



## HOTREC position on Work-Life Balance Trilogue phase

HOTREC has very carefully followed the General approach reached by the Council and the vote of the European Parliament (EMPL committee) on a proposal for a Directive on Work-Life Balance (COM(2017) 253 final).

Overall, HOTREC considers that work-life balance and gender inequality in the labour market remain topics that deserve in-depth attention and need to be addressed.

Nevertheless, it is critical to mention that 90% of the 1.9 million companies constituting the hospitality sector are micro-sized enterprises. Therefore, the application of the Work-life Balance proposal in the hospitality sector e.g. redistribution of work; more administrative work with regard to processing applications, more trainings and financial costs; not to mention the problem of lack of skills in the sector<sup>1</sup>, shall have substantial impact on the sustainability of the industry.

With regard to financial costs, in countries where the leaves are fully or partial paid by the employers, employers will have to pay a double salary: to the person on leave and to the replacing person. In countries where the leaves are paid by the social security systems, employers will indirectly pay for the leaves. The extra financial burden constitutes a huge challenge for micro-enterprises which count with very low profit margins.

In view of the trilogue negotiations about to start, HOTREC would like to put forward its main priorities.

### PAYMENT OR ALLOWANCE

HOTREC fully supports the Council approach with regard to payment:

- **Payment or allowance to be defined by Member State and / or social partners**
- Paternity and Carers' leave: the right to an adequate allowance should be foreseen

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<sup>1</sup> While the average job vacancy rate is 1.7% in the EU, it reaches in the hospitality sector 3% in Belgium; 4% in Germany; 7% in Greece.

- Parental leave: for the two months non-transferable leave, the payment or allowance should be paid, at an adequate level, for a period of at least 1,5 months

#### Justification

- It should be up to each Member State to define the level of payment for the paternity, parental and carer's leave through the principle of subsidiarity.
- It shall be up to the decision-makers of each EU country to fix certain rules according to the economic and financial wealth of the country and of their companies;
- Countries where companies pay for the leaves, would need to pay a double salary: to the person on leave and to the replacement;
- It is also to take into account that it is more expensive to hire two part-time employees, rather than one-person full time, not to forget the lack of skilled workforce in our sector;
- In the countries where the leaves are paid by the governments, indirect taxes would need to be charged to the companies;
- 90% of the 1.9 million companies in the sector are micro-enterprises often with a low profit margin. Too important payments would undoubtedly impact the finances of micro and small enterprises and lead to a decrease in competitiveness, job creation and possible closure of businesses, while the hospitality sector is one of the very few which still creates tens of thousands of jobs every year.

## PARENTAL LEAVE

HOTREC supports the Council approach with regard to parental leave:

- **Two months cannot be transferred**

#### Justification:

- It should be up to the families to decide if they would like to transfer or not the months of leave to their partners;
  - In fact, there are countries where full transferability of the leave is the rule and, therefore, partners share the time of parental leave at their own convenience. If three or four months would become non-transferable, this would go against the free willingness of families.
- **Age:**
    - Member States to decide when the leave should be taken **or**
    - Eight years old as the recommended age until which parental leave should be granted

#### Justification:

- Subsidiarity should prevail on the matter;
- Eight years old is the recommendation agreed by social partners in Council Directive 2010/18/EC.

## CARER'S LEAVE

### ***Preferred option:***

HOTREC favors the Council approach on Carer's leave:

- Member States shall take the necessary measures to ensure that workers have the right to carer's leave, to be defined in national legislation or practice.

#### **Justification:**

- Subsidiarity should prevail. Taking into account the diversity of carer's leave at national level, this option seems the most reasonable one;
- Traditionally, it is a fact that women tend to be the ones taking care of the elderly or the sick people. We wonder if this Directive is the right place to legislate on the matter

### ***Second preferred option:***

Only in case there is no possible agreement between Council and Parliament on the preferred option, then HOTREC would propose that:

- The carer's leave should only be extended to family in first degree (son, daughter mother, father, spouse or partners in civil relationship);
- Medical proof should be provided (as agreed by the European Parliament).

#### **Justification:**

- To extend the leave to family at second degree could lead to abuses;
- Medical proof seems to be the correct instrument to prove the exact reason why the leave should be taken.

## FLEXIBLE WORKING ARRANGEMENTS

HOTREC supports the Council position:

- **Age:** these arrangements should be taken up to a given age (age recommended - until the child reaches 8 years old)

#### **Justification:**

Please see justification provided for parental leave.

## REVERSAL OF THE BURDEN OF PROOF

HOTREC is against the reversal of the burden of proof.

Nevertheless, and in view of reaching a compromise, HOTREC supports the outcome reached at the European Parliament:

- Art. 12 / 2: the employer may be requested to provide duly substantiated grounds for the dismissal for parental, paternity and carer's leave. Nevertheless, flexible working arrangements are left out of the scope;

### **Justification:**

- The European Commission states that similar provisions have already been introduced in EU legislation. Nevertheless, and to HOTREC's knowledge, similar provisions have only been introduced in the following pieces of legislation:
  - Directive 2006/54/EC (equal treatment of men and women)
  - Directive 2000/43/EC (equal treatment irrespective of racial or ethnic origin)
  - Directive 2007/78/EC (general equal treatment Directive)
- Nevertheless, the present proposal for Directive is not about fundamental rights;
- The Commission proposes that the worker can request the employer to provide duly substantiated grounds for the dismissal (art.12/2). The employer shall provide those grounds in writing. Usually, it is up to the employee to prove that he/she was dismissed without a good reason. In this case, the Commission proposal reverses the burden of proof and is aiming to ask employers to prove that they have dismissed the employee without a reason. This directly interferes with the national judicial systems concerning dismissal procedures and goes beyond general EU legislation, collective agreements and national legislation;
- Subsidiarity should prevail on this matter;
- It is to note that the legal basis of the proposal of Directive is art 153/1/i TFEU (equality between men and women with regard to labour market opportunities and treatment at work). Nevertheless, art 12/2 of the proposal foresees that employers shall provide written reasons for the dismissal, if the employee wishes so. This obligation falls on a different legal basis of the TFEU (art 153/1/d - protection of workers where their employment contract is terminated), which needs unanimity in the Council in order to be approved;
- The written reply constitutes another administrative burden for micro-entreprises and SMEs. HOTREC advocates for the deletion of this additional layer.

## DEFINITION OF WORKER

HOTREC supports the Council approach on the definition of worker: men and women, who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.

### **Justification:**

- Subsidiarity prevails – it should be left to Member States to decide on the definition of worker;
- Every country has a specific legislation on the topic. In some countries the definition of worker is provided by different court cases, whereas in other countries it depends on different collective agreements and different sectors;
- The self-employed should be clearly excluded from the scope of worker, as in this case there is no employment relationship, but a business relationship.

## SMEs AND MICRO-ENTREPRISES

HOTREC fully supports the approach of the European Parliament when providing some degree of flexibility for micro enterprises (MSNEs) and SMEs, namely:

- Recital 30 – general clause encouraging Member States to provide guidance and advice and to reduce administrative burden;
- Parental leave – reasonable period of notice should be provided to the employer;
- Flexible working arrangements – specificity and constraints of MSNEs and SMEs shall be considered. In more general terms, very positive that the serious disruption of the proper functioning of the establishment, or the serious or negative impact on the business could be reasons for a refusal or postponement of the leave;
- Any other references that provide flexibility to MSNEs and SMEs.

## REPLIES IN WRITING

HOTREC does not support the proposal from the European Parliament according to which the employer has the obligation to reply to all leave requests in writing.

HOTREC supports the Council approach, giving the employer flexibility to decide how the justification should be done (e.g. flexible working arrangement - an oral justification is possible).

### **Justification:**

- 90% of the 1.9 million companies in the hospitality sector are micro-enterprises;
- Many of them are family based;
- The obligation of providing a reply in writing is an additional bureaucratic step, which hinders small companies and might lead to a more formal environment inside companies.

## OTHER POINTS

HOTREC also supports the following points put forward by the European Parliament:

- **Child care and elderly facilities:** Recital 11- the need to invest and develop accessible, affordable and high quality child and elderly care facilities that allow carers to maintain an active professional life;
- **Pensions:** Recital 20 - Members States shall secure that the leave provided for in the Directive shall not affect the worker's pension entitlements during this whole period.

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