public and Private Welfare is limited to the draft Directive (DD).

The opinion of the German Association for Public and Private Welfare is addressed to the European Council, the European Parliament and the Federal Government with regard to its actions in the Council.

2. Legal basis

There are already a number of principles of non-discrimination at EU level with regard to remuneration, access to employment and occupational pension schemes, along with minimum standards for part-time work and parental leave which ensure the equal treatment of men and women in the workplace and aim to reduce the gender pay gap and gender pension gap². However, the evaluation of Europe-wide regulations showed that the right to take time off work following the birth/adoption of a child³ in particular has rarely been utilised to date. In a large majority of cases, the fathers also transferred their portion of entitlement to time off work to the mothers. A consultation undertaken in 2016 by the European Commission clearly demonstrated the fact that the causes for the under-representation of women in the labour market and their poorer professional development opportunities can predominantly be seen in the lack of sufficient options for individuals to take time off work and lack of genuine incentives for such entitlement to be utilised equally by men and women⁴. Given that the EU has yet to succeed in significantly increasing the employment of women, the European Commission wishes to create the stimulus for improved work-life balance within the framework of its competencies by way of a separate measure.

In accordance with Art. 153 para. 1 i) in conjunction with para. 2 b) sentence 1 of the Treaty on the Functioning of the European Union (TFEU), the European

Your Deutscher Verein
contact is:
Cornelia Markowski.

1 European Commission, Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM(2017) 253 final dated 26/04/2017 as well as European Commission "An initiative to support work-life balance for working parents and carers", COM(2017) 252 final dated 26/04/2017; EU Commission, Impact Assessment, SWD(2017) 202 final dated 26/04/2017; EU Commission: Executive summary of the impact assessment, SWD(2017) 203 final dated 26/04/2017.

2 European Commission, Draft Directive on work-life balance, Chap. 3 of the Explanatory Memorandum

3 The currently applicable EU provisions regarding parental leave from 2010 stipulate that each parent may take at least four months unpaid time off work from the date of birth or adoption of a child until the child in question reaches the age of eight, whereby up to three months of said entitlement may be transferred to the other parent.

4 EU Commission, Report on the public consultation, SWD(2017) 206 final dated 26/04/2017, p. 31

Commission may propose minimum requirements for the improvement of equality between men and women with regard to labour market opportunities and treatment at work. The German Association believes that the combination of a proposed Directive containing provisions regarding time off work and working arrangements and a non-legislative communication on the development of the childcare and care infrastructure, the opening up of EU funds and link to the "European Semester" is a good approach in order to protect the principle of subsidiarity. It supports the idea of improving the conditions for the pursuit of employment and the exercising of family responsibilities for men and women. As part of the public consultation in advance of the EU's work-life balance package in 2016, the German Association has already stated that it considers there to be a need for European guidelines to improve the implementation of work-life balance, combined with the promotion of dialogue regarding good practical experiences. However it rejects monitoring within the "European Semester"⁵.

3. The terms "parental leave", "caregiving leave" and "paternity leave"

In the German translation of the proposed Directive, the various periods of time off are translated as "Urlaub". The German Association for Public and Private Welfare believes this term is neither appropriate nor up-to-date. The term "Urlaub", when used in an employment law context in Germany, refers to an employee's entitlement to time off work for recreational, recuperation or professional employee development purposes (holiday leave). If an employee takes time off as a result of childcare duties and caring responsibilities within the family, this is now referred to as "Elternzeit" and "Pflegezeit" (time off work). The German Association suggests using the terms "Elternzeit", "Pflegezeit" und "Vaterschaftszeit" in the official German translation of the EU legal texts. The Federal legislature shall at the very least be required to use these terms as regards implementation of the Directive.

4. Parental leave, Art. 5 DD

4.1 Duration of parental leave and transferability of parental monthly entitlement

A comprehensive and well-proven system of family and gender equality policy-related benefits for families with one or more children has been established in Germany over recent decades⁶. In bearing these achievements in mind, the German Association considers the proposed minimum parental leave of eight

⁵ See contribution by the German Association for Public and Private Welfare to the consultation dated 09/02/2016 at: https://www.deutscher-verein.de/de/uploads/hauptnavigation/stab-internationales/pdf/konsultationsbeitrag_possible-action-to-address-the-challenges-work-life-balance.pdf

⁶ In order to benefit families with children (both in employment as well as outside of work), monetary benefits were expanded, child day care services were developed, a legal entitlement to childcare from the age of 13 months was introduced, and the tax deductibility of household-related services and childcare costs as well as the recognition of times of child-raising in the pension were improved in Germany.



months in total with adequate income according to Art. 5 para. 1 in conjunction with Art. 8 DD to be insufficient. This also applies in view of the fact that, in accordance with EU law, parental leave follows on from the maternity leave (eight weeks), with the latter being offset against parental leave (“Elternzeit”), as is the case in Germany. Parents may request time off work for the first three years after their child is born (“Elternzeit”). Entitlement to parental benefits shall run in parallel for the first year or for the first 14 months of the child’s life so that the parents are able to compensate for their loss of income (Baselsterngeld)⁷. Such benefits are income-dependent compensation for reduced income. Single parent families are given equal status. Should a European regulation be created that would effectively allow both parents to return to work before the end of the first twelve or 14 months of their child’s life, this would create a gap that cannot be regarded as desirable in terms of modernising the provisions in place for work-life balance in favour of parents. In addition, the infrastructure for the provision of care services for children under the age of one would need to be expanded at a significant cost in order to be able to cater for the resulting demand for childcare facilities, both from a quantitative as well as qualitative perspective. Given the backdrop of experiences in Germany regarding the expansion of the provision of care services for children in the last years, this is a challenge that must not be underestimated. The German Association therefore calls on the EU legislature to create an arrangement that will enable parents in Germany to take time off work with adequate income for at least the first twelve or 14 months of a child’s life. What this means within the logic of the EU framework is that a minimum total of ten or twelve months of parental leave (“Elternzeit”) with adequate income should follow on from eight weeks of maternity leave from the date of birth. The German Association suggests stipulating in the Directive the fact that Member States should take into account the circumstances of different family types when configuring their measures and benefits, including in particular the circumstances of single parent families.

From a gender equality policy-related perspective, the European Commission’s proposal to structure the parental leave (“Elternzeit”) for each parent in a non-transferable manner appears to be a good approach. However, the German Association notes that any excessively rigid arrangement would significantly restrict the freedom of families to establish a work-life balance in accordance with their specific needs. As a result, it is necessary to combine non-transferable and transferable months with adequate income with each other.

4.2 Extension of entitlement up until the age of 12

Generally speaking, the German Association welcomes the proposal by the European Commission for individuals to now be able to request paid time off work and flexible working arrangements (Art. 5 para. 1 DD and Art. 9 in conjunction with Art. 3f) DD) up until the age of at least twelve years old. It creates greater flexibility for working parents with school-age children, particularly due to the fact that the parental leave (“Elternzeit”) can also be requested in the form of

⁷ The entitlement period can be expanded by two “partner months”, including by way of sharing part-time work and childcare duties between partners (“Elterngeld Plus”).

flexible working arrangements (e.g. remote working possibilities, flexible working models or reduced working hours) at the end of full-time parental months for caring purposes. A change to the law would be required in such cases in Germany.

Even if Art. 9 DD merely aimed to grant employees the right to request and grant the employer the right to make the final decision, the German Association sees challenges here for employers that employ men and women with one or more children. There are increased staff organisation expenses as an employer has to take into account, where applicable, requests for reduced working hours, flexible working arrangements or remote working possibilities for an additional four years for each child of a particular employee. In addition, the impact of the proposal would be even more to the detriment of other workers within the company who are forced to “pick up” any work that is not completed as a result of an extended option for time off work or part-time work. Member States are asked to work together with employers to develop good rules and procedures, such as for the management of deputising staff or new personal use/ deployment models.

However, if the proposal by the European Commission to extend the right to request, as amended, is indeed adopted, the German Association also calls on the Federal legislature to implement the leeway offered by the Directive in a suitably responsible manner, taking into account the interests of all parties involved. This also applies to the right of Member States to be able to limit the timing of any part-time arrangements and other flexible working arrangements, as per Art. 9 para. 1 DD. It also applies to the obligation of Member States to determine themselves the fact that and indeed how parental leave (“Elternzeit”) can be requested on a part-time basis, in blocks, separated by periods of work or in other flexible forms, as per Art. 5 para. 6 DD.

The German Association welcomes the fact that the European Commission has also extended the options for flexible working arrangements to carers, as well as to include remote working possibilities. The use of electronic remote access and mobile devices within a working context makes it possible to work more flexibly both in terms of location as well as time, and also save transit time. This gain in terms of flexibility and time can be used in order to achieve a better everyday balance between professional requirements and family caring duties.

The European Commission proposes giving employees the right to return to the original working pattern at the end of the agreed period in the case of temporary agreements regarding flexible working arrangements, as per Art. 9 para. 3 DD. What is meant here is the same or an equivalent post without suffering any detriment in the terms and conditions as a result of the absence in question, see recital 22 DD. The new EU regulation would eliminate a regulatory gap in § 8 of the German Act on Part-Time Work and Fixed-Term Employment (Teilzeit- und Befristungsgesetz). The German Association welcomes the “right to return to work” as it helps to prevent long-term losses in family income and social security fund claims, particularly with regard to pension entitlements of caring parents or carers, insofar as the employees in question have already been able to increase their working hours again. However, it wishes to point out in this



context that implementation of the proposal is associated with additional burdens for employers.

4.3 Amount of adequate income, Art. 8 DD

The German Association for Public and Private Welfare welcomes the proposal for a “payment or an adequate allowance” in accordance with Art. 8 DD. If the new regulation failed to introduce minimum requirements for adequate income during any periods of time off work, it is highly likely there would be hardly any new positive impact on work-life balance. The EU Directive proposes structuring the payment so that it is at least equivalent to what would be received in case of sick leave. In Germany, this ought to refer to sick pay (Krankengeld). It totals 70 % of the most recent gross monthly earnings⁸. In the case of higher incomes in Germany, the European proposal would actually entail an increase in parental benefits as there is no cap, which is not the case for parental benefits – here the limit is set to 1800 euros per month under German law. Given that it is a tax-funded benefit, the German Association requests that provision is made in the EU Directive for Member States to be able to retain or introduce a capping limit for higher or high incomes.

However, with regard to claimants whose entitlement to parental benefits had previously been below the capping limit applicable in Germany, the benefits in question would be lower in future as German sick pay is indeed currently several percentage points higher than parental benefits, but would be reduced by the employee's contribution to the statutory social security scheme prior to the benefits being paid out. The German Association stresses the need to avoid any reduction in such claims in Germany as a result of the new regulation at EU level.

In order to ensure equal treatment of all employees, the German Association proposes incorporating a particular regulation in the Directive for employees who are unable to demonstrate a recognised calculation period for their most recent monthly earnings prior to going on parental leave (“Elternzeit”). The aim of this is to ensure they also receive benefits that fulfil the requirements of Art. 8 DD.

5. Caregiving leave, Art. 6 DD

The German Association for Public and Private Welfare supports the form of time off work in acute care situations, as well as the extension to include any severe illness suffered by a relative. The proposed EU regulation goes further in individual cases than German law regarding time off work as a result of a short-term loss of working capacity (§ 2 Pflegezeitgesetz [Home Care Leave Act]) as any such time off work could be claimed several times over a number of years for the same relative in need of care or severely ill relative. It therefore requests

⁸ § 47 of Volume V of the Social Insurance Code (Sozialgesetzbuch V); the upper limit is max. 90 % of the most recent net earnings and max. 3045 EUR per month as it is only credited up to the income threshold.

that any such time off work is to be kept clearly limited to acute cases where benefits become due so as to satisfy the interests of employers.

The German Association also welcomes the EU Commission's approach for a broad definition of "carers" in Art. 3 c) DD. However, it suggests expanding the definition of group of relatives with regard to Home Care Leave Act. In accordance with § 7 para. 3 of the Pflegezeitgesetz, grandparents, parents-in-law, spouses of siblings and siblings of spouses, life partners of siblings and siblings of life partners, adopted children or foster children, as well as children, adopted children or foster children of the spouse of life partner, sons and daughters-in-law and grandchildren are all entitled to caregiving leave ("Pflegezeit").

The German Association also welcomes the fact that any short-term caregiving leave ("Pflegezeit") should be linked to a payment or an adequate allowance according to Art. 8 DD. It provides a greater incentive for men to look after their relatives in need of care or severely ill relatives, to perform caring responsibilities within the partnership and to relieve their working partner or other (female) family members from their duties. In Germany, any losses in income occurring during this period are offset by way of a care allowance totalling 90 % of net earnings⁹. It is modelled on sick pay, and a change in the law would not be required to this extent.

6. Paternity leave, Art. 4 DD

Generally speaking, the German Association for Public and Private Welfare welcomes the proposal to grant fathers paid time off work on the occasion of the birth of their child so that they are able to support their partners as they start life as a family. It acknowledges the fact that the right to paternity leave ("Vaterschaftszeit") should be granted irrespective of marital or family status as defined in national law, and welcomes the fact that any losses in income should also be secured here by way of adequate income. However, it is unclear what the relationship is between the time off work and the paid parental leave ("Elternzeit") available to the father of a child from its date of birth (or adoption) for a period lasting several months, or whether it is restructured to follow maternity leave ("Mutterschutzfrist"). The German Association requests clarity in this matter and points out that maternity leave ("Mutterschutzfrist") is a gender-specific benefit for occupational safety and is not a family policy-related benefit.

⁹ § 44 a) para. 3 et seq. of Volume XI of the Social Insurance Code (Sozialgesetzbuch XI)

Legal notice

Published by:

Deutscher Verein für öffentliche und private Fürsorge e.V.

Michael Löher, Vorstand

Michaelkirchstr. 17/18

10179 Berlin

Germany

www.deutscher-verein.de

info@deutscher-verein.de