

***Courtesy translation***

Mr Jean-Claude Juncker  
President of the European Commission  
Rue de la Loi 200  
B-1049 Bruxelles  
Belgium

The Hague, 27 June 2017

Dear Mr Juncker,

The House of Representatives of the Netherlands/Tweede Kamer der Staten-Generaal has examined the EU proposal concerning the directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU COM(2017)253 in terms of the principle of subsidiarity. As such, use was made of Article 5 of the EU Treaty and Protocol 2 of the Treaty on the Functioning of the European Union concerning the application of the principles of subsidiarity and proportionality.

I am writing to inform you that the opinion of the House of Representatives with regard to the subsidiarity of the aforementioned proposal is negative.

A majority of the House of Representatives takes the view that

- the proposal is not a transnational problem or a subject that could only be realised by means of measures at EU level. Equally, it is not a transnational problem or a subject that could not be resolved by Member States. In addition, it is unclear what the benefit is of equalising regulations on work-life balance between the Member States, in view of the functioning of the internal market;
- the social domain, and with it the related work-life balance, is a national concern. Work-life balance is pre-eminently an issue of individual choices and, where necessary, national policy, both of which arise from specific national, social and cultural considerations, partly based on the national policy system.

For the above reasons, the House of Representatives of the States-General has reached the judgement that the European Commission has not satisfactorily demonstrated that the proposal meets the principle of subsidiarity.

The annex sets out the contributions to the debate by the different parliamentary groups, in which they explain their standpoints with regard to subsidiarity and other matters in greater detail.

A copy of this letter will also be sent to the European Parliament, the European Council and the Government of the Netherlands.

Yours sincerely,

Khadija Arib  
Speaker of the House of Representatives

## Annex I. Contributions by parliamentary groups

The House of Representatives of the Netherlands has 150 seats. These seats are distributed as follows:

- Liberal Party - *Volkspartij voor Vrijheid en Democratie* - VVD (33)
- Party for Freedom - *Partij voor de Vrijheid* - PVV (20)
- Christian Democratic Party - *Christen Democratisch Appel* - CDA (19)
- Democrats 66 - *Democraten 66* - D66 (19)
- GreenLeft - *GroenLinks* - GL (14)
- Socialist Party - *Socialistische Partij* - SP (14)
- Labour Party - *Partij van de Arbeid* - PvdA (9)
- Christian Union - *ChristenUnie* - CU (5)
- Party for the Animals - *Partij voor de dieren* - PvdD (5)
- 50PLUS (4)
- Reformed Political Party - *Staatkundig Gereformeerde Partij* - SGP (3)
- DENK (3)
- Forum for Democracy - *Forum voor Democratie* - FvD (2)

With regard to evaluating the proposals in terms of subsidiarity, eight parties made a contribution.

### Subsidiarity

The members of the **VVD (Liberal Party) parliamentary group** adopt a negative standpoint regarding subsidiarity in this case. The proposal on work-life balance would introduce a number of new or raised minimum standards for parental, paternity and care leave, including the new right of fathers to take at least ten working days' leave at the time of the child's birth. The European Commission takes the view that the right of both parents to parental leave is not sufficiently achieved by the [existing Directive \(2010/18/EU\)](#). The European Commission cites as a problem the fact that there is insufficient incentive for men to take leave to care for children or dependent relatives and that work-life balance could be improved in some Member States. In addition, the European Commission judges that the current legal framework offers insufficient incentives for men to take on an equal share of caring responsibilities.

The members of the VVD parliamentary group take the view that there is no demonstrable transnational problem that Member States could not resolve themselves. Work-life balance is pre-eminently an issue of individual choices and, where necessary, national policy arising from specific national, social and cultural considerations, partly based on the national policy system. There is no clear benefit in minimum standards that apply across Europe. The members of the VVD parliamentary group also dispute the EU's right to make it an overarching objective that everyone should take an equal share of caring responsibilities. This is pre-eminently a decision for individuals and for parents jointly.

In addition, the proposal falls short in its analysis of the consequences of the policy proposals. These rules would radically alter existing laws and regulations and the current system of terms and conditions of employment and collective labour agreements in all Member States. Any such operation would be bound to involve excessive bureaucracy and the associated resulting criticism of (European) government.

In addition to all that, in specifically detailing minimum standards, the European Commission assumes that the Netherlands is itself incapable of choosing its own objectives or does not have the tools available to formulate policy based on its own political choices. It is also unclear that there would be any real benefit in a gradual equalisation of regulations on work-life balance in the various Member States. The members of the VVD parliamentary group take the view that Europe would not automatically be more competent in this field than individual Member States. On the contrary.

The members of the **PVV (Party for Freedom) parliamentary group** consider the social domain to be a national concern and the members therefore adopt a negative standpoint regarding subsidiarity in this case.

The members of the **CDA (Christian Democratic Party) parliamentary group** argue that it is up to the Member States themselves to determine whether and how measures can be used to

achieve a work-life balance. This is not a concern of Europe. It is not a case of a transnational problem that the Member States are incapable of resolving themselves.

The members of the **D66 (Democrats 66) parliamentary group** are strong advocates of extending leave taken at the time of childbirth, enabling fathers, as well as co-mothers and partners, to spend more time with their newborn child. This is also of great importance for the child's development. Equally, it is very important to encourage women's participation in the workforce. The difference in the level of participation in the labour market between men and women remains too great. The members therefore agree with the position that it should be possible for work and caring duties to be shared out fairly and for partners to share these duties equally. In view of the importance of extending these rights, the members would be very disappointed if the Netherlands did not itself extend them but needed to be forced to do so by European regulations.

The members share the Dutch Government's view that it is good, on the one hand, to have a minimum European standard, ensuring there is a level playing field between Member States. But, on the other hand, they also feel that there should be room for differences between Member States and that the formulation of social policy is primarily a matter for the Member States themselves. However, there are certainly opportunities for the EU to take on a role in this area, as was the case with the Maternity Leave Directive in 1992 and the Parental Leave Directive in 2010. The members of the D66 parliamentary group would like to see further justification of why this directive should be established at European level, why it cannot be tackled by Member States themselves and why the decision was not taken to give a recommendation rather than a directive before issuing the final judgement.

The members of the **GroenLinks (Green-Left Party) parliamentary group** adopt a positive standpoint regarding subsidiarity in this case. The members agree with all of the arguments put forward by the European Commission.

The members of the GroenLinks parliamentary group take the view that employees in Europe should be given the same basic conditions of employment. Regulations on leave are part of that. It is therefore up to the EU to draft regulations on this.

Currently, European Member States are failing effectively to promote the equal sharing of care responsibilities between men and women. It is good for the European Union to regulate the minimum standards, ensuring that European employees enjoy the same rights and equality of men and women in the labour market is promoted.

The members of the **SP (Socialist Party) parliamentary group** have expressed a negative opinion with regard to subsidiarity. They take the view that the social domain and the associated work-life balance is a national matter. It concerns part of the social security system, which is the responsibility of a member state. Equally, it does not concern a transnational problem or a subject that could only be realised by means of measures at EU level. For example, there is already a bill in the Netherlands on extending paternal leave.

The members of the **ChristenUnie (Christian Union) parliamentary group** take the view that the directive does not pass the subsidiarity test. Although the members do not oppose extending paternal leave or care leave or the introduction of measures on employment and care, they do not take the view that this can be in any way a European concern. The members take the view that the proposed measures on granting leave and associated matters are a national concern and do not include transnational aspects that cannot be addressed by Member States themselves.

The members of the **SGP (Reformed Political Party) parliamentary group** point out that it is pre-eminently a matter for Member States to determine what the most desirable work-life balance is in view of the specific culture in that member state. According to these members, the proposal particularly fails to meet the subsidiarity requirement with regard to the question whether a right to paid leave should exist. European regulation should limit itself to the right to take leave. It is not clear to these members why a standard minimum regulation of paid leave should be necessary, with a view to the functioning of the internal market.

### **Legal basis**

The members of the **VVD parliamentary group** point out that the European Commission bases its proposal on Article 153 of the [Treaty on the Functioning of the European Union](#). This article refers to equality between men and women with regard to labour market opportunities and treatment at

work. Based on this very general provision, the European Commission considers itself invited to put forward highly specific minimum standards with regard to work-life balance. The members of the **VVD parliamentary group** do not believe that the European Commission has a mandate to set aside national authorities on this matter. The purported legal basis concerning equal opportunities for men and women in no way represents a legally-sound basis for Brussels to intervene in the personal choices of men and women in organising their family lives. This purported legal basis is also too general and untargeted in order to form the basis for breaching the authority of national governments to apply their own policy on such matters.

The members of the **PVV parliamentary group** have no comments on the legal basis.

The members of the **CDA parliamentary group** agree with the legal basis but do not believe it to be applicable because their judgement with regard to subsidiarity is negative: measures for improving work-life balance are the preserve of national government.

The members of the **D66 parliamentary group** take a positive view with regard to the legal basis for the EU proposal.

The members of the **GroenLinks parliamentary group** take a positive view with regard to the legal basis put forward for the EU proposal.

The members of the **SP parliamentary group** take a positive view with regard to the legal basis, primarily because of its very general wording. However, it is up to Member States themselves to determine how equality between men and women with regard to labour market opportunities and treatment at work should be configured. Directive 2010/18/EU is sufficient.

The members of the **ChristenUnie parliamentary group** take the view that Article 153 of the Treaty on the Functioning of the European Union calls on the European Union to exercise restraint in cases where Member States are capable of acting themselves. The European Union's actions must at most be supplementary and supportive. In the proposed directive, this is not the case and with regard to granting leave, it is also not necessary or desirable.

The members of the **SGP parliamentary group** argue that the legal basis of the Treaty focuses on labour market opportunities and treatment at work. They argue that the proposal does not aim to remove actual barriers on these points, but instead asserts the need for work-life balance based on considerations of political desirability. This broader approach than actually suggested on the basis of the Treaty is demonstrated by the aim of supporting women's career development. Paternity leave also targets a wider perspective, such as the father's involvement in child rearing. These members argue that the Treaty falls short as a legal basis for any proposals broader than labour market opportunities and treatment at work.

The members of the **SGP parliamentary group** also argue that the right to ten days' paid leave places a significant burden on small companies. As such, the proposal is at odds with the Treaty obligation to avoid such burdens.