



30.6.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Senate of the Republic of Poland on the 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)0253 – C8-0137/2017 – 2017/0085(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Senate of the Republic of Poland has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

OPINION**OF THE SENATE OF THE REPUBLIC OF POLAND**

of 22 June 2017

on non-compliance with the subsidiarity principle of the 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

Having considered the proposal for a regulation 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, the Senate of the Republic of Poland finds that it does not comply with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union (TEU).

The Senate of the Republic of Poland stresses that the aims of the proposed directive, namely providing a better work-life balance for parents and carers and aspiring towards equal treatment and equal opportunities for men and women in the labour market, are to be supported.

At the same time, the Senate considers that the Commission is unnecessarily encroaching into the legal systems of the Member States by imposing specific rules without taking into account the fact that systemic national solutions exist which go in a similar direction. In the Polish legal system, a number of regulations have been introduced to ensure a high level of protection for parents. These regulations address issues such as paternity leave (Article 4); parental leave (Article 5); expansion of workers' rights: maintaining rights accrued during leave and guaranteed return to work (Article 10); non-discrimination (Article 11); protection against dismissal, and burden of proof (Article 12). The Senate therefore takes the view that such a specific initiative at European Union level in this matter is groundless and provides no added value.

In the view of the Senate, the rule prohibiting the transfer of at least four months of parental leave to the second parent (Article 5) is a particularly vivid example of excessive interference in the Member States' legal systems. The rule means that in the first year following the birth of a child, the parents will no longer be able to freely divide their care duties over the child. If a man does not take advantage of four months of leave, then it lapses. The new rules also mean that women will be entitled to just under nine months of paid leave (currently, they are entitled to as much as 12 months of such leave under Polish law). The Polish rules on leave provide a large degree of discretion and flexibility in the use of this entitlement by both parents (only the first 14 weeks of maternity leave fall exclusively to the mother of the child). In this respect they are compatible with the principle of the protection of family and professional life, as set out in Article 33 of the Charter of Fundamental Rights of the European Union. According to the Senate, the directive, by imposing the obligation to take at least four months of parental leave on fathers, is interfering in family life and removing from parents the right to decide how they care for their child and organise their working life.

The Senate notes that the Commission has failed to comply with its obligation to demonstrate that the objectives of the directive are better achieved at the level of the European Union and has not presented any specific data or reliable analyses showing the need for such a harmonisation of national rules. Furthermore, it has failed to provide information on the projected costs of implementing the proposed measures. However, in the opinion of the Senate, implementing some of them will be very costly, both for the state budget and for employers.

The Senate also raises doubts as to the Commission's assumption underlying the rules proposed in the directive, namely that a high percentage of women in the labour market is one of the signs of equality between women and men. Imposing measures based on that assumption also constitutes, in the opinion of the Senate, excessive interference in the choices of citizens.

The Senate therefore concludes that the proposed rules are in breach of the principle of subsidiarity.

SPEAKER OF THE SENATE

Stanisław KARCZEWSKI