



- Fact sheet -

2017 Commission proposal legislation on care leaves

The European Commission has proposed a legislative package on work-life balance on 26 April 2017. This package follows a consultation, to which AGE submitted a response, and long-lasting efforts to upgrade the protection for leaves for working parents. As an innovation, the Commission has proposed care leaves of five days per year and workers, remunerated at the level of sickness benefits as part of the new package.



The new package addresses family leaves in a comprehensive manner. It repeals the existing directive on parental leave to integrate new provisions, most notably on care leaves.

Whom does this directive concern?

The directive defines care leaves as a right of workers who have an employment contract or an employment relationship. It defines a 'carer' as 'a worker providing personal care or support in case of a serious illness or dependency of a relative',



meaning a worker's son, daughter, mother, father spouse or partner in civil partnership; **thus it does not include in-laws, aunts and uncles nor sisters and brothers.** It defines 'dependency' as a situation in which a person is 'temporarily or permanently in need of care due to disability or a serious medical condition other than serious illness'. The provisions in the draft directive would allow member states to define conditions of length of service prior to opening the rights, but this length should not exceed one year.

What does the directive propose concretely?

➤ Care leave and *force majeure*

For these cases, the proposal allows for five days per year, per worker, subject to the appropriate substantiation of the medical condition of the worker's relative. Care leave, as parental and paternity leave provided for in the proposal, should be remunerated at least on the level of sick leave. Carer's leave is distinct in the





directive from 'time off from work on grounds of force majeure', which should be provided 'for urgent family reasons in cases of illness or accident making the immediate presence of the worker indispensable'. Time off in cases of force majeure is not remunerated under the provisions of the directive. The case of 'force majeure' is not a novelty and already exists in EU employment legislation

During care leaves, employment rights acquired by a worker at the time of starting a carer's leave should be maintained. When returning from leaves, workers should return to their jobs or equivalent posts, for which conditions should not be less favourable than before the leave, including improvements in working conditions to which they would have been entitled if they had stayed in full service.

➤ **Right to request flexible working arrangements**

Additionally to the right to leave, the proposal introduces a right to request flexible work arrangements for parents and carers. Flexible work arrangements mean an adaptation of work schedule, a reduction of hours worked and, a novelty in European legislation, the possibility of telework. Employers have to consider the request and respond to them, but can oppose them if the opposition is duly justified. The directive protects the right to return to the original working pattern if the arrangements are agreed upon to be of a limited duration. Employers are obliged to consider and to respond to such a request.



➤ **Non-discrimination and protection from dismissal**

The directive protects workers from less favourable treatment in the case they have applied for or exercised the rights referred to in the directive. Additionally, the directive reverses the burden of proof in case a worker considers to be unjustifiably dismissed because of having exercised her or his rights under the directive. In this case, the employer has to provide explanations proving that dismissal was not linked to the uptake or request of the rights in the directive.

The new package marks the follow-up of efforts to modernise the rights to family leaves, currently existing in a directive on maternity leave and protection from dismissal of mothers during maternity leave, and another directive on parental leave, which implements an agreement between social partners. An initiative on increasing protection, length and remuneration of maternity leave started in 2008 was repealed in 2014 due to a lack of willingness to adopt the directive in the Council.





Why five days? What does the impact assessment say?

The Commission, in its impact assessment has tried to evaluate the impact of different forms of carer's leave: the evaluation was either no legislation and only policy guidance on the success factors of carer's leave, 12 weeks of unpaid leave, 4 weeks of paid leave (sick pay level) and 5 days of short-term leave (sick pay level).

The five-day option would mean some change in member state's legislation, but no fundamental changes, which makes this option more acceptable for member states. The option of 12-weeks unpaid leave is evaluated negatively because the aim of the initiative is to encourage men to take up care leaves, and it was deemed less likely that more men will take up care leaves if they are unpaid. It was identified that the 5-day option might be unsuitable for persons with family member who have heavy care needs, therefore the Commission highlights the need for the provision of formal care services for this option.

All options, according to the impact assessment, should have an impact facilitating women's employment and a reduction of the risk of poverty of their households, but this impact is deemed stronger for the options including pay.

> **The impact on companies** was assessed the following ways: all options consider create costs for companies for arranging the leaves, temporary loss of productivity, and, where employers incur the cost for the leave payment, the payment itself. However, they also benefit from staff satisfaction and retention and avoid re-hiring costs. According to the impact assessment, a 12-weeks unpaid leave would create costs of 300 million over the next 40 years, the 4-weeks paid option would create benefits of 295 million and the 5-days paid option 1.078 million.

> **For governments, the impact of paid care leaves is also considered positive.** Costs are linked to the processing of leave requests and payment of benefits, estimated benefits derive from additional tax revenue and the non-payment of unemployment benefits that would be drawn by workers who stop working because of care duties.

> **Macroeconomic benefits** include the increase of the size of the labour force and changes in employment and labour market participation; these changes are positive for the scenarios of paid leave. It is expected that exports would marginally decrease (by 0.2 billion in 2050) and prices marginally decrease (-0.3%). The employment effect is expected to be of +45.000 by 2030 and +76.000 by 2050 for the four-weeks paid scenario, slightly lower for the 5-days paid scenario and much lower for the 12-weeks unpaid one.

While the overall evaluation seems to suggest that the four-weeks proposal is more beneficial for companies, governments and individuals, the impact assessment warns about higher administrative problems linked to the introduction of the leave compared to the 5-days paid option. Therefore, the Commission retained the last option.





The legal gap analysis seems to suggest that not much adaptation is needed on the carer's leave proposal:

No current provisions ↓ Falls significantly short of requirements ↘ Falls somewhat short of requirements → Meets requirements ↗ Exceeds requirements ↑

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Paternity Leave																														
	2 weeks leave (10 wd)	↘	↗	↑	↓	↓	↗	↗	↗	↘	↑	↑	↗	↓	→	↗	↘	↑	↘	↗	↘	→	↑	↑	→	↗	↑	↓	↗	
	Paid at sick pay level	↑	↑	↗	↓	↓	↗	↗	↑	↑	↑	↗	↑	↓	↑	↗	↑	↑	↑	↑	↑	↘	↑	↑	↑	↑	↑	↓	↑	
Parental Leave																														
	Length 4 month up to child age 12	↗	↑	→	→	↘	↘	↑	↘	↘	↘	↘	↘	→	↘	→	↗	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↑	
	Right to request flexible use	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	
	100% non transferable	↗	↗	→	↑	↘	↘	↘	↑	↓	↓	↗	→	↑	↑	↓	↑	↑	↗	↗	↘	↘	↗	↗	↑	↑	↑	→	↘	
	Entire period paid at sick pay level	↗	↗	↗	↑	↗	↑	↑	↓	↓	↗	→	↑	↑	↓	↑	↑	↑	↗	↗	↘	↘	↗	↗	↑	↑	↑	→	↘	
Carers' Leave																														
	Right to a short-term leave of 5 days per year	↑	↑	↑	↓	↑	↑	↑	↗	↗	↑	↗	↑	↑	↑	↑	↑	↑	↘	↑	↓	↑	↑	↑	↑	↑	↑	↑	↗	
	Paid at sick pay level	↗	↑	↑	↓	↗	↗	↑	↑	↓	↗	↗	↗	↑	↗	↗	↑	↓	↑	↑	↓	↗	↑	↑	↑	↑	↑	↑	↓	
Flexible Working Arrangements																														
	Right to request flexible schedule	↗	↗	→	→	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	
	Parents with children up to 12	↗	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	↘	
	Carers	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	
	Right to request telework	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	
	Parents with children up to 12	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	
	Carers	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	
	Right to request reduced working hours	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	
	Automatic right to return to working hours	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	
	Employer obligation to consider the request and reply	↑	↗	↗	↑	↑	↑	↗	↗	↗	↑	↑	↗	↑	↑	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗	↗		

(Impact assessment, p.116)

Which flanking measures does the proposal foresee on long-term care?

AGE's February 2016 position on carer's leave was that, in a perspective of gender equality, care leaves only make sense if they are flanked by affordable, available quality long-term care services. The Commission identified the same in the impact assessment, especially in the analysis of the impact of the proposal for five-days care leaves. The communication accompanying the proposal for a directive includes a number of elements towards this:

- **Sharing of best practices** with social partners and Member States through seminars under the Mutual Learning programme on smooth transitions between leaves and employment, on crediting of family-related leave periods in the pension system
- **Guidance** on employment-friendly and accessible care services, and monitoring the provision in the European Semester
- Improve **EU level data collection** on availability, affordability and quality of care services, with a view to explore possibilities of developing benchmarks at EU level
- Encourage the **use of the European Fund for Strategic Investment** to finance social infrastructure, including through public-private partnerships





- Develop the provision of accessible, affordable and quality long-term care services using **support from ESF and the ERDF**; request member states to review the programming of European Structural and Investment funds to earmark more means
- Monitor the adequacy of member state's spending in light of their long-term care needs via the **European Semester**

What is the follow-up process?

For the directive:

The legislative process is launched with the proposal for a directive; therefore the Council and the European Parliament will, in parallel, consult to find a position in view of the 'trilogue' (an informal process between Parliament, Council and Commission). AGE is in close contact with Members of the Parliament to monitor the process there.

For the non-legislative aspects

- The revision of the EU funding programmes is ongoing in view of the post-2020 Financial framework
- AGE will monitor the European Semester to see if the promise to monitor long-term care provision and financing is translating into reality
- The Social Protection Committee's Indicators subgroup as well as the Commission (DG Employment and Social Affairs) will probably look for indicators to measure availability, adequacy and quality of care and lead reflections on these
- Member states (such as Council presidencies – Estonia in the 2nd half of 2017, then Bulgaria and Austria) might organise mutual learning conferences on long-term care

Links for further reference:

- Proposal for a Directive on Work-Life Balance for Parents and Carers: <http://ec.europa.eu/social/BlobServlet?docId=17605&langId=en> ([French version](#) / [German version](#))
- Commission communication accompanying the Commission Proposal for a Directive ... on work-life balance for parents and carers: <http://ec.europa.eu/social/BlobServlet?docId=17604&langId=en>
- Impact Assessment accompanying the proposal: <http://ec.europa.eu/social/BlobServlet?docId=17621&langId=en>

