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S T A T E M E N T

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of the German Women Lawyers' Association (djbb) on the European Commission proposal for a Directive on work-life balance for parents and carers

I.

The German Women Lawyers' Association (Deutscher Juristinnenbund, djbb) supports the European Commission 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 (217/0085 (CO D)).

The German Women Lawyers' Association (djbb) is an association of female lawyers and economists aiming at the further development of law. This Civil Society Organisation/NGO is politically and economically independent and non-denominational. The djbb primarily contributes to the further development of law in all fields and the realisation of equal rights and equality for women in all areas of society at national, European and international level. The djbb has long called for statutory measures to ensure equality between women and men in working life. The djbb works together with similar associations at European and international level to realise women's rights and promote women's interests throughout Europe, especially in the European Union. The djbb is particularly interested in supporting and commenting on European legislative proposals related to gender equality in view of guaranteeing and achieving the effective implementation of gender equality throughout Europe. This also applies to the European Commission proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers.

II.

The djbb calls on the Bulgarian Presidency to make every effort to reach a political agreement on the proposal for a directive as soon as possible. At the same time, it is important to keep equality policy objectives in mind while demanding effective regulations. The djbb asks the Federal Government to support the Presidency in these efforts and to live up to its pan-European responsibility in addition to its own national interests. The European Commission considers that minimum European standards, and thus the approximation of Member States' rules on the nature, duration and payment of necessary measures to reconcile professional and private life, are sufficient. The legal basis for the proposed Directive is thus Article 153 TFEU. Harmonisation above and beyond minimum standards would be desirable and legally justifiable on the basis of Article 157 TFEU. It is however understandable that the Commis-

on, at this stage, confines itself to minimum standards in light of Member States' sensitivities in the field of social policy. The following explanations are given with taking this context into account.

The draft Directive rightly integrates the issue of equality between women and men in working life with support measures to reconcile work and private life. From the djb's point of view, the draft Directive makes an important contribution to creating and further developing binding legal rights of parents. There is a social and economic need to facilitate fathers and mothers in combining paid work with care giving responsibilities. Parents and family carers need time to take on family responsibilities as well as financial support if they lose their earnings during this period of leave. In view of the continuing traditional distribution of caregiving in accordance with gender roles, which is reinforced by the on average lower incomes of women, mechanisms allowing families to distribute care work more fairly are necessary.

Comparative legal studies show that a short period of parental leave with high wage compensation combined with well-developed institutional childcare has a positive effect in integrating women in the labour market. At the same time, it is also about tackling gender stereotypes and prejudices regarding fathers or men as care giving fathers and family carers and thus, ultimately, about a fairer society.

The draft Directive is therefore rightly aimed at guaranteeing minimum European standards for parental leave as well as necessary financial support. This involves measures to increase the employment rate of women and facilitate their return to work on the one hand, and the inclusion of men in caring for children and relatives on the other, and thus a more just and equal distribution of care work.

However, the introduction of minimum standards must not lead to the watering down of existing rules in Member States. Minimum standards allow national legislation to voluntarily go beyond the regulated level, but only prohibit Member States from falling below this regulated minimum - not from falling below their own former standards. An explicit prohibition of regression cannot be enshrined in European law, thus efforts must be made in the respective national legislatures to ensure that more far-reaching, existing national legislation is maintained.

The compulsory ten-day leave for fathers in connection with the birth of the child is to be welcomed. The minimum four months of parental leave proposed in the draft for each parent is also an important measure to promote a fairer distribution of care responsibilities between women and men. Another positive development is the minimum level of income compensation during this period, with Member States having a wide margin of appreciation in the calculation modalities which should not be used to dilute the objectives of draft Directive. In addition to parental leave for employees, better protection of self-employed people with care responsibilities should also be sought in the long term, even if this requires a revision of Directive 2010/41/EU.

The term "Eltern- bzw. Vaterschaftsurlaub" used in the German translation of the draft Directive should be reconsidered. The term "Urlaub" (i.e. generally meaning 'holiday') does not do justice to the social value and the time dedicated to the care of children and relatives. On

the contrary it contributes to the underestimation and social devaluation of care work predominantly performed by women.¹

III. In detail

1. Paternity leave

The introduction of a ten-day paternity leave to support the mother after birth is welcomed. Paternity leave should be available immediately after birth and should include a right to leave of absence from the employer. The paternity period must be combined with an income replacement benefit (e.g. similar to sickness benefit level) for this period; otherwise it may result in the right to paternity leave not being used. It is also conceivable to go beyond the draft Directive in the direction of the French model. This would allow paternity leave to be taken no later than the fourth month after birth. Fathers should have special protection against dismissal during paternity leave. Paternity leave should also be available regardless of employment contract (temporary or permanent) or length of service.

2. Parental leave – minimum duration

Article 5(1) of the draft Directive provides for an individual right to at least four months parental leave for all workers until the child reaches a certain age (12 years). In this context, the right to parental leave should not be transferable to the other parent (Article 5(2) of the draft Directive). This means that parental leave is forfeited if it is not taken by each parent. This regulation provides for a necessary rational-economic incentive for employees so that fathers participate more strongly in caring responsibilities. It also promotes acceptance of parental leave by both parents when there is an individual entitlement that does not apply in the event of non-use.

In Germany, a minimum period of non-transferable parental leave has proved successful. Since 2007, there has been a Parental Leave and Parental Benefits Act, which regulates leave entitlements and financial compensation. In addition, there are leave entitlements of up to 36 months per parent, which go significantly beyond the parental leave provided for in the Directive. The period for bringing up children with simultaneous financial support is limited to a total of 14 months when the full benefit rate is claimed. The income replacement benefit is not paid directly by the company, by a business levy or social security scheme. Instead, a tax-financed benefit system has been established, from which a replacement rate of 67% of the average net income of the 12 months preceding the birth of the child is paid. This system replaced the rigid fixed amount of child benefit (most recently 300 euro per month), which had provided a strong financial incentive for the lower income parent to take childcare leave. For a long time, women's associations in Germany had been demanding an income replacement based on the income actually earned by a parent. This demand was fulfilled with the introduction of parental benefits in 2007.

¹ The term is replaced here by the term "Elternzeiten" and will only be used when direct reference is made to the draft Directive.

In German Law, 'partner months' of two months are foreseen for parental benefit - this leave is not transferable to the other parent. There are exceptions for single parents, who can avail of the whole time period. This rule successfully contributes to the continually increasing participation of fathers in parental leave and child care since the introduction of the system. While few fathers availed of their rights in respect of earlier child benefit without 'partner months', for children born in the year 2008 a fifth of fathers availed of their rights, for children born in 2010 a quarter did so and since then fathers take parental benefit for every third child. This also increases acceptance in companies of family-related leave for men.

At the same time the incentive effect is limited due to the two month time period: four of five fathers (79 %) take the minimum period of two months, while the vast majority of mothers (87 %) use the maximum benefit period of 12 months². It is impossible to derive an intensive involvement of fathers which will have a sustainable effect on the division of family labour from a two-month interruption of working life for child care. 8 weeks could be an extended holiday just as much as personal support by fathers directly following the birth. All of this represents significant progress on earlier models, but should be extended in view of real relief of mothers. The non-transferable minimum of four months leave per parent foreseen in the draft Directive is therefore strongly welcomed.

3. Parental leave minimum financial amount – Member States flexibility

Parental leave must be combined with an attractive income replacement, which also allows fathers, who are often still better earning, to avail of leave to care for children. The proposal for a directive therefore rightly sets out a certain safeguard related to the payment level (specifically sick pay). A European regulation should provide that, during paid parental leave, benefits should be based on Member States levels of other compensatory benefits, such as sickness or unemployment. The Member States margin of appreciation is considered important, thus only the safeguard related to the payment level should be specified. Such a general rule would allow Member States scope not to introduce all calculation modalities of a given system for parental leave. In Germany, for instance, a complicated and individual comparison calculation of the gross/net income replacement rate is used for sickness benefit, and a markedly shorter payroll period chosen than for the parental benefit, which is designed as a flat-rate wage replacement system.

4. Parental leave – duration

The djb views the option of taking parental leave for children up to 12 years old as a very sensible extension that enables parents to react flexibly to care-intensive situations (relocation, divorce/separation, change of school etc.), for older children as well.

² Statistisches Bundesamt, Öffentliche Sozialleistungen, Statistik zum Elterngeld, Leistungsbezüge 2015 and press release dated 21 June 2016 -212/16.

5. Parental leave – time limits

The djb criticises the fact that the entitlement to parental leave will be dependent on a certain length of employment or length of service. All parents (and their children!) must have equal access to childcare leave. Accordingly, the djb is sceptical of the provision in the draft Directive to allow employers to postpone parental leave for operational reasons.

Furthermore, the draft Directive grants Member States a margin of appreciation to determine the period within which parents must inform employers of their intent to take parental leave. In this regard, the djb points out that this discretion to offset claims could be used for overly short or non-transparent time limits. djb therefore recommends that at least a framework for a notice period be included in the draft Directive.

6. Self-employed people

The djb suggests the introduction of minimum standards for the self-employed as well. They should also receive income-related benefits during parental leave and paternity leave. Accordingly, an amendment of Directive 2010/41/EU is recommended. The extension of protection to self-employed mothers during pregnancy, childbirth and breastfeeding should also be encouraged. This requires further development of Article 8 Directive 2010/41/EU.

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