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AK Position Paper

Work-life balance for parents and carers

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Christoph Klein
Director

Executive Summary

The proposed directive aims to address women's under-representation in employment through improved conditions for reconciling their working and private duties. Employed parents are to be provided with greater choice in how to organise work and caring responsibilities. Particular attention is given to increasing the involvement of fathers, thus to a partnership-based division of childcare responsibilities. The BAK welcomes the initiative at the European level and the aims of the directive.

In the BAK's view, the European Commission, however, should ensure that its policy-making has a positive impact on solidarity-based financing of care in the Member States. In addition, the BAK wishes to highlight the need for the provision of sufficient high-standard and affordable childcare centres, especially for children under the age of three. We believe it is of critical importance for the European Commission to set an impetus in this matter, such as for instance with regard to the Barcelona objectives. Childcare and care infrastructure are key prerequisites for the labour market participation of both women and men.

Key points in the BAK's view:

- **Paternity leave:** The BAK welcomes the provision on paid paternity leave in the proposed directive. However, leave of ten working days on the occasion of the birth of a child is too short to achieve the aims set out in the proposal of increased paternal participation in caring responsibilities. The BAK believes that one month would be an appropriate timeframe.
- **Parental leave:** In general, the BAK welcomes the fact that each parent would be granted the individual right to a minimum period of paid parental leave of at least four months under the proposed directive, with the aim of increasing the incentives for men to participate in caring responsibilities. However, the BAK wishes to point out that the proposal does not take the situation of single parents into consideration. Furthermore, we firmly reject the right of the employer to postpone the granting of parental leave.
- **Flexible working arrangements:** In general, the BAK welcomes flexible working arrangements for parents (until their children reach at least their 11th birthday) and carers as well as the right to return to original working patterns. However, we criticize the right of the employer to refuse the worker's request.

The AK's position in detail

Article 3 (Definitions)

In practice, the distinction between a person with a "serious illness" and a person in need of care due to a "serious medical condition" is likely to cause problems and would have to be defined more precisely at the latest when transposed into national law. In the BAK's view, however, the question should already be clearly defined at an EU level.

We also wish to note that the terms used in the German version of the proposed directive for "paternity leave", "parental leave" and "carers' leave" ("Vaterschaftsurlaub", "Elternurlaub" and "Urlaub für pflegende Angehörige") are outdated. "Urlaub" ("holiday") serves the purpose of recreation, whereas the aforementioned forms of time off from work are focused on caring responsibilities. We therefore suggest replacing the term "Urlaub" with "Karenz" ("leave").

Article 4 (Paternity leave)

The BAK welcomes the entitlement to paid paternity leave (including same-sex couples). However, leave of ten working days is too short to achieve the aims set out in the proposed directive of increased participation of fathers in caring responsibilities. In our view, the period of paternity leave should be extended to one month.

Austria has not yet implemented universal entitlement to paternity leave at the legislative level. However, such an entitlement to leave of up to 28 days does exist in the public sector and is set out in a few collective agreements. All other workers must reach an agree-

ment on time off with their employer. In Austria, a flat-rate payment for fathers (the "family leave bonus") has recently been introduced for fathers (with children born from March 1, 2017). It is paid during family leave of 28 to 31 days that is taken within 91 days of the birth of the child. The level of the "family leave bonus" is EUR 22.60 per day (i.e. around EUR 700 in total). However, that payment is deducted from the childcare allowance (Kinderbetreuungsgeld) that is later granted to the father or – in the case of same-sex couples – to the second parent.

This provision under European law – which makes sense in the BAK's view – would require amendment of the Austrian Family Leave Act (Familienzeitbonusgesetz) with respect to the level of compensation provided, which would need to be at least at the level of sick pay. In addition, entitlement to leave needs to be enshrined in labour law, including protection against the termination of employment.

Article 5 (Parental leave)

In general, the BAK welcomes the fact that each parent would be granted the individual right to a paid parental leave of four months. It is also positive that the provisions of this directive would also be applicable to workers with a status similar to that of employees, who are insured as independent contractors (freie DienstnehmerInnen) under Section 4 (4) of the Austrian General Social Insurance Act (Allgemeines Sozialversicherungsgesetz).

The aim of this provision is to increase the involvement of fathers in childcare and to address women's under-representation in employment. This goal is welcomed by the BAK. The non-transferable parental leave is a possible way of achieving the desired aim by increasing the incentives for participation of fathers in caring responsibilities at the European level.

The Austrian Maternity Protection Act and the Austrian Paternity Leave Act enable parents to take parental leave until their child's second birthday. Under Austrian law, there is no individual right to at least four months of parental leave that is non-transferable and can be claimed at least until the child is twelve years old. If, for example, the mother makes use of her full entitlement to leave by the child's second birthday, the other parent has no statutory entitlement to parental leave. The right to four months of non-transferable paternity leave as set out in the proposed directive – in the interest of greater involvement of fathers in child raising – would also be new under Austrian law.

However, the BAK wishes to point out that the proposed directive does not take the situation of single parents into consideration. In the BAK's view, it must be ensured that such a provision does not lead to a worsening of conditions for workers in Austria.

In addition, under paragraph 5, employers would be able to postpone the granting of parental leave by a reasonable period of time on the grounds of a serious disruption of the good functioning of the given establishment (if this case is provided for in the particular Member State). That provision strongly counteracts the aim of the directive, namely that of work-life balance for

parents and carers. Only an enforceable entitlement, such as the one existing in Austrian law, allows parents to plan ahead in terms of childcare. The right of postponement is particularly problematic if no suitable childcare place is available. For the aforementioned reasons, the BAK firmly rejects the right of the employer to postpone the granting of parental leave.

We welcome the inclusion of the needs of adoptive parents, parents having a disability and parents with children with a disability or long-term illness. However, the provision needs to be more specific.

In our view, the Commission's proposal leaves too many questions open that need to be clarified by national law. At a time of greater mobility and cross-border partnerships, such differing provisions in the national law of the Member States are already leading to difficult questions of interpretation in practice.

Article 7 (Time off from work on grounds of force majeure)

The current formulation of the provision on time off from work on the grounds of force majeure gives the Member States too much leeway in terms of implementation and should therefore be defined more precisely.

Article 8 (Adequate income)

Under the proposed new directive, Member States shall ensure that workers exercising their rights to paternity leave (Article 4), parental leave (Article 5) or carers' leave (Article 6) will receive a payment or an adequate allowance at least equivalent to what the worker concerned would receive in the case of sick leave.

In Austria, payment provisions that cover periods of leave and time off for caring responsibilities have been institutionalised in the Austrian Childcare Act (Kinderbetreuungsgeldgesetz), the Austrian Leave Act (Urlaubsgesetz), the Austrian Parental Leave Bonus Act (Familienzeitbonusgesetz) and the Austrian Care Allowance Act (Bundespflegegeldgesetz). However, adjustments may be necessary to provide for the adequate allowance required under the proposed directive in all cases, which should be at least equivalent to the amount of sick pay.

In cross-border cases, despite having social insurance at the national level, the worker may receive no allowance if she/he takes care leave. This can be illustrated by the case of a worker who commutes across the border to Germany, but is resident in Austria. In the case of care leave, under German law the worker receives an allowance (in lieu of salary) through the health insurance fund of the relative requiring care. However, if that relative is located and insured in the Austrian health care system, the Austrian health insurance funds are not subject to any payment liability under Austrian law. German labour law, which only allows cross-border workers to take time off without earnings does not, therefore, provide the worker concerned with an adequate allowance as defined in this Article. A solution for these cases needs to be developed on the basis of European law and could be included in the proposed directive.

Another key topic, which is not covered by the proposed directive, is that of insurance coverage during the period of such leave. In the BAK's view, it is essential for that matter to be included in Article 8.

Article 9 (Flexible working arrangements)

Under the proposed directive, parents and carers would have the right to request flexible working arrangements (until the child is at least eleven years old). The BAK welcomes that initiative. It is of particular importance that workers have the right to return to their original working patterns after the end of (parental) part-time work. In the BAK's view, the right to return is important because part-time employment is continuing to rise, especially among women. Currently, some 950,000 women work part-time in Austria. That means the topic of part-time work affects almost half of all women employed. In many cases, part-time work does not allow the employee to make an independent living. Furthermore, long periods of part-time work have negative impacts on the worker's pension level. Therefore, many women are interested in working longer hours.

Unfortunately, however, the proposal leaves many questions open. Legal protection for the parents whose request is refused by the employer has not been clearly defined. The term "reasonable limitation" is too vague and requires interpretation.

In Austria, workers are entitled to parental part-time work at businesses with 21 or more employees, if the given worker has been employed by the business for three years or more. Besides, there is a right to change the distribution of working hours within the working week. These rights are applicable until the child's seventh birthday or until the child starts school at a later point. Until the child's fourth birthday, absolute protection against termination of employment and dismissal is provided. After that time, protection is provided against termination of employment due to part-

time work. Mothers and fathers may use their right to part time work at the same time. Employers do not have the right to refuse the request for parental part-time work. However, under certain circumstances, they may enforce other working hours through the courts.

At small businesses, parental part-time work can be agreed with the employer until the child's fourth birthday. If no agreement is reached with the employer, the employee may sue the employer to attain the employer's consent.

Under the proposed directive, parental part-time work would be possible for workers with children up to the age of at least twelve (but would be limited in duration under certain circumstances). However, enforcement and the possibilities of limitation still need to be specified in the proposed directive. The BAK is skeptical of the employer's right to refuse the worker's request.

Article 10 (Employment rights)

Article 10 (2) introduces important improvements from an Austrian perspective, since parents are entitled to benefit from any improvement in working conditions to which they would have been entitled during their absence. Accordingly, periods of parental leave are to be included without limitation in any entitlements that are dependent on length of employment. We consider that provision important, since the Gender Pay Gap increases as a result of leave periods.

Articles 11 and 12 (Non-discrimination, protection from dismissal and burden of proof)

The BAK welcomes the provision on non-discrimination, pursuant to which Member States shall take the necessary measures to prohibit less favourable treatment of workers on the grounds

that they have applied for, or have taken leave. In the BAK's view, that means that explicit non-discrimination provisions need to be enshrined in the Austrian Maternity Protection Act and in the Austrian Paternity Leave Act. In addition, provisions that explicitly provide for the protection of workers with a status similar to that of employees, who are insured under Section 4 (4) of the Austrian General Social Insurance Act (Allgemeines Sozialversicherungsgesetz) as independent contractors (freie DienstnehmerInnen), also need to be enshrined in law. The BAK explicitly welcomes that.

Articles 13 and 14 (Penalties and protection against adverse treatment or consequences)

A recent (non-representative) study conducted by the Vienna Chamber of Labour between September and December 2016 makes the problems that young parents – primarily women – face, visible (https://wien.arbeiterkammer.at/interessenvertretung/familie/Kind_da_Job_weg.html). Young parents most frequently turned to the legal advice department of the Vienna Chamber of Labour in connection with worsening of the working atmosphere or the working conditions at their workplace (in 40% of cases), followed by the assignment of worse duties (in 34 percent of cases). In around 22 percent of cases, the discrimination even resulted in the loss of the worker's job. In 19 percent of cases, it led to the loss of a managerial position.

In the BAK's view, the current legal protection against discrimination and negative consequences in connection with parenthood is insufficient. An extension of penalties, which must be effective, appropriate, have a deterrent effect and, above all, protect against discrimination and negative consequences, must be aimed for.

Should you have any further questions
please do not hesitate to contact

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