

Berlin, 4 May 2022

AGF Statement on the draft law on implementing the EU Work–Life Balance Directive in Germany

Despite the very short deadline for responses, we would like to thank you for the opportunity to comment on the draft law to implement the Work-Life Balance Directive in Germany.

The European Directive on Work–Life Balance for parents and carers (EU 2019/1158), which was supported by the German government, obliges the Member States of the European Union to implement minimum provisions to make it easier for parents and carers to reconcile work and family life. This includes individual rights to paternity leave, parental leave and care leave, as well as flexible working arrangements for employees. The Directive requires that special attention be paid to equality between men and women in terms of labour market opportunities and treatment in the workplace.

As the deadline for transposing the Directive into national law by 2 August 2022 approaches, the draft of the “Reconciliation Directive Transposition Act aims to make minor corrections to laws already in place. Regrettably, the government is missing the opportunity to make important and more far-reaching changes.

The following adjustments are of an almost “homeopathic” nature, as they do not actually extend individual rights and therefore represent hardly any significant improvements to the everyday lives of families:

- If an employer refuses a request to reduce working hours during parental leave, the employee now has a right to a justification (instead of the previous request that "the employer and the employee (should) come to an agreement within four weeks");
- The new competence of the Federal Anti-Discrimination Agency for dealing with discrimination in regards to the Work–Life Balance Directive;
- The introduction of a deadline (four weeks) for a response to an application for leave under the Family Care Leave Act or the Care Leave Act in small businesses. However, there is still no legal entitlement to (family) care leave for employees in companies of this size.

There are to be small actual improvements for families whose relatives are employed in small businesses, detailed in two points in the Care Leave and Family Care Leave law:

- In future, it shall be possible for employees in small companies (i.e. up to 15 (Care Leave Act) or 25 (Family Care Leave Act) employees) who have voluntary agreements with their company for care leave to return to their jobs prematurely if the domestic care situation no longer exists.
- Similarly, employees in small businesses who agree with their employer on care leave under the Care Leave Act or the Family Care Leave Act will be protected against dismissal for the duration of the agreed leave.

The resulting improvements for families are thus marginal at best. Irrespective of the general criticism regarding the Caregiver Leave Act and the Family Caregiver Leave Act, which are inadequate in their basic approach, family

caregivers who work in small businesses continue to be excluded from the legal entitlement to care leave. They are dependent on the goodwill of their employers for leave by mutual agreement.

It is very regrettable that Germany has, since the introduction of the Work–Life Balance Directive, failed to provide for effective improvements in the area of reconciliation between work and family life and does not do so in this draft law.

The family organisations therefore call on the federal government to take more substantial measures to implement the Work–Life Balance Directive. There are numerous approaches to this, which are mentioned below but not elaborated in detail:

- As the Independent Advisory Council on the Reconciliation of Care and Work also states, the Care Leave Act and the Family Care Leave Act are not, for several reasons, adequate models for reconciling care and work. The family organisations request that these two laws be merged into a new Family Care Leave Act. This must include tax-financed financial compensation for up to 36 months, which must be designed in a socially just manner. In addition, the regulation on short-term inability to work should provide for an extension to at least 10 working days per year.
- The introduction of paternity leave of at least 10 days after birth as an independent right.
- Extension and adjustment of the parental allowance.

Fortunately, some of these approaches are already referred to in the current coalition agreement. Unfortunately, however, the opportunity to introduce two weeks' paid leave for the partner after the birth of a child as it is announced in the agreement, has been missed in this current draft law. The family organisations united in the AGF expect significantly more legislative commitment after the magic date of 2 August 2022 to solve the problems in reconciling work and family life that affect families with children/young people and relatives in need of care.