



**European Committee  
of the Regions**

Commission for Citizenship, Governance,  
Institutional and External Affairs

**July 2017**

**CONSULTATION OF  
THE SUBSIDIARITY EXPERT GROUP AND  
RELEVANT DECISIONS OF NATIONAL AND REGIONAL PARLIAMENTS**

**ON**

**SUBSIDIARITY AND PROPORTIONALITY RELATED ASPECTS  
OF  
THE PROPOSAL FOR A DIRECTIVE ON WORK-LIFE BALANCE FOR PARENTS AND  
CARERS**

**SYNTHESIS AND ANALYSIS**

**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**

**Disclaimer:**

*This document does not seek to reproduce all the contributions to the consultation and the decisions of national/regional parliaments, but rather to synthesise the main points. It is not binding on the Committee of the Regions and does not prejudice the final content of its relevant opinion/s.*

## 1. Introduction/background

The legislative proposal on work-life balance for parents and carers was included in the **CoR Subsidiarity Work Programme 2017**.

Therefore, the **Subsidiarity Expert Group**<sup>1</sup> was asked to contribute to the subsidiarity and proportionality analysis of relevant aspects of the proposals. The consultation ran from 20 June 2017 to 7 July 2017 and received a one contribution from a British respondent. The report at hand is synthesis and analysis of the contribution to consultation and the contributions by national parliaments and regional parliaments.

The Early Warning System (EWS) deadline is 28 June 2017. Four reasoned opinions of national parliaments/chambers thereof have yet been published on IPEX<sup>2</sup>: Polish Senate, Polish Sejm, Dutch Senate and Dutch House of Representatives concluded that the proposal did not comply with the subsidiarity principle. Italian Senate and Romanian Chamber of Deputies have sent their contributions in the framework of political dialogue; both have not raised any issues of subsidiarity or proportionality. The third contribution in the framework of the political dialogue was submitted by the Danish Parliament, where the majority believed that the extension of existing rights must be adopted on the basis of an agreement between the parties in the Member State; they emphasized a role of social partners in this area as well. The Joint Committee for EU Affairs of Spanish Parliament, then, adopted a Resolution attesting the compliance with the principle of subsidiarity.

Four positions have been submitted on REGPEX<sup>3</sup>, two of them – by the Legislative Assembly of Emilia-Romagna and by the Legislative Assembly of Marche – attesting to compliance with subsidiarity and proportionality principles and two others, a position by the Upper Austria Parliament and a joint position by the Austrian regional governments, raising subsidiarity and proportionality issues.

The following report and any additional information will be forwarded to **Ms Nathalie Sarrabezolles (FR/PES)**, rapporteur of the relevant CoR opinion, for him to take into account for the drafting of her opinion, particularly for the **assessment of compliance with the principles of subsidiarity and proportionality**.

Rule 55.2 of the Rules of Procedure of the CoR specifies the following:

*"Committee opinions on proposals for legislative acts in areas not falling within the Union's exclusive field of competence shall express a view on the proposal's compliance with the principles of subsidiarity and proportionality."*

Consequently, the draft opinion will have to contain such an assessment.

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<sup>1</sup> The CoR Subsidiarity Expert Group currently includes 13 members from institutions that are members of the Subsidiarity Monitoring Network.

<sup>2</sup> <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20170253.do>

<sup>3</sup> <http://portal.cor.europa.eu/subsidiarity/Pages/documentdetails.aspx?docnum=253&docyear=2017&docpart=COM>

## 2. Synthesis and analysis of contributions and parliamentary decisions

### 2.1 Legal basis

The provisions in the proposal for the directive are based on Article 153 of the Treaty on the Functioning of the European Union (TFEU). Social policy is an area in which competences are shared between the European Union and the Member States and the **subsidiarity principle** applies for legislative EU action in this field. Article 153(2)(b) TFEU establishes that "(T)o this end, the European Parliament and the Council: (...) (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Article 153 empowers the European Parliament and the Council to adopt minimum requirements in the field of equality between men and women with regard to labour market opportunities and treatment at work.

The Parliament of Upper Austria submitted a position on REGPEX, stating that the proposal contains detailed provisions which go beyond the minimum requirements, thus beyond the legal basis. Art.4 in combination with Art.8 is considered as problematic, as according to provision in Art. 8 "*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*". This provision is quite detailed and would impose a burden on State and businesses. Provisions of Art.5 in combination with Art.8 would clash with the Austrian law granting for a parental leave up to twelve months thus, longer than proposed four months, but payed less than "the worker concerned would receive in case of sick leave". Furthermore, as problematic and going beyond coordination and support to MS is deemed to be a provision of Art. 7 providing for a "right to time off from work on grounds of force majeure". The provisions in Art.12 on protection from dismissal and burden of proof for the employers is also considered as going beyond the minimum requirements.

According to the respondent to consultation, Article 153 does not fully correspond to the content of the proposal as the Commission intends to raise, not just to complement, social standards across the EU.

#### SUGGESTION FOR THE DRAFT OPINION

The rapporteur might wish to comment on the relation between the competence given by the legal basis and the measures proposed.

### 2.2 Subsidiarity<sup>4</sup>

Regarding the formal aspects of subsidiarity, the legislative proposal contains a justification in the respective exploratory memorandum. The Commission states that "*existing legislative measures are not sufficient to address the challenges of combining properly work and family obligations in today's economic and social environments and ensuring equality between men and women with regard to labour market opportunities and treatment at work*" and that "*the modernisation of the existing legal*

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Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

*framework aiming at providing common minimum standards for work-life balance policies can only be achieved by EU-level action rather than by the individual Member States alone". The Commission emphasises that only EU level action would ensure common minimum standards which "are particularly relevant in the context of free movement of workers and the freedom of providing services in the EU Internal Market".*

In their reasoned opinions, the national parliaments stated that the Commission had not sufficiently justified the assertion that the objectives of the proposed directive could be better achieved at EU level (Polish Sejm), and that the proposed measures would excessively interfere with the legal system of Member States without taking into account national legislation and solutions that aimed to achieve the same purpose, thus interfering with the private and family life of citizens (Polish Senate). The Dutch Senate stated that the proposal did not refer to a transnational problem or an issue that could not be resolved by Member States (Dutch Senate); neither the Dutch House of Representatives nor the Dutch Senate could see a clear benefit to standardising regulations on work-life balance across Member States, as these were primarily a matter of private choice and (where necessary) national policy. Both criteria of the subsidiarity test – necessity and added value of EU action – were therefore called into question by the national parliaments.

Two positions submitted on REGPEX raise subsidiarity issues. The Parliament of Upper Austria is of the opinion that existing national measures and arrangements in place are sufficient to achieve the intended objectives and that the proposed measures are not necessary. A joint position submitted by the Austrian regional governments also highlights that national measures are sufficient to achieve the intended objectives.

Two further positions – by the the Legislative Assembly of Emilia-Romagna and Legislative Assembly of Marche attest to compliance with the subsidiarity principle. The Legislative Assembly of Emilia-Romagna welcomes the aim of the proposal to achieve work-life balance and ensure equality between men and women with regard to labour market opportunities and treatment at work noting that to make these measures effective it is essential to them to be accompanied by policies aimed at promoting cultural change in the entire society. Legislative Assembly of Marche also welcomes the proposed measures and suggests to promote measures in support of the so - called "conciliation culture" also within the framework of the secondary education programs in order to raise the awareness of young people.

According to the respondent to consultation, the Commission suggests in the Proposal to introduce new legal rights that stipulate pay for those entitled to the mentioned leave, where the Commission has no competence (principle of Conferral). It appears that the attempt at U level to set a minimum sick pay level goes beyond minimum requirements and thus could be considered as a breach of the subsidiarity principle.

#### **SUGGESTION FOR THE DRAFT OPINION**

The rapporteur might wish to highlight the need to better justify the proposed measures in terms of subsidiarity.

### 2.3 Proportionality<sup>5</sup>

Regarding the formal aspects of proportionality, the proposal contains a justification concerning the suitability and appropriateness of EU action in the respective exploratory memorandum. The Polish Senate and the Polish Sejm have pointed out that justification lacks a detailed statement allowing to appraise compliance with subsidiarity and in particular with proportionality principle. The proposed measures are considered as exceeding what is necessary to achieve the objectives and does not respect sufficiently national legislation and established national arrangements. The Polish Senate pointed out that proposed measures might entail high costs for national budget and employers.

The rapporteur might want to explore if the measures proposed do not impose any disproportionate cost to local and regional authorities.

In the Explanatory Memorandum, the Commission provides the following justification in terms of proportionality:

*"Union action leaves as much scope for individual and national decisions as possible, whilst still achieving the objectives of increasing female labour market participation and gender equality. The principle of proportionality is observed considering the size and nature of identified problems"*.

The Polish Senate and the Polish Sejm have pointed out that the justification lacks a detailed statement enabling compliance with proportionality principle to be assessed. The proposed measures are deemed to exceed that which is necessary to achieve the objectives and do not sufficiently respect national legislation and established national arrangements. The Polish Senate observed that the proposed measures might entail high costs for national budget and employers.

Two positions submitted on REGPEX – by the Parliament of Upper Austria and a joint position submitted by the Austrian regional governments – raise proportionality issues and point in particular that the measures proposed would limit the room for national decision in order to achieve the intended objectives and even limit individual choices. The proposed measures are considered being beyond what is necessary to achieve the intended objectives. Furthermore, according to a joint position submitted by the Austrian regional governments, it can not be excluded that implementing of the proposed measures would entail financial and administrative costs for SMEs and LRAs.

Two other positions – by the the Legislative Assembly of Emilia-Romagna and by the Legislative Assembly of Marche – have not raised any issue with regard to proportionality.

According to the respondent to consultation, concerning proportionality a priority should be given to better and correct implementation of existing legislation, supplemented by non-legislative means such as sharing of best practice, capacity-building measures, guidance for all levels of government and awareness-raising actions than going through a legislative route.

Research indicates that implementation and enforcement of existing social legislation is uneven across

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The proportionality principle (Article 5.4 TEU) stipulates that the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties, i. e. the means proposed by the EU must be suitable and appropriate.

Member States. Fundamentally, the respondent advocates for objectives to be designed and developed in partnership with local and regional government and its partners.

#### SUGGESTION FOR THE DRAFT OPINION

The rapporteur may wish to explore whether non legislative means would be more appropriate and effective than legislative ones, and also whether the measures proposed impose a disproportionate cost upon local and regional authorities. The proposal might also be discussed in light of the Commission's commitment to Better Regulation.

### **3. Additional information**

For the obligatory assessment of compliance with the principles of subsidiarity and proportionality in the draft opinion - as required by the rule 55.2 of the RoP - , the rapporteur might wish to refer to the arguments highlighted above.

The Subsidiarity team (in the CIVEX commission secretariat) is at the disposal of the rapporteur in case of any inquiries and can be contacted via email at [subsidiarity@cor.europa.eu](mailto:subsidiarity@cor.europa.eu) .