



Work-life balance measures: recent EU developments and the Dutch approach

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Introduction and outline

- The EU acquis on work-life balance issues
- The Commission's proposal for a directive on work-life balance (COM (2017) 253 final)
- Assessment of existing EU law and the proposal
- Dutch law on carers' leaves and adjustment of working hours, time and place
- Some conclusions



EU *acquis* on work-life balance

- Recast Directive 2006/54 (employment)
 - Prohibition of direct sex discrimination (e.g. disadvantage related to pregnancy)
 - Example: ECJ C-438/99 *Melgar*
 - Prohibition of indirect sex discrimination (e.g. disadvantage related to part-time work or parental leave)
 - Example: ECJ 170/84 *Bilka*
 - Return from leave: same or equivalent job and benefit from improvements



EU *acquis* on work-life balance

- Pregnancy and maternity leave (92/85)
 - Maternity leave, 14 weeks, allowance sick pay
 - Protection against dismissal from the beginning of the pregnancy to the end of the maternity leave
- Parental leave (2010/18)
 - Birth or adoption; 4 months; one month non-transferrable; until the child is 8 years old
 - Unpaid



Self-employed and part-time work

- Self-employed (2010/41)
 - Sufficient maternity benefits for at least 14 weeks (sick pay), Article 8
- Part-time (97/81)
 - As far as possible, employers should give consideration to requests by workers to transfer from full-time to part-time and vice versa (Clause 5(3))



The Commission's proposal on work-life balance for parents and carers and repealing Directive 2010/18/EU

- COM (2017) 253 final and additional measures
- Some starting points
 - Incentives for men to take up leaves
 - Leaves not only to care for children, but also ill or dependent relatives
- New leaves
 - Paternity leave for fathers at the occasion of the birth of the child: 10 days
 - Carers' leave for workers providing personal care or support in case of serious illness or dependency of a relative: 5 days a year



The Commission's proposal

- Main changes concerning parental leave:
 - Individual right, non-transferrable for at least four months
 - Up to the age of 12 years at least
 - Repeal of Directive 2010/18
- Payment of adequate income at least equivalent to sick pay in case of paternity leave, parental leave and carers' leave (no change for paid time off)



The Commission's proposal

- Flexible working arrangements for workers with children up to at least 12 years and carers
- Flexible working arrangements = adjust working patterns:
 - remote working arrangements
 - flexible working schedules or
 - a reduction of working hours



The Commission's proposal

- Right to request such flexible working arrangements for caring purposes
- Employers have to consider and respond to requests and justify any refusal
- The duration might be subject to a reasonable limitation. If the duration is limited, right to return to the original working pattern at the end of the agreed period



The Commission's proposal

- Request to return to original working pattern in case of change in circumstances: employer has to consider and respond to such request
- Return to own job or equivalent post and benefit from improvements
- Prohibition of discrimination on the ground of applying for or taking leave or having exercised right to flexible working arrangements
- Protection from dismissal and adverse treatment
- Burden of proof in case of presumption of dismissal
- Penalties (including e.g. fine); equality bodies etc.



Assessment

- Important step forward
 - The role of men: paternity leave
 - Carers' leave, also for seriously ill or dependant relative
 - Paid leaves
 - Individual rights
 - Flexibility meeting the needs of workers with care responsibilities
- Pregnancy and maternity Directive remains unchanged



Assessment

- No reference in the Preamble to CEDAW
- No obligation to combat gender stereotyping (art. 5 CEDAW)
- Rather short leaves, in particular carers' leave
- Rather weak right to flexible work arrangements, no right to extend working hours
- No legislative proposals on childcare facilities
- No provisions on consequences for entitlements to (statutory) social security and (occupational) pensions, even in case of a temporary reduction of working hours



Dutch law: some examples

- Paternity leave: would be extended
- Parental leave: would be paid leave
- Short-term care leave: 10 days a year paid 70% of the minimum wage: no change
- Long-term care leave (unpaid) for six weeks weekly working time: no change
 - NB: the group of persons who might be in need of care (short and long-term care leave) is broad and includes ‘social relations’, as long as care is directly linked to the relation and should reasonably be provided by the worker



Dutch law: Flexible working

- Right to adjust working hours for some periods and a changing number of hours; the working schedule and the working place in undertakings with more than 10 workers
- Working hours: employer has to grant the request to adjust working hours and working time, unless serious business reasons prevent this (e.g. serious organisational problems)



Dutch law: Flexible working

- The working time schedule has to be adapted according to the request of the worker, unless this is not reasonable or justified (balance of interests)
- The employer has to consider the request to adjust the working place and discuss a refusal with the worker



Some conclusions

- Piece meal approach
- Revised and coherent EU framework up to a certain level. By repealing the Parental Leave Directive, more consistency
- Important step:
 - Paid leaves
 - Carers' leaves
 - Flexible working arrangements
- New challenges: importance of care



Thank you for your attention!

