



HOTREC position on a Directive on Work-Life Balance

HOTREC takes note of the Commission proposal for a Directive on “Work-Life balance for parents and carers repealing Council Directive 2010/18/EU” – [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 to mention that the hospitality sector is currently facing skills shortages, despite the high level of unemployment in Europe¹. In particular, the leaves proposed by the European Commission and flexible working time arrangements, would risk, in that context, further deteriorating the situation, as employers will face two problems at once: skills shortage and the fact that the employees could be more often on leave, which could be potentially detrimental to the day-to-day operational management of small businesses, duly operating often on a daily basis and on a 24 hours schedule, notwithstanding the cost to replace the worker on leave.

Moreover, and as a general principle, HOTREC fully supports art. 16 – which states that Member States may introduce or maintain provisions that are more favourable to workers than those laid down in the Directive.

In concrete terms, HOTREC has the following concerns:

- **Hospitality in economic terms:** 91% of the companies on the hospitality sector are micro-enterprises. The sector provides 10 million jobs to the EU economy, from which up to 60% are held by women and up to 20% by people aged under 25 years. Hospitality is, therefore, inclusive, an entry door to the job market, a major contributor to youth employment and to the overall EU economy. The present proposal could demotivate the sector to recruit young people including women², as companies would be afraid of the consequences of the potential extra leaves to their businesses which costs would be detrimental to their competitiveness.
- **Social Dialogue:** HOTREC disagrees with the Commission’s approach of repealing Council Directive 2010/18/EU. The latter had been negotiated by employers (Business Europe and

¹ 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.

² Please see HOTREC comment on “Carers leave”.

UEAPME) and trade unions (ETUC) in 1995 and it has been re-negotiated in 2010. The employers had not received a request from the trade unions to revise the text. By repealing the agreement, the European Commission undermines the role of the Social Dialogue and brings a negative precedent to its history;

- **Subsidiarity:** HOTREC considers that the European Commission has to comply with the subsidiarity principle. The proposal is willing to level different leave options already in place at national level in some Member States and harmonise it at EU level. HOTREC is of the opinion that these options should remain a choice of Member States. A one-size fits all solution cannot prevail. Moreover, countries which already foresee these provisions, would need to change their own systems in order to comply with the new legislation – this would lead to red tape and more bureaucracy. In addition, it is to be noted that countries who do not foresee these leaves may already have other non-legislative incentives in order to promote work-life balance.³
- **Financial impact:** The impact assessment accompanying the Communication: “A new start to support work-life balance for parents and carers” has estimated that in the long-run (2015-2055) the total impact on companies will be € -172.7 billion.⁴ HOTREC would like to stress that it is difficult to predict the distant future. More importantly, the impact assessment does not make reference to short term costs. HOTREC considers that the new legislation would have a tremendous impact in the short term in the hospitality sector (as 91% of the companies are micro-enterprises). As a result, some companies might close down, as their annual profit margin would be drastically affected. The new legislation would also directly impact the performance of the companies, which would be inevitably translated into a loss of production, whereas processing applications, redistribution of work, replacement costs and more trainings shall be needed. Finally, the financial effect of the different leaves and flexible working hours in microenterprises is double as the employee in the customer service would need to be replaced with another employee. This situation would bring a very strong burden to the sector, which is still recovering from the crisis. If the leaves are paid by the employer, the latter will simply not be able to hire a replacement.
- **SMEs case:** Recital 30 states that: “This Directive should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. Member States are therefore invited to assess the impact of their transposition act on SMEs in order to ensure that SMEs are not disproportionately affected, with specific attention for micro-enterprises with regard to administrative burden”. HOTREC considers that the principal of recital 30 should be part of the articles in order to have legal force;
- **Public finance:** In several Member States, compensation during leaves, is paid via social security spending. Consequently, more leaves would lead to greater social spending. This could contribute to a situation where employers could be asked to pay for these indirect

³ For instance, Malta does not foresee these new leaves, but the government provides fiscal incentives to companies to reintegrate mothers in the labour market. On the other hand, countries such as Poland, foresee paid paternity leave, but fathers do not usually use it, due to cultural reasons.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0202&from=EN>

costs. At the same time, if taxes on labour market increase, employers will hire less. In some other Member States, it will be up to the employers to pay for the allowances corresponding to the leaves and flexible working time carried out by the employees. This will directly affect companies as, according to the proposal, the allowance should be at least equivalent to what the worker concerned would receive in case of sick leave.

- **Legal basis:** 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 approved⁵.
- **Objectives:** under “specific objectives”, the Commission proposal points out the reduction of absenteeism as an outcome of the reform. HOTREC is of the opinion that women’s absenteeism would increase, as women would use more the proposed carer’s leave and the extended right to parental leave (until the child has 12 years of age). Moreover, the longer the women stays out of the labour market, the bigger the gender pay gap will be. Consequently, HOTREC considers that the proposal would affect negatively women’s labour market opportunities and equal treatment at work;
- **Paternity leave** – Most Member States have paternity leave provisions in their legislation at national level⁶. HOTREC considers that this matter should be dealt either through national legislation or collective agreement provisions. Subsidiarity should prevail. It should also be considered that some Member States might have not foreseen the leave for cultural reasons or legal reasons⁷. Nevertheless, and considering that, as a basic principle, fathers should have the **possibility** of spending some days off when the child is born, HOTREC agrees with a **five days paternity leave** as a compromise solution.
- **Parental leave** - HOTREC considers there is no sufficient evidence that shows that extending the age limit from 8 to 12 years would contribute to achieving the aims set out in the proposal. Moreover, the EU should not level by the highest existent country standards. In addition, parents should have the right to choose to transfer or not the months of leave to their partner. Nevertheless, and in order to try to find a compromise, HOTREC would propose that the Directive foresees **two months non-transferable**.
- **Carer’s leave:**
 - HOTREC accepts to provide a minimum of **five days carer’s leave** to the employee, with the aim of trying to reach a compromise;

⁵ It is to be noted that HOTREC opposes the shift in the burden of proof in connection with a dismissal due to the use of paternity, parental, carers’ leave or flexible working arrangements – please see HOTREC position under the point “flexible working arrangements”

⁶ According with HOTREC’s research, 24 EU countries have paternity leave at national level.

⁷ For instance, in Germany, there is no need to introduce paternity leave, as the German Parental Allowance and Parental Leave Act (Bundeseltern-geld und Elternzeitgesetz – BEEG) is already in effect and entitles parents – both women and men to paid leave.

- HOTREC also considers that the definition of “relative” as stated in art. 3/d must remain unchanged. In this sense, carer’s leave should strictly apply to a worker’s son, daughter, mother, father, spouse or partners in civil partnership (...), otherwise abuses might occur.

Nevertheless, HOTREC has the following concerns:

- Abuses could damage the hospitality sector in terms of cost, replacement arrangements, administrative burdens and re-organisation of work. SMEs and microenterprises will find this proposal particularly challenging to cope with⁸;
 - The employee shall provide the exact reason to take the leave (e.g. medical certificate) - the expression: “Such right may be subject to appropriate substantiation of the medical condition of the worker’s relative”, must be clarified;
 - Traditionally, it is a fact that women tend to be the ones taking care of the elderly or the sick people. This could imply that employers in the hospitality sector could be less inclined to employ women, knowing in advance that the leave could be taken.
- **Flexible working arrangements:**
 - Flexible working arrangements (such as changes to working schedules, the possibility to request a temporary reduction in working hours, etc.) shall be agreed at company level between employer and employee to find the right balance as a result of the employers’ needs and strategic objectives, on a voluntary basis;
 - It is to be noted that the hospitality sector requests flexible working hour arrangements, due to its specific nature (e.g. hotels are open seven days a week, 24 hours a day).
 - Microenterprises (91% of the 1,8 million companies in the sector) would probably suffer the most with this proposal, as the re-organisation of the work, possible replacement arrangements and financial costs would need to be addressed⁹. Indeed the impact assessment recognises that the majority of the cost is driven by flexible working time arrangements¹⁰. A special scheme for micro-enterprises and SMEs should be set up at national level;
 - HOTREC questions the need in terms of proportionality to introduce in the legislation the protection of the employee from dismissal (art 12/1);
 - It is not proportionate that the burden of proof in this case is left to the employer (art.12/2);
 - The scope is too broad – the current Directive states that workers coming from their parental leave might request flexible working arrangements. The present proposal refers to workers with children up to twelve years old and carers in general;

⁸ Giving employees, especially SMEs and micro-enterprises, the opportunity to take leave for caring for their relatives, causes a shortage in hospitality industry. As this situation especially affects SMEs, in Germany, for instance, only when the employer employs more than 15/25 people, employees can ask for carers’ leave.

⁹ For most SMEs it is not easy to comply with a claim to reduce working time due to their small number of employees. In fact, the employer needs to hire another employee, which means higher administrative expenses. All in all, it is more expensive to hire two part-time-employees, rather than one person full time.

¹⁰ Page 10 of ([COM \(2017\)253 final](#)).

- The hospitality sector already offers the possibility to employees to uptake work on certain scheduled shifts, which might be an opportunity to help them reconcile family and working life balance.
- **Non-legislative measures** – HOTREC fully supports the non-legislative measures proposed by the Commission in its Communication to encourage work-life balance for working parents and carers ([COM\(2017\)252 final](#)), namely:
 - Support from Member States in providing high quality early childhood education and care;
 - Continue the transposition of EU legislation and ensuring better implementation;
 - EU funding;
 - Best practices sharing.

HOTREC also advocates that:

- **Facilities:** Member States should facilitate the provision of formal, quality and affordable care services for both children and/or elderly for a suitable number of hours for a working parent (Barcelona Objectives). It is also to note that, child care and / or elderly facilities should as well be available during the weekends and during the evenings (companies in the hospitality sector deliver service 24 hrs day /7 days week);
- **Incentives for SMEs and micro-enterprises:** the national authorities could provide fiscal and/or administrative incentives for SMEs to employ men & women who are long-term unemployed, for example, or who are in need of “flexible working time arrangements” in order to facilitate work-life balance with the final aim of boosting employment¹¹;
- **Digitalisation of services** should be further deployed, so that administrative formalities can be done online (e.g. parents would not be obliged to take a day-off to deliver or fill-in certain paper forms);
- **Private life** – respect of private life beyond hours of work should be preserved.

¹¹ For instance, in Malta working parents receive free childcare services and companies can claim up to Eur 50,000 in tax incentives if they provide childcare facilities for their employees.

HOTREC counter-proposals

Taking into account the feedback received from the European Parliament and the state of play of discussions at the Council, HOTREC, in an effort to reach a compromise, would propose the following changes to the Commission proposal:

Amendment 1	
Commission proposal	HOTREC counter-proposal
Art.4 – Paternity leave	
<p>1. Member States shall take the necessary measures to ensure that fathers have the right to take paternity leave of at least ten working days on the occasion of the birth of a child.</p>	<p>1. Member States shall take the necessary measures to ensure that fathers have the right to take paternity leave of at least ten five working days on the occasion of the birth of a child.</p>
Justification	
<ul style="list-style-type: none"> • Although subsidiarity should prevail, HOTREC considers that fathers shall have the opportunity to take some days off when the child is born; • Nevertheless, the possibility should not be a compulsory right; • Moreover, 10 days, as the Commission proposes, would have a huge impact in the reorganisation of work within the hospitality sector, as well as replacement costs and additional training requirements. It is to be taken into account that in the countries where it is up to the companies to pay for the leaves, the company needs to pay for two employees: to the person on leave and to the replacing person. In countries where leaves are paid by the social security systems, it might occur that taxes will be raised to be paid by the companies. For micro-entreprises employing less than 10 people, the extra costs and red tape will constitute a real burden. 	

Amendment 2	
Commission proposal	HOTREC counter-proposal
Art.5 – Parental leave	
<p>1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least twelve.</p>	<p>1. Member States shall take the necessary measures to ensure that workers have an individual right to parental leave of at least four months to be taken before the child reaches a given age which shall be at least least twelve up to the age of eight of the child.</p>

Justification

- There is no sufficient evidence that shows that extending the age limit from 8 to 12 years would contribute to achieving the aims set out in the proposal;
- Normally children need more attention from their parents when they are little;
- The employer might face a decrease in the predictability of work with regard to portable rights: when the employee signs a new contract with the employer, there is a possibility that the employee will have the right of parental leave until the child is 12 years old, without the employer knowing about it.

Amendment 3	
Commission proposal	HOTREC counter-proposal
Art.5 – Parental leave	
<p>2. Where Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that at least four months of parental leave cannot be transferred.</p>	<p>2. Where Member States allow one parent to transfer their parental leave entitlement to the other parent, they shall ensure that at least four two months of parental leave cannot be transferred.</p>
Justification	
<ul style="list-style-type: none"> • It should be up to the families to decide if they would like to transfer or not the months of leave to their partners; • The rule of 4 or 3 months non-transferable would be detrimental to the countries where transferability is the rule and where salaries between men and women are generally at the same level. 	

Amendment 4	
Commission proposal	HOTREC counter-proposal
Art.8 – Adequate income	
<p>In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4, 5 or 6 will receive a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of sick leave.</p>	<p>In accordance with national circumstances, such as national law, collective agreements and/or practice, and taking into account the powers delegated to social partners, Member States shall ensure that workers exercising the rights to leave referred to in Article 4, 5 or 6 will receive a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of subject to a separate ceiling set by each Member State.</p>

Justification

HOTREC strongly defends that it should be up to each Member State to define the payment for the paternity, parental and carer's leave. Subsidiarity should prevail in this matter, as the economic and financial robustness of a country and of their companies shall drive the decision-making. It is again to take into account that 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. Moreover, in the countries where the leaves are paid by the governments, indirect taxes would need to be charged to the companies. It is to consider that 91% of the 1.8 million companies in the sector are micro-entreprises with a very low profit margin. Unproportioned payments could 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.

HOTREC's message

HOTREC hopes that the EU institutions receive these counter-proposals as a sign of willingness and compromise from the side of the hospitality sector, and that they are able to take our amendments on board. Our proposals reflect the speciality of our sector and its 1.8 million enterprises, making it together with tourism the third socio-economic activity in Europe. Other options would increase unemployment and injury the sector's competitiveness.

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